

Possible reasons why the Board may not wish for Russell Mishcon's dissertation to be published

Executive Summary Page 1	"One such conclusion involves a possible breach of fiduciary duty which, if confirmed, requires immediate action by the Board of Trustees"
Contents	Andrew Evans' name is mentioned
Acknowledgements Page 6	Andrew Evans' name is mentioned again. Footnote 26 refers to a private meeting between the Chairman, the CEO and DH officials
Page 9	"The current practice of MFT is to distribute monthly and twice yearly payments to all Primary Beneficiaries irrespective of financial need". We have higher and lower reg pay so this is not strictly true.
Pages 9-10	"It also has a grant application system, which is not dependent on financial need but whether certain criteria are met. This may be in breach of the Trust's charitable function". The remainder of page 10 is critical of the Trust/Trustees and Trustees may well disagree with its content.
Page 11	The UK litigation against the American drug companies is referred to; is this public knowledge?
Page 15	"For example, treating all Primary Beneficiaries the same, irrespective of financial need, appears to be contrary to Charity Law"
Page 16	In the paragraph entitled "Need" there is reference again to payments being made irrespective of financial need.
Page 17	"A recent decision, in July 2007, by MFT's Board of Trustees to make a distinction between those households earning above £30,000 p.a. and those below, so that the latter now receive £57.00 per month more, may be a breach of MFT's charitable function" Should the Board's decisions be published? Breach of charitable function mentioned again.
Page 18	In the paragraph entitled "Empowerment" reference is made again to the meeting between the Chairman, the CEO and DH officials where the issue of empowerment was raised. This was a private meeting and no official notes were released so is somebody who was not in attendance able to make reference to it?
Page 27	The paragraph entitled "Weighting and Skew" provides reasons why the results of the survey may be totally inaccurate: those in greatest need are more likely to respond, respondents may not have been truthful about financial matters.
Page 28	53% of beneficiaries responded. Given the concerns for the types of beneficiaries who responded (page 27) this further undermines the results of the survey.
Page 29	"The proposed dissertation topic was also approved by the Ethics Committee of London South Bank University" Pat Spellman asked about this at the last Board Meeting.

Page 31	<div>GRO-A</div>
Page 39	“When asked if they [Primary Beneficiaries] could manage without financial support from MFT 77% of respondents said they could not.13% did not know and 10% said that they could”. Does this not confirm that need <i>is</i> present in the majority of cases?
Page 40	“Of the 70% of respondents who felt their needs had changed, the following chart shows that 72% are concerned about finances”. This is irrespective of the money they already receive from MFT which is a further indicator of widespread need.
Page 42	A quote taken from an individual’s survey response is used to show how some beneficiaries are too proud to apply for grants. If each individual were to be means tested would this not cause even greater, more widespread, damage to pride than the grant application process? A further quote is used to show how one respondent regards the grants system as biased and how they feel everyone should be given more money to be independent. This policy would be in complete contrast to the strict need based requirement mentioned throughout the dissertation.
Page 51	“As for the 2003 Long Term Review, a Business Case was presented to the Government in 2006, some 2 years after the suggested date for submission” This is critical of the Trustees.
Page 51	Footnote 94 again makes reference to the meeting with DH officials.
Page 53	Andrew Evans’ name is mentioned again
Page 60	Reference is again made to the litigation against the American drug companies; is this public knowledge?
Page 61	“However, documents very recently disclosed under the Freedom of Information Act are said to evidence a Government cover-up, which has long been suspected and may, therefore, prompt the Government into a further, face-saving settlement, either in anticipation of the Archer Report or to satisfy its recommendations”. Should one of the Trustees, considering the Trust is wholly funded by the DH, be publishing such a statement?
Pages 63-65	The section entitled “The Business Case – ‘Funding long-term survival’” is critical of the business case. Should a member of the Board of Trustees, who effectively commissioned and wrote the business case, be undermining it in such a public way?
Page 67	“There is no apparent logic to this stance...” If Russell was a Trustee when this ‘illogical’ decision was reached (which I think he was) then he would presumably have been party to it. Should he therefore be airing this opinion now having not done so at the time? “Moreover, any household with an income over £30,000 arguably has no financial need and should not receive any support from MFT, although trustees are entitled to consider that there may still

Pages 67-68	<p>be some financial need". This is controversial and may cause upset amongst beneficiaries if the document were to be published.</p> <p>"Therefore, notwithstanding the desire by MFT's Board of Trustees to be inclusive towards all Primary Beneficiaries, payment to a member of MFT's community of care who is not in financial need, as determined by The Board of Trustees, would appear to be a breach of a trustee's fiduciary duty to have regard to charitable need. If confirmed by legal opinion, action will need to be taken". Having taken legal opinion from BLP and, informally, from the Charity Commission, this statement does not appear to be confirmed by legal opinion so what is the worth in it being printed?</p>
Page 68	<p>"I also find it difficult to understand the rationale behind the giving of £250 a month to a non-infected widow with a dependent child or to the guardian of an orphan (with £100 a month for subsequent children), when regular pay to a Primary Beneficiary (which may include an infected widow) provides for only an additional £30 a month for the first dependent child and £15 a month for subsequent children". Should this sort of issue not first be raised with the Board so that they can either justify the rationale or alter policy? I suspect the reasons may be budget constraints and the fact that widows only receive support for a limited period.</p>
Page 69	<p>"Those who have been involved from the very beginning of MFT with its function have long considered that both the Government's initial and subsequent response to the plight of the victims has been 'pitiful..., parsimonious, niggardly [and] insensitive'^{from the Rev. Preb. Alan Tanner's interview}, responding only when political force is applied". I am sure the DH would object to an MFT Trustee publishing these comments.</p>
Page 69	<p>Footnote 130 quotes from a private letter between Russell and the Department of Health.</p>
Page 70	<p>"The Department of Health's written response to the request for an interview with the Minister indicates that neither further capital funds, nor an increase in annual grant, are likely". Should a Trustee be disclosing publicly the DH's strategy on future funding? Likewise should a Trustee disclose that "The one ray of hope is the indication that the Department 'will consider the recommendations made by the [Archer] Inquiry when it reports'".</p>
Page 70	<p>"... in March 2008, an MFT Working Party recommended that a designated fund of £35,000 be allocated for such a scheme..." Presumably the contents of this meeting are confidential and Russell is only aware of them through being a member of the group.</p>
Page 70	<p>"MFT has not, historically, been strong on strategy with a consequent lack of strategic management by its Board of Trustees. It now has an excellent, very professional, Chief Executive and supporting staff, but the Trustees meet together only quarterly and</p>

	the last ‘brainstorming’ session was 18 months ago and lasted a few hours”. This is very critical of the Board.
Page 71	The whole page refers to the Board’s strategies which were agreed at a private Trustee Strategy Day.
Page 73	There is again mention of seeking legal opinion regarding a possible breach of fiduciary duty. As this has been done and there is no breach is there any use in printing it?
Page 73	Footnote 143 reads: “Trustees can be personally liable for breaches of fiduciary duty, which lead to financial loss to the charity. The recent incorporation of MFT’s trustee body does not affect that liability. If a complaint was made to the Charity Commission, it would undoubtedly make enquiries and could open an inquiry. If it did so it would then publish a report on its web-site. Proceedings under the Charities Act 2006 can be brought by trustees (or any one of them), or by any person interested, which could include the Government as a funder or anyone who qualifies as a beneficiary.....” This statement could well encourage such challenges which would surely be of no benefit to anybody.
Page 80	The final paragraph again refers to a Government cover-up and also to destruction of evidence by civil servants; probably not something that a Trustee of a Government funded charity should be publicly stating whether it’s true or not.

APPENDICES

B Page 3	“Whilst those infected knew, at this time, that they were HIV positive, none had been made aware that they were also HCV positive, yet the Government’s waiver document referred to claims for hepatitis infection. The Government clearly knew something that it was not prepared to share with those haemophilia sufferers that had been infected, or their medical practitioners.” More opinions that perhaps a Trustee should not be airing publicly?
B Page 11	<div style="border: 1px dashed black; padding: 10px; text-align: center;"> GRO-A </div>
B Page 12	When referring to the interview with Baroness Kennedy, Russell writes: “She is well placed to comment on the potential uses [of] the Freedom of Information Act regarding allegations that there has been a ‘cover-up’ by the Department of Health relating to the issue of contaminated blood”. Whether there has been a ‘cover-up’ or not is not for a Trustee to publicly discuss.
Section 1 Page 1	Alan Tanner is highly critical of Government in his interview responses.
Section 2 Page 3	In one of his interview responses Peter Stevens refers to a statement made to him in a private conversation with Mark Winter:

	<p>“our group of people have the same sort of life expectancy as a bunch of middle aged smokers”. Peter goes on to say “Given that, from what I can see, most of them are a bunch of middle aged smokers, I found that was quite illuminating and although I don’t think that particular remark has been widely circulated round the community...”. There is a reason why this remark has not been circulated around the beneficiary community and I’m sure Mark would rather it remained that way.</p>
Section 2 Page 4	Peter is critical of Ministers/officials at a couple of points.
Section 3	This is a transcript of the interview with Andrew Evans.
Section 3 Page 6	The final paragraph expresses Andrew’s suspicions of Government corruption.
Section 4 Page 9	In his interview response Mark Winter expresses his concerns over the way the Trust’s funds are distributed and the lack of equity with the disbursement process; would he want this to be common knowledge amongst beneficiaries?
Section 8	This contains a letter to Russell from the Department of Health; are the Trustees able to publish this?
Section 10	Andrew Evans’ name is published again (this section contains a letter to all beneficiaries from the Chairman and Andrew Evans).
Section 11	Russell states in his letter to beneficiaries that his dissertation would be of no cost to the MFT. If we paid a legal bill of his to the value of some £3000 for advice (I am not entirely sure myself if we did) then this statement is incorrect.
Section 12	<p>This section contains numerous comments from beneficiaries.</p> <p>Have they given their permission for these to be printed? Would we want the wider beneficiary community to be reading others’ opinions and comments?</p>
G Page 1	“Received approval for sending out questionnaire” This refers to a decision reached at a meeting of the Board of Trustees, presumably printed in the minutes.

I am yet to read section 14 which is entitled “Summary Report on the Macfarlane Trust Survey” and was written by Independent Data Analysis Limited. I do not see how anything in there would prevent the Trustees from wanting the dissertation to be published since it is simply statistical analysis of beneficiary responses to the questionnaire. It may, however, contradict the view that we make payments regardless of need by showing that in the vast majority of cases there is at least some degree of need.