



List of questions provided to Sir Andrew Collins in a Rule 9 Request dated 25 May 2021, and transcript of handwritten response.

1. Please set out your name, address, date of birth and professional qualifications.

Name: Andrew David Collins.

Address: [GRO-C] London, [GRO-C]

Date of Birth. [GRO-C] 1942.

Professional Qualifications: Barrister, Recorder and High Court Judge.

2. Please provide an overview of your career at the Bar, and provide the dates at which you were appointed and retired as a judge.

AC: Introduction

I must make it clear that when I wrote to Sir Brian when the Inquiry was announced. I had no recollection of any of the details of the litigation in which I was involved some 30 years ago. All that I could recall was that I had had a meeting with Kenneth Clarke, the then Secretary of State for Health, and that the claims had been settled. I am afraid my memory played tricks because I assumed that I must have believed that the claims would succeed. I may have been influenced by some of the published material which has shown that Factor 8 was derived from sources in the USA which was contaminated and that the existence of such contamination should have been identified. Now that I have seen the material disclosed to me, I have a better picture of the circumstances of the litigation. However, as I have said, I cannot now recall any details beyond those contained in the material which I think really speaks for itself. I would certainly have been in breach of my duties as counsel if I had

provided advice with which I did not agree. If I had had any doubts or qualifications, I would have identified them.

It follows, I am afraid, that I am unable to answer most of the detailed questions which have been asked of me.

I think the simplest way to deal with the matters raised is to answer each numbered paragraph so that this statement should be read with the letter of 25 May 2021.

3. Please set out your membership, past or present, of any committees or groups relevant to the Inquiry's Terms of Reference ('TOR'), which can be found on the Inquiry's website at www.infectedbloodinquiry.org.uk.

AC: *None.*

4. Please confirm whether you have provided any evidence or been involved in any other inquiries, investigations, criminal or civil litigation in relation to human immunodeficiency virus ('HIV') and/or hepatitis B virus ('HBV') and/or hepatitis C virus ('HCV') infections in blood and blood products. If you have, please provide details of your involvement.

AC: *None so far as I can recall.*

5. When were you first instructed by the Central Defendants – the Department of Health ("DH"), the Committee on the Safety of Medicines ("CSM") and the Licensing Authority ("LA") – in connection with the HIV litigation? Insofar as you are now able to do so, please provide details of the matters upon which you were instructed.

AC: *I cannot recall whether I was instructed before or after the litigation had commenced. The Treasury Solicitor will no doubt know.*

6. Who instructed you?

AC: *The Treasury Solicitor.*

7. Did you receive a single instruction, or were you instructed separately by the DH, the CSM and the LA?

a. Was there any material difference in the way in which you were instructed by these defendants?

AC: *Obviously a single instruction.*

8. Who were your main points of contact with, (i) the DH, (ii) the CSM, (iii) the LA, and (iv) the Treasury Solicitors ("TSol")?

AC: *It seems Jayent Desai was the Treasury Solicitor's representative with whom I dealt.*

9. To the best of your knowledge, why were you chosen for the case?

a. You may be assisted by the documents [DHSC0003674_001 (in particular the penultimate paragraph)] and [DHSC0041034_021], which refer to your role in previous litigation concerning the LA and Valium/benzodiazepine. Please explain, in general terms, the relevance of that case to the HIV litigation.

AC: *I had been a member of the first Treasury Counsel list and had experience of personal injury litigation. The material referred to in 9a does not assist me to know why I was chosen.*

10. Had the DH instructed alternative counsel on this matter before you were instructed? If so, who, and do you know why you replaced them?

AC: *No knowledge.*

11. Who was responsible for the instruction of the other members of your team, Michael Spencer Q.C. and Justin Fenwick? To the best of your knowledge, why were they instructed?

AC: *Mr Spencer was a personal injury expert and Mr Fenwick I knew (he had been a pupil in my chambers) as a highly competent lawyer. I do not know why they were chosen.*

12. How was the work on the HIV litigation divided between your team? For example, did different members take responsibility for different areas of the case (and if so, what were they)? What was your role?

AC: *No recollection.*

13. Did the DH indicate to you whether it had a specific objective in mind when you were first instructed? Did that objective change during the course of your instruction?

AC: *No recollection.*

14. Please describe the general attitude of those instructing you, as you saw it, towards the HIV litigation.

AC: *The documents speak for themselves.*

15. How would you describe:

- a. The priority attached to the HIV litigation by those instructing you;
- b. The ease or difficulty with which you were able to obtain instructions on the HIV litigation;
- c. The willingness of those instructing you to listen to and take your advice?

In respect of these questions, please explain whether there was any difference between the attitudes of the DH, the CSM and the LA.

AC: *The documents speak for themselves.*

16. To the best of your recollection, what were your initial views on the prospects of each of the Central Defendants in the HIV litigation? Did you form any initial views on the prospect of the other defendants in the litigation?

AC: *The documents speak for themselves.*

17. The earliest written advice the Inquiry has identified from Counsel dealing with the HIV litigation is dated 18 October 1989 [DHSC0006484_012]. In respect of that advice, please address the following questions:
- a. Were you the author of this advice? Please confirm whether the signature on the page marked page 13 of the advice is your signature.
 - b. If you were not the author, or if others also contributed to the advice, please state who those people were and what they did.
 - c. To the best of your knowledge, had you provided any written advice in the HIV litigation before this time?

AC: *Any signatures identified as mine will indeed have been mine. I have no reason to doubt that my initials appear on the advice and that accordingly, I signed it.*

18. In respect of this, and other written advice that you provided to the Central Defendants in the HIV litigation, did the documents contain your full and best analysis of the relevant issues? Was there ever a reason not to record in writing your view or advice on a particular issue in the litigation? If there was, please provide details of what the issue was, and why you did not (or were asked not to) commit your thoughts to paper.

AC: *Naturally, any written advice which I signed contained my genuine views.*

19. The advice includes the observation [§9]: *"I should add that, from the information I have seen, I think that there are reasonable defences to all claims on the merits."*

- a. Was that your view at the time?
- b. If so, are you able to say what information it was based on, and why you had come to that conclusion?

AC: *It was of course my view at the time. I cannot now recall what information I had.*

20. The author of the advice of 18 October 1989 wrote that [§7.3]:

“There is, I think, much to be said for some such scheme to compensate those who fall victim, through no fault of their own, to a medical disaster. But that is a political and not a legal problem, although a sympathetic judge may be persuaded to take account of the absence of alternative compensation in deciding whether there is a duty of care, that being one of the surrounding circumstances.”

(The following questions proceed on the basis that you were the author of the advice. If you were not, please move on to the next paragraph.)

- a. Please explain why you thought that was “*much to be said*” for the type of scheme to which you referred in the first line.
- b. Did you think that there were good grounds for such a scheme in the case of those people with haemophilia, and their partners, who had been infected with HIV as a result of the use of blood and blood products?
- c. How much of a considered view were you intending to express on this matter? For example, had you formed a view on how much such a scheme would cost, how it should be funded, and the breadth of cases to which it should apply? Did such considerations affect your view of the scheme?
- d. What was your purpose in including this passage? In particular, were you seeking to persuade or prompt the DH towards adopting such a scheme by including this passage in the advice?

AC: *No explanation is needed since the answers are obvious.*

21. Internal DH documents (listed below) from around the time of the advice indicate that there was some discussion about whether or not the Central Defendants should seek to argue that no duty of care was owed to individual plaintiffs in the HIV litigation. You are recorded in one of the documents, a minute of 17 October 1989, as advising that such a defence should be advanced [DHSC0041034_021].¹ It was recorded in the advice of 18 October 1989 [DHSC0006484_012] that [§9]: *“Once the decision has been made to leave it to the courts, it must be dealt with properly, taking all properly arguable points”*.

- a. Please explain what your position was on this matter at that time.
- b. Please comment on what advice you offered to the Central Defendants, and in particular whether the views attributed to you in the minute of 17 October 1989 and those contained in the advice of 18 October 1989 correctly reflected your position.

AC: *The minutes speak for themselves and led in due course to the litigation culminating in the Court of Appeal decision of 20/9/90.*

22. There is evidence that the Minister of State for Health, David Mellor, was reluctant to argue the duty of care point in the HIV litigation, although he was content for it to be advanced in other litigation [DHSC0041034_009].² A minute of 24 October 1989 records Counsel advising that this would be a *“very difficult”* position, and proposing a compromise position where the duty of care point was taken in full in respect of the CSM and the LA, but only by the DH insofar as it applied to matters of policy [DHSC0041034_007].³

- a. Were you the Counsel who put forward this suggestion? If not, do you know who did?
- b. Please explain, insofar as you are able to do so, the rationale for this advice.

¹ Minute: Mr Wilson to J C Dobson, 17 October 1989

² Minute: Rachel Wolley to Mr McKeon, 23 October 1989

³ Minute: Sue Armstrong to Mr Wilson, 24 October 1989

- c. Was this the position that was adopted during the course of the litigation? If not, what position was adopted and why?

AC: *I cannot add to the documentation.*

23. In an internal DH minute of 26 October 1989, an official warned that the DH *“seems to me to be getting perilously close to allowing policy considerations to influence the overall conduct of litigation where that proposed conduct is based on Counsel’s advice.”* [DHSC0006279_004]⁴

- a. Did you have any concerns that *“policy considerations”* were unduly or inappropriately influencing the approach to the HIV litigation at that time?

AC: *No.*

- b. Did you have any other concerns about the approach that was being taken to the litigation by ministers or civil servants at that time?

AC: *No.*

24. According to a DH note, a conference was held between officials and Justin Fenwick on 19 October 1989 [DHSC0041034_015]. In respect of that meeting and note:

- a. Would you have been aware of the conference and the matters discussed at it?
- b. Do you know why Mr Fenwick attended rather than you?
- c. Did you disagree with any of the advice given or positions taken by Mr Fenwick (as described in the note)? If so, please explain the (material) points of disagreement.
- d. Are you able to assist with any of the following points:

⁴ Minute: Ronald Powell to Mr Arthur, 26 October 1989

- i. The rationale behind the advice that, *"Any decision by Ministers must be on the grounds of policy or discretion. It must not be 'in consideration of you dropping the case, we will pay you £x damages.'"* (The letter from Andrew Neil referred to in the note is at [DHSC0006484_021].)
- ii. Mr Fenwick's feeling that, *"the plaintiffs will lose the case."*
- iii. What Mr Fenwick meant by the comment (if accurately recorded): *"Ministers, he felt, should consider compensation."*
- iv. Mr Fenwick's reported expectation that, *"the Court would find liability for short periods of time on the AIDS sufferers ie between the time of screening and implementation."*
- v. Mr Fenwick's reported view that, *"If the Department lost on the hepatitis issue, it would be liable to every hepatitis patient."*
- vi. Mr Fenwick's reported view on the risks of liability being found on the basis of the arguments about hepatitis (see the penultimate paragraph of p.3 of the note).
- vii. What Mr Fenwick meant when advising that the facts should be fully investigated (bottom of p.3).

AC: *I am sure I would have agreed with Mr Fenwick unless there is some documentation recording any doubts.*

25. A further note records a conference between DH officials and you and Mr Fenwick on 29 November 1989 [DHSC0007045_006].

- a. Please comment on what advice you were asked to give, and what advice you gave, about *"whether to approach Attorney-General or Judge (J) to muzzle Sunday Times."*
- b. Is it accurate to say that you were *"less optimistic about success on preliminary issue (relating to hepatitis) than JF"*. Please explain, insofar as you are now able to do so, the issues involved and the advice that you gave on this point.
- c. Please explain your position on whether or not the manufacturers of blood products should have been joined to the claim (see §15). You may be assisted by the reference in the note of the conference on 5

December 1989 to the agreement that, *“Armour should be kept out of the main proceedings if at all possible.”* [DHSC0007045_009]

- d. Please explain the reference to the problems involved in obtaining expert witnesses, and in particular why there had been *“many letters of refusal”* (insofar as this is within your knowledge).

AC: *No recollection.*

26. A further note records the Summons for Directions on 5 December 1989 [DHSC0007045_008] and a conference with Counsel on the same day [DHSC0007045_007].

- a. To the best of your knowledge, and based on your reading of the documents, were you present at the hearing and conference on 5 December 1990 (see in particular §6 of the note of the conference)? If not, which Counsel would have been?
- b. The Summons for Directions records the judge’s direction that there would be no trial of any preliminary issues. How did this affect the Central Defendants’ approach to the case?
- c. The note of the conference with Counsel refers to the *“further payment promised via the Macfarlane Trust ... clearly having some impact.”* Are you able to assist with what lay behind that observation?
- d. The note also records Counsel’s hope that instructions for the Defence would *“require the duty of care points to be taken robustly.”* Was that also your view? Is there any significance to the fact that it appears to have been raised again in this conference?

AC: *No recollection.*

27. A note records a further conference between DH officials and you and Mr Fenwick on 18 May 1990, primarily concerning Public Interest Immunity (“PII”) [DHSC0043223]. A written advice by Mr Fenwick on PII follows on 4 July 1990 [DHSC0004360_072].

- a. Please explain, in general terms, the approach you advised on PII and the principles that guided you.

- b. Why did Mr Fenwick, rather than you, provide the written advice on 4 July 1990? What role, if any, did you play in the production of that advice? (You may be assisted by the comment at p.5, §3 of the written advice.)
- c. Please explain what role John Laws (as he then was) played in advising on the position to be adopted in respect of PII (see p.1 of the conference note, and p. 15, §18 of the written advice). Why did you plan to consult him?
- d. Please provide what assistance you can on what lay behind the following comments, as recorded in the notes of the 18 May 1990 conference:
 - i. *"We must stop destruction on the date the litigation comes on."*
 - ii. *"Hepatitis virtually nothing. Most of it has already been destructed."*
- e. Were you aware of any of the Central Defendants intentionally destroying documents for the purpose of ensuring that they were not disclosed as part of the HIV (or other) litigation?
- f. Was there anything unusual about the approach adopted to PII in the HIV litigation when compared to similar cases?

AC: *John Laws was the Treasury Devil and it was important that any approach to PII should be consistent. I was unaware of any destruction of documentation so far as I am aware.*

28. In his written advice of 4 July 1990, Mr Fenwick recorded that he did not consider that the documents under consideration for PII would adversely affect the Central Defendant's case: *"Indeed, many of them may be helpful in explaining the careful consideration which was given to various matters at the time. However, that is not the point."* Was this a view that you shared? If not, why not?

AC: *No recollection.*

29. The note of 18 May 1990 refers to advice being given on the approach to be taken to a limitation defence in the HIV litigation. This appears to be to the effect that the Central Defendants should plead this as a defence to retain the option of arguing this point at a later stage if it was decided to do so.
- Is this a correct interpretation of the note, and of the advice you gave at the conference?
 - Please explain why you gave the advice that you did on the limitation point?
 - Were you aware of any concerns or hesitations among the Central Defendants about relying on a limitation defence? If so, what were you told about them, and how did this affect your advice?

AC: *The note speaks for itself.*

30. At a hearing in chambers on 26 June 1990, Ognall J took what he described as a “rare ... initiative” by inviting the parties to “give anxious consideration to the prospect of any compromise of these proceedings.” A written copy of his remarks is at [DHSC0046964_024].
- Were you present at the hearing? If not, how did you learn of Ognall J’s comments?
 - What did the comments suggest to you, at the time, about Ognall J’s analysis of the legal merits of the case? How did this compare to your own analysis?
 - What was your response to Ognall J’s comments? How did it affect your approach to the case, and the advice that you gave on it? (You may be assisted by §7 of the note at DHSC0004360_147, which is discussed further below.)
 - Please provide any further comment that you wish to make on Ognall J’s intervention.

AC: *I cannot pretend that my memory is necessarily correct but I think that I was irritated as Ognall J had demanded the presence of silks which was a great inconvenience since I was engaged in litigation in Liverpool. While Ognall J’s comments were unnecessary since my views with the other counsel mirrored*

his, they perhaps emphasised the risk that even if the law was favourable to the defendants a judge could find in the plaintiffs' favour since their circumstances would so obviously appeal to the public.

31. On 20 July 1990, Sir Donald Acheson, the Chief Medical Officer ("CMO"), sent a minute to the Secretary of State and others expressing his hope that, *"for humanitarian reasons the Government will find some way to make an ex gratia settlement to the infected haemophiliacs in relation to this unique tragedy."*

[HSOC0017025_004]

- a. Were you made aware of this minute, or the view expressed in it?
- b. If so, what effect, if any, did it have on your approach to, and advice on, the HIV litigation?
- c. A subsequent article in *The Guardian* suggested that the CMO was *"particularly concerned that the Government's previous policy of blood importation should not be subject to cross-examination in open court"* **[DHSC0020866_150]**. Were you aware of any such concerns being expressed by the CMO or anyone else connected to the Central Defendants?

AC: *No recollection.*

32. A note on options for the HIV litigation was circulated to the private offices of the Secretary of State and ministers under cover of a minute dated 24 July 1990 **[DHSC0046964_003, DHSC0004360_147]**. The note records that you had *"confirmed [your] earlier view that we have a very good chance of a successful outcome for the great majority of cases"* [§6]. The note goes on to summarise that advice, including your identifying claims in which *"the legal arguments are more finely balanced"* [§6].

- a. To the best of your recollection, does the note accurately record the advice that you gave at that time?
- b. Are you able to assist with whether that advice was given orally or in writing? (Please note that the Inquiry has not identified any written advice from you at this time.)

AC: *I have no reason to doubt the accuracy of the notes and the absence of any written advice means that it was clearly oral.*

33. On the basis that the note is accurate, why did you take the view that the Central Defendants should not take the lead in any application for Ognall J to recuse himself, but that you would be happy to support such an application made by others [§7]? Was this a matter that you explored with the other Defendants?

AC: *No recollection.*

34. The note records your “personal view” that “the government would do well to make a further ‘political’ gesture to avoid the embarrassment of a legal wrangle likely to continue through the whole of 1991” [§8].
- a. To the best of your recollection, does the note accurately record your personal view on this matter?
 - b. If it does, please explain your reasons for that view, and what you envisaged the “‘political’ gesture” might be. In addressing this question, please explain how you felt such an approach would avoid setting a legal precedent.
 - c. Please provide any further comment you wish to provide on the options discussed in the paper.

AC: *It is I would have thought obvious that ‘political’ meant a settlement which would appeal to the public and would avoid expensive litigation.*

35. The note records that, “Ministers may wish to hear Counsel’s advice at first hand before deciding” [§23]. Do you recall whether you did personally advise ministers at this stage in the litigation? (Please note that the Inquiry has not identified any document indicating that you did so advise ministers at this point in time.)

AC: *No recollection.*

36. The note raises the possibility of consulting the Prime Minister, “*in light of her earlier interest*” [§21]. Were you aware of the Prime Minister’s interest in this matter? If so, what did you understand her interest and views to be?

AC: *No recollection.*

37. By letter dated 7 September 1990, the lead solicitors for the Plaintiffs in the litigation, Pannone Napier, put forward a proposal for settling the claim [DHSC0020866_134]. This was the subject of a submission to the Secretary of State on 18 September 1990 [DHSC0020866_091]. Following that submission, a decision was taken for a formal response to Ognall J’s intervention to be given in the form of a letter, dated 3 October 1990, from a DH official to the solicitor dealing with the claims in Tsol, which was to be passed to the judge [DHSC0046936_091]. An undated document from the DH files appears to be a note of a conference with Counsel, possibly from around this time [DHSC0020866_127].

- a. Based on your recollection, and the documents provided and available to you, please explain (insofar as you are able to do so), your role in advising on the responses for Ognall J and the Plaintiffs.
- b. Please explain what role, if any, other members of the Counsel team played.
- c. To what extent, if at all, did you liaise with the legal representatives of the other Defendants in the HIV litigation when advising the Central Defendants? In particular, were you involved in, or aware of, the discussion summarised at [§10] of [DHSC0020866_091].

AC: *The documentation speaks for itself.*

38. Does the minute of 18 September 1990 accurately convey the advice that you had given on this matter? If not, please explain what your advice was.
- a. Do you recall whether you provided advice in writing or orally?
 - b. Please explain, in broad terms, the reasons for the advice that you gave.

AC: *I do not doubt the accuracy of the notes.*

39. The minute records an *"impasse"* on the question of whether Ognall J should be asked to step down from hearing the case, as no party was prepared to initiate any application [§6].

- a. Was this your understanding of the situation?
- b. The minute records: *"There does not seem any way out of this impasse and we therefore suggest that the proposal should be dropped."* Was this your advice? If it was, please explain the reasons for it. If it was not, please provide what assistance you can on who gave this advice, and explain whether or not you agreed with it.

AC: *No recollection.*

40. The minute refers to a proposed meeting between the Solicitor General and *"the Department's lawyers on Thursday (20 September)"* [§5]. Did you attend that meeting? If so, do you recall what was said?

- a. A further internal DH minute, dated 8 October 1990, contains marginalia that records: *"Our Counsel gave the impression (at a meeting with Solicitor General on 24.9) that they felt that the Central Defendants were also (relatively) more vulnerable on the late seroconverters. They still assess the odds for this group as 60:40 in our favour. I have asked Mr Canavan to clarify this point with Counsel."*
[DHSC0046936_074]

- i. Do you recall attending such a meeting? Do you think that it is likely that you would have done, given the reference to Counsel in the plural (*"they"*) and the significance of a meeting with the Solicitor General?
- ii. Does the handwritten addition to the minute accurately reflect advice that you gave on this point?

AC: *I do not recall any such meeting.*

41. Do you recall attending a conference that may have given rise to the note at [DHSC0020866_127]? Please provide what assistance you can on what was said at that conference and who was present.

- a. Do you know what was meant by the phrase: *"Can't go on any longer without ceiling figure"*?
- b. Do you know what was meant by the phrase: *"Payment must not be 'nuisance'"*?
- c. Should the reference to the Court not being able to take into account the *"£34m"* be taken to be a reference to payments already made through the Macfarlane Trust? Was it your view that while a Court could not take these into account, the point could be made in settlement negotiations that these payments had already been provided?
- d. Do you know what was meant by the phrase: *"Will prob. [inserted] win – likely hurdle [with] causation."* Was that your view of the Central Defendant's prospects in the litigation? Is there any significance to the fact that causation is mentioned, whereas duty and breach are not?
- e. Do you know what significance there was to settling the litigation, *"before 5 April: phase between this year & next"*?
- f. Do you know what was meant by the phrase: *"Disting feature: suffered because of treatment thro nobodies fault"*?
- g. Was it your advice that the Central Defendants would *"win"* the litigation, but that there was *"always hazard"*?
- h. Was it your advice that the Government would end up paying the legal costs of the litigation in any event, and that it would be better if that money went to people with haemophilia who had been infected with HIV rather than lawyers (*"better to Hem than lawyers"*)? Is the reference to *"£15m"* an estimate of the legal costs? If so, who made that estimate, on what basis, and what was it intended to cover?

AC: *No recollection: the documentation speaks for itself.*

42. On 20 September 1990, the Court of Appeal gave judgment in the appeal and cross-appeal against Rougier J's first instance decision on the PII application

[RLIT0000657]. In doing so, the Court held, among other matters, that the Plaintiffs' had an arguable case against the Central Defendants.

- a. Please comment on the significance of this judgment to the Central Defendants' approach to the litigation, and to your advice about that approach.
- b. In particular, please comment on what influence, if any, the judgment had on efforts to settle the litigation.
- c. The DH gave a press release following the decision **[RFLT0000005]**. What role, if any, did you play in preparing this press release?

AC: *No recollection: the documentation speaks for itself.*

43. On 18 October 1990, the Secretary of State for Health met the Prime Minister and the Lord Chancellor to discuss the HIV litigation. Were you informed of this meeting **[HMTR0000002_015, HMTR0000002_016]**? If so, what were you told about it, and how (if at all) did this influence your approach to and advice on the HIV litigation?

AC: *No recollection.*

44. On the same day, 18 October 1990, a Department of Health minute records a request from the Secretary of State for further legal advice on three specific points **[DHSC0046936_041]**.
- a. Did you receive instructions to this effect?
 - b. Do you know why the Secretary of State requested that the advice on legal liability should contain "*no reference to settlement*"? If you do not know, are you able to assist – from your knowledge and experience of the litigation, and from the papers provided and available to you – as to why the request should be made in this way?
 - c. Was this the instruction that was conveyed to you?
 - d. Was it unusual, in your experience, to be instructed in such terms?

AC: *I cannot recall any detail.*

45. On 19 October 1990, you wrote to Mr Desai of TSol about your meeting that day with the Plaintiffs' Counsel, Rupert Jackson Q.C. [SCGV0000230_018].
- Please provide what assistance you can as to why and how this meeting was arranged. Who took the initiative in arranging it, and what instructions had you received about your attendance?
 - To the best of your knowledge, was the letter an accurate account of what was discussed at the meeting? Was there any information that you chose not to put into the letter? If so, what was it and why did you not include it in the letter?

AC: *My note speaks for itself.*

46. The letter refers to your impression that the Plaintiffs would settle for around £50 million, which "*confirmed my own feeling expressed in the meeting with the Secretary of State*".
- To the best of your knowledge, when and where had that meeting taken place?
 - Who attended, and what was discussed?
 - Was a record of the meeting kept? If so, do you have (or would you be able to locate) a copy of it?
 - If no record was kept, why was this?
(Please note that the Inquiry has not been able to identify any record of this meeting.)

AC: *On the assumption that the meeting is the one I recall having had, I am afraid I cannot now recall how it arose or what was said in it. Suffice it to say that it led to the eventual compromise.*

47. You, Mr Spencer and Mr Fenwick produced written advices on liability and quantum dated October 1990 [DHSC0007039_001, DHSC0007039_002].
- Were these advices provided in response to the Secretary of State's request, as recorded in the minute of 18 October 1990? If not, please explain the circumstances in which they came to be produced.

- b. Please explain, insofar as you are now able to do so, the division of labour between you, Mr Spencer, and Mr Fenwick in producing these advices.
- c. To the best of your recollection, were there any significant areas of disagreement between counsel on the matters contained in the advices, or in the general approach to the case?
- d. Did you, personally, have any misgivings about the matters contained in these advices?
- e. Does the advice on liability accurately reflect your assessment of the Central Defendants' prospects in the litigation?
- f. Was there any significance to the fact that you concluded the advice on liability in the way that you did [§57]? Was the paragraph intended to persuade the Central Defendants towards settlement?

AC: *I am surprised at the question. Of course the advice reflected my views.*

48. A document entitled, "Present Position on HIV/Haemophilia Litigation" refers to a meeting between Kenneth Clarke, the Secretary of State, and Counsel on 1 November [DHSC0046962_187, p.2]. The report contains a brief summary of what appears to have been discussed.

- a. To the best of your knowledge, did you attend such a meeting? If you do not recall, do you think it is likely that you would have attended, given that the meeting was with the Secretary of State?
(The following questions are based on the assumption that you did attend):
- b. To the best of your knowledge, why was the meeting called?
- c. Who else attended, and what was discussed? Do you think that the document cited above contains an accurate summary?
- d. Was a record of the meeting kept? If so, do you have (or would you be able to locate) a copy of it?
- e. If no record was kept, why was this?
(Please note that the Inquiry has not been able to identify any record of this meeting, other than the document cited.)

AC: *I only had one meeting with the Secretary of State but I cannot recall any details.*

49. According to a note by a DH solicitor, Ronald Powell, he had a conversation with Mr Fenwick on 7 November 1990 [DHSC0004365_043]. Mr Fenwick is recorded as reporting on further discussion between you and Mr Jackson on Monday 5 November 1990.

- a. To the best of your knowledge and recollection, does the note accurately record the discussion that you had with Mr Jackson?
- b. Is there any information relevant to the Inquiry's Terms of Reference that was not contained in the note?
- c. Did you share the view, attributed to Mr Fenwick in the note, that there *"did not seem to be any claim in law against the CBLA"*?
- d. Did you agree with Mr Fenwick's assessment that the Plaintiffs *"may now be in a position where they need the matter to be settled"* in light of the need to extend legal aid certificates?

AC: *I would have made my views clear if they did not agree with Mr Fenwick's.*

50. By this time, William Waldegrave had replaced Kenneth Clarke as Secretary of State for Health.

- a. Did you detect any difference in approach between Mr Clarke and Mr Waldegrave to the HIV litigation?
- b. An internal DH minute contained the following observation: *"There was, I think, little formal difference between his [Mr Waldegrave's] line and Mr Clarke's: that it would be sensible to reach a settlement with the plaintiffs if that can be done at acceptable cost. Behind that similarity however lay a greater inclination to settle, and I suspect some willingness to settle at a somewhat higher cost"* [DHSC0020866_101, §1]. Please comment on whether this was your experience and impression of the attitudes of the two men.

AC: *I do not recall any dealings with Mr Waldegrave.*

51. The Plaintiffs' formal Proposed Heads of Compromise were provided to the Central Defendants at or around 9 November 1990 [DHSC0046962_067, DHSC0003654_117]. The proposal was for settlement of most of the claims in the sum of £42 million, with the "medical negligence" claims to be settled separately, and the Plaintiffs' costs to be paid.

- a. What were your views of the proposed settlement? To the best of your knowledge, what were the views of Mr Spencer and Mr Fenwick?

AC: *I must have been in favour.*

52. A DH minute of 12 November 1990 contained a detailed analysis of the proposed compromise [DHSC0046962_028].

- a. To the best of your knowledge, did you see this document at the time? If so, do you recall your response to it?
- b. Looking at the document now, do you agree with the analysis that it presents? Please identify and explain any areas of disagreement. To the best of your recollection, would you have held those views at that time?

AC: *Any disagreement would surely be recorded somewhere.*

53. A handwritten minute and note record a meeting in the Secretary of State's room on 19 November 1990 [DHSC0020866_083, DHSC0020866_084]. Your name, and that of Mr Spencer, are contained in the top left hand corner of the note.

- a. To the best of your knowledge, did you attend a meeting with the Secretary of State (or with others in his room) on 19 November 1990?
- b. If so, who attended, and what was discussed? Please provide what assistance you can on the matters contained in the note.
- c. Was any other record of the meeting kept? If so, do you have (or would you be able to locate) a copy of it?
- d. If no record was kept, why was this?
(Please note that the Inquiry has not been able to identify any record of this meeting, other than this note.)

AC: *I have no recollection of who was present or what was said.*

54. A minute dated 23 November 1990 was sent to the private office of the Secretary of State, containing information on the HIV litigation, seemingly ahead of a meeting with the Chief Secretary to the Treasury (Norman Lamont) [DHSC0003654_115]. The Secretary of State's speaking note recorded: "*I have consulted colleagues and our leading Counsel. I now incline to the view that, if we can secure the proposed package, we should aim to do so.*" It also recorded that "*Counsel advise that the plaintiffs might be prepared to settle for a figure of around £30m on the basis of the balance of risks*", but that there were a number of difficulties associated with pursuing such an outcome.
- a. Does the speaking note, and the associated document at Note D [DHSC0003654_115], accurately reflect the advice that you provided to the Secretary of State? If you did not provide that advice, who did, and did you agree with it?
 - b. How and when did you provide that advice?
 - c. Did you provide written or oral advice?
 - d. If the advice was written, do you have (or have access) to a copy to it?
 - e. If the advice was oral, is there any reason why the advice was communicated in that way rather than being written down?
 - f. Did you agree with the analysis of the position, as set out in the minute, the speaking note, and the attached documents? Please identify and explain any areas of disagreement.

AC: *The documents speak for themselves.*

55. An internal Treasury minute was sent to the Chief Secretary on 29 November 1990 regarding the HIV litigation [HMTR0000002_011]. This note contained a summary of what the author described as "*more cautious*" DH legal advice, including, (i) liability in the 20-30 "*medical negligence*" cases was "*quite likely to be established*", (ii) the number of Plaintiffs involved in late infection cases, where the prospects were "60/40", may be as high as 500, and (iii) an expectation that judges would "*do everything in their power to be as favourable as possible to the haemophiliacs.*"

- a. Did you share the views attributed to the DH legal advisors in the minute?
- b. On your interpretation of the note, were the prospects of the “*late infection*” cases considered to be 60/40 in favour of the Central Defendants, or in favour of the Plaintiffs?
- c. To the best of your knowledge, what was the basis for the estimate of up to 500 late conversion cases? Was this a figure that had been reached relatively recently in the analysis of the litigation? If so, what was that?
- d. Do you agree with the assessment of the Treasury legal advisors that the DH’s legal advice was “*likely to err on the gloomy side*”? Did you ever discuss the case with Treasury legal advisors?

AC: *Counsel had indicated the risk the existence of which was obvious.*

56. A minute of 4 December 1990 records a conversation between Mr Powell and Mr Fenwick. Mr Fenwick is recorded as giving his analysis of the prospects of success on different elements within the litigation [DHSC0003654_108]. His overall conclusion was that the Central Defendants had an overall chance of success of somewhere in the region of 60% to 75%. Mr Fenwick’s analysis seems to have been worked up into a note that was attached to a minute that was sent to the Secretary of State’s private office the following day, 5 December 1990 [DHSC0003383_006].

- a. Do you know why Mr Fenwick, rather than you or Mr Spencer, was asked to provide this advice?
- b. To the best of your knowledge, were you aware of the contents of this discussion at the time?
- c. To the best of your knowledge, do you think it is likely that you would have agreed with Mr Fenwick’s analysis, as recorded in the minute? Please identify and explain any areas where you think that you may have disagreed with Mr Fenwick.
- d. Did you agree with Mr Fenwick’s analysis, as recorded in the minute? Please identify and explain any areas where you disagree.

- e. Mr Fenwick is recorded as referring to “some terrible gaps” on self-sufficiency. Did you agree? Do you know what those “gaps” were?

AC: *No recollection. I would surely have said if I had disagreed with Mr Fenwick.*

57. On 11 December 1990, the Secretary of State for Health announced in the House of Commons that the Government intended to settle the litigation in line with the Plaintiffs’ proposal, and that as a result an additional £42 million would be provided to the Macfarlane Trust. The Secretary of State also gave other details, including that payments from the Macfarlane Trust would not affect a recipient’s eligibility for social security benefits [DHSC0020866_034].

- a. Other than what is set out in answers to previous questions, what further role did you play in advising the DH, or the wider Government, on whether or not to accept the Plaintiffs’ proposals for settlement?

AC: *None.*

58. That announcement was followed by efforts to finalise the settlement, dealing with outstanding issues such as costs, the ongoing medical negligence litigation, and the drafting of the settlement order (see, for example, the documents listed in the table above).

- a. What role did you play in finalising the agreement?
- b. Insofar as you are now able to do so, please set out the division of labour between you and the other counsel instructed by the Central Defendants in this process, and explain the reasons behind that approach.

AC: *No recollection.*

59. To what extent, if at all, was there discussion of the prospect of future litigation against the Central Defendants (or the wider Government) from people with haemophilia, in particular those who may have been infected with hepatitis?

- a. What role did you play in any such discussions, and what advice did you give?

- b. To the best of your recollection, were efforts made to ensure that anyone who received additional payments from the Macfarlane Fund as a consequence of the settlement would be prevented from bringing a claim relating to their hepatitis infection against the Central Defendants (or the wider Government)?
- c. If so:
 - i. What were those efforts?
 - ii. To what extent were they communicated by the Central Defendants to the Plaintiffs and those representing them?
 - iii. What views, if any, did you have about this matter then?
 - iv. What views, if any, do you have about this matter now? In particular, do you think the Central Defendants, the wider Government, and those advising them acted appropriately in this matter?

AC: *No recollection.*

- 60. Following the settlement, recipients of funds from the Macfarlane Trust were required to sign a Deed of Undertaking precluding future litigation against, *“the Department of Health, the Welsh Office, the Licensing Authority under the Medicines Act 1968, the Committee on Safety of Medicines, any district or regional health authority or any other Government body involving any allegations concerning the spread of the human immuno-deficiency virus or hepatitis viruses through Factor VIII or Factor IX (whether cryoprecipitate or concentrate) administered before 13th December 1990.”* [MACF0000086_225].
 - a. What role, if any, did you play in drafting the wording of this Deed?
 - b. Please explain, insofar as you are now able to do so, what instructions you received on the wording of this Deed, and what discussion took place around it. In particular, please comment on your understanding of who initiated the wording (in particular the prohibition on litigation concerning hepatitis infections).
 - c. Were you aware of any opposition from, (i) your Counsel team, or (ii) anyone with whom you dealt on this matter, to this Deed?

- d. Do you know how individual Plaintiffs were informed and advised about the effect of this Deed? Please provide any details that you can. Do you recall having any concerns at the time about how the Plaintiffs were being so informed and advised?

AC: *None that I can recall.*

61. To the best of your knowledge, how prominently did the question of possible future hepatitis litigation feature in the negotiations conducted between the Central Defendants and the Plaintiffs in 1990/1991? How willing were the Plaintiffs to accept that this should form part of the compromise, and/or how strongly did they resist the proposal? Was the settlement delayed or put into jeopardy by this point?

AC: *No recollection.*

62. The settlement was announced in open Court on 10 June 1991 (see documents listed in the table above for this date).
 - a. Please consider Ognall J's remarks (as recorded in the Davies Arnold Cooper note), and in particular his comment that he considered that, *"all parties have been well advised to compromise these actions on terms before me and I acknowledge their good will in so doing"* [NHBT0091944]. Were you ever made aware of Ognall J's reasons for making this observation, or his wider view of the litigation, and the way in which he was settled?
 - b. Please consider the speaking notes of Rupert Jackson Q.C. [NHBT0091946] and Daniel Brennan Q.C. [DHSC0003663_042]. To what extent did their analysis of the strengths and weaknesses of the parties' positions in the case accord or differ from the one that you had formed at the time? Please identify and explain (insofar as you are able to do so) any significant difference of view. Were you surprised in any way by their analysis?
 - c. Have your views on the legal merits of the claims changed over time?

AC: *I am afraid those questions are entirely unhelpful.*

63. Please consider your speaking note **[MACK0001247_010]**.

- a. To the best of your recollection, was this the content of your address to the Court? Please identify any material additions or omissions of which you are aware.
- b. Were the contents of the speaking note approved by those instructing you before it was delivered? (If you do not recall exactly, do you think it is likely that the speaking note was so approved?)
- c. Please explain why it was felt necessary to set out the Central Defendant's position in the terms that you used.
- d. On what basis did you say that the total sums paid by the United Kingdom Government "*compares favourably with payments made in other countries*"?
 - i. The Inquiry has recovered a document from the DH files containing a table comparing the approach of different nations **[DHSC0003654_079]**. Do you think it is likely that this influenced your submissions on this point? Do you know who produced this table?

AC: *Of course the clients would have approved of what I said and I have no reason to doubt the accuracy of the notes.*

64. What further role, if any, did you have in matters relating to the HIV litigation?

AC: *None so far as I can recall.*

65. What further role, if any, did you have in any other matter relevant to the Inquiry's Terms of Reference?

AC: *None so far as I can recall.*

66. Reflecting on the way in which the HIV litigation was conducted:

- a. Do you, personally, have any regrets or concerns about the advice that you gave, or the actions that you took, in respect of the HIV litigation? If so, please give details.
- b. Do you have any regrets or concerns about the advice given, or the actions taken, by any other member of your team of Counsel? If so, please give details.
- c. Do you have any regrets or concerns about the instructions given, or the actions taken, by the Central Defendants? If so, please give details.
- d. Do you consider that those representing the Central Defendants acted appropriately in the course of the litigation? If not, please explain why.
- e. Do you consider that the Central Defendants themselves acted appropriately in the course of the litigation? If not, please explain why.
- f. During the course of the litigation, were you in any way surprised by the instructions that you received from the Central Defendants? If so, please give details.
- g. Do you have any concerns over how the Plaintiffs in the HIV litigation were advised or represented during the course of the HIV litigation? If so, please explain what those concerns are.

AC: *No regrets or criticisms.*

67. To the best of your knowledge, what role did the Haemophilia Society play in the litigation? How influential was the Society on the course of the litigation?

AC: *No recollection but I suspect no relevant role.*

68. In the note of the conference of 29 November 1989, it is recorded that the Society: *"do not want to be seen to push the litigation as Counsel advised they would lose at the outset"* [DHSC0007045_006].

- a. Do you recall the source for this information?
- b. Did you have any contact with the Haemophilia Society, or Counsel for the Haemophilia Society, in respect of the HIV litigation?
- c. Were you aware of anyone else having such contact? If so, please provide details.

- d. Please provide any further details that you are able to provide about your knowledge of the Haemophilia Society's position.

AC: *No knowledge.*

69. You wrote to the Chair of the Inquiry shortly after the preliminary hearings, offering to give evidence [ACOL0000001]. In your letter, you referred to acting in litigation concerning infected blood, before Ognall J, in the late 1980s or early 1990s. You recalled that you had a consultation with the Secretary of State (whom you identified as Kenneth Clarke), and that, following the consultation, the claims were conceded. You also wrote that your view was *"that liability could not be contested."*

- a. When you wrote the letter to the Chair of the Inquiry, were you relying on memory, or had you consulted any documents?
- b. Having now seen the documents attached to this letter, do you still think that your view at the time was that liability could not be contested?
- c. If you do think that was your view:
 - i. Why did it not feature in the written advice or the notes of meetings contained in the documents attached to this letter? Please explain why you did not include it in those documents/discussions, or in your submissions at the settlement hearing.
 - ii. Did you, at any stage, inform the Secretary of State or anyone else among the Central Defendants that you considered that *"liability could not be contested"*? If so, please provide details. If not, please explain why not.
 - iii. Did you express your view that *"liability could not be contested"* to other members of your Counsel team? If so, please provide details. If not, please explain why not.
- d. If you no longer think that was your view, please comment on why you included this remark in your letter to the Chair of the Inquiry.

AC: See introduction above.

I am sorry if I have seemed somewhat irritated by the large number of matters raised for me to deal with, but my memory of detail is virtually nil and the documentation does speak for itself.