

Wednesday, 28 July 2021

(10.00 am)

SIR BRIAN LANGSTAFF: Yes.
MS RICHARDS: Sir, just before I start with the questions, I think yesterday I suggested, when looking at the leaflets and the delay, that Dr Walford had described the delay as unconscionable and Lord Glenarthur as "much too long". In fact it was the other way round. Dr Walford used the term "unconscionable" to describe the delay in relation to decision-making on BPL, in relation to the leaflet she said "much too long", and it was Lord Glenarthur who used and then associated himself with the use of the word "unconscionable" in relation to the leaflet. So I just wanted to correct that. It was the other way round.

SIR BRIAN LANGSTAFF: Thank you.

LORD KENNETH HARRY CLARKE (continued)
Questions from MS RICHARDS

MS RICHARDS: Lord Clarke, I want to ask you to look at two statements you made, one in a press release and one in Parliament, and then ask you some questions about it?

A. Okay.

Q. So the press release of 1 September is at DHSC0006401_006.

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blood donation but it is not possible to test a person's blood for the presence of AIDS. The best measure which can be taken at the present time is to ask people who think they may have AIDS or be at risk from it, to refrain from giving blood. This is what this leaflet sets out to do."

Pausing there, Lord Clarke, and just so you know where the questions are going to be heading, I'm going to be asking you in a few minutes, once we've looked at some other documents, about the use of the phrase "no conclusive proof". But we can see it's set out there and I just want to see what advance notice you had of the press release by looking at couple of other documents.

If we look at DHSC0002309_034, this is a document which is a minute of 26 August 1983 from your private office, Mr Naysmith, to Mr Winstanley in the Health Services Division.

A. Yes, you showed me this yesterday.

Q. Indeed, indeed. The purpose of showing you this again is simply that we can see from the first paragraph that you've been shown a question and answer briefing and the press statement prepared. And again, I can take you to --

A. And that was obviously -- I was told about that

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SIR BRIAN LANGSTAFF: 1 September?

MS RICHARDS: 1983.

SIR BRIAN LANGSTAFF: Thank you.

MS RICHARDS: This is the press release, in fact the press release in relation to the publication of the leaflet. 1 September 1983 --

A. Is this the first leaflet?

Q. This is the first leaflet. I'm not going back to the saga of the leaflet, Lord Clarke, but it's to see what was said about the causal link between AIDS and blood products.

A. Oh yes, right.

Q. So the press release reads:

"The Department of Health and Social Security has today published a leaflet - 'AIDS and how it concerns Blood Donors'. It has been produced in co-operation with the Regional Blood Transfusion Directors.

"Announcing publication, Kenneth Clarke, Minister for Health said: 'It has been suggested that AIDS may be transmitted in blood or blood products. There is no conclusive proof that this is so.

Nevertheless I can appreciate the concern this suggestion may cause. We must continue to minimise any possible risk of transmission of the disease by

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obviously in the background briefing. It would have accompanied the draft press notice I was given.

Q. Indeed. And we should have that. I think it's the next few pages, let me just double check.

Yes, if we turn over the page, we can see this is the text of the draft statement that you were approving. It's not a hundred per cent identical to the final press statement but in terms of the relevant passages there's no, I think, material difference. So you'll see the draft statement being submitted to you, end of the second line:

"It has been suggested that AIDS may be transmitted in blood or blood products. There is no conclusive proof that this is so. Nevertheless" --

A. Yes, it's the same. It's essentially the same.

Q. Essentially, yes. If we just go, I think for the sake of completeness, through the question and answer brief you were also being sent, which is on the next page -- is there a page before that, Soumik? The third page. That's it.

There are number of references in this document to the phrase "no conclusive evidence" or "no conclusive proof", and I'm just going to highlight those.

So we can see paragraph 2:

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1 "What is being done to protect haemophiliacs?
 2 "I must emphasise that there is no conclusive
 3 evidence that AIDS is transmitted through blood
 4 products. But there is no means of testing for the
 5 presence of AIDS ..."
 6 Et cetera.
 7 That's there. If we go over the page, to the
 8 bottom of the next page, at the bottom, the suggested
 9 question and answer for "What is the Government doing
 10 to stop imports of Factor VIII from America?":
 11 "I must emphasise that there is no conclusive
 12 evidence that AIDS has been transmitted by American
 13 blood products. Factor VIII is essential to the
 14 treatment of many haemophiliacs and the possible risk
 15 of infection from AIDS must be balanced against the
 16 obvious risks of not having enough Factor VIII."
 17 Then if we go to the next page, paragraph 21,
 18 halfway down the page, the question:
 19 "Why issue a leaflet at all?"
 20 The suggested answer that's being given to you
 21 by way of briefing is:
 22 "While there is no conclusive evidence that AIDS
 23 is transmitted through blood or blood products we
 24 believe that it is right that blood donors should be
 25 fully informed about AIDS and we have produced an

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1 statement; you saw the question and answer briefing?
 2 **A.** Oh yeah, sure, I would if I'd started questioning. It
 3 will be put out in my name because I was much better
 4 known to the media and to the public that -- because
 5 of all the controversies I was in the middle of in the
 6 Health Service -- as one always is in the Health
 7 Service -- than Simon was, and I was also more
 8 accustomed, if any interviews arose, to giving
 9 interviews. So to -- I say, in order to get more
 10 publicity, actually, they would tend to put it out in
 11 my name. But I wasn't the author of any of this.
 12 **Q.** Again, just so we can follow through the trail of
 13 documents, if we just look at DHSC0002321_034. It's
 14 a document we looked at yesterday. I'm just going
 15 back to it for another purpose now.
 16 So this was the minute from your office on
 17 31 August 1983, again about the issue in relation to
 18 the first leaflet. But we can see --
 19 **A.** I don't think I've seen this before.
 20 **Q.** We did look at it yesterday, Lord Clarke.
 21 Paragraph 2:
 22 "I've now spoken to MS(H) who has commented as
 23 follows ..."
 24 **A.** Yes, we had this yesterday.
 25 **Q.** Yes.

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1 information leaflet for blood donors which asks those
 2 who think they may either have AIDS or be at risk from
 3 it not to donate blood."
 4 **SIR BRIAN LANGSTAFF:** Could we just go back to the
 5 first of those pages, the Q&A brief.
 6 **MS RICHARDS:** Page 3 of the document, please, Soumik.
 7 **SIR BRIAN LANGSTAFF:** It's number 3:
 8 "Is anything known about the means of
 9 transmission ..."
 10 **MS RICHARDS:** "The mechanisms by which the disease is
 11 transmitted and the causative agent or agents are not
 12 known. However most of the [blank] cases in this
 13 country have occurred in male homosexuals or
 14 intravenous drug abusers. This is consistent with the
 15 pattern observed in other countries."
 16 **SIR BRIAN LANGSTAFF:** So there is nothing known about the
 17 way it is transmitted but nonetheless, to avoid the
 18 risk, one should not take blood from those who might
 19 be in those high risk groups?
 20 **MS RICHARDS:** That would appear to be the thrust of that
 21 part of the message, sir, yes.
 22 Lord Clarke, if we just go back to the first
 23 page of the document, I think would it be right to
 24 understand from what is set out by your private office
 25 in the first paragraph, you saw the draft press

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1 **A.** I obviously had forgotten. I was obviously
 2 slightly -- apologies -- I'd forgotten that I'd
 3 earlier agreed to what I was now being worried by.
 4 **Q.** Yes. And the purpose for going back to it today,
 5 Lord Clarke, is just to look at the second paragraph
 6 of your comments, where you say:
 7 "Subject to any last minute views by
 8 Lord Glenarthur, I am content for us to proceed on
 9 this basis. The Press Notice can be issued with the
 10 minor amendments I have made."
 11 So precisely what those minor amendments are,
 12 I don't think we know, but I don't think anything
 13 turns on that.
 14 **A.** Because we haven't got the original documents, have
 15 we, in terms of so and so.
 16 **Q.** No. But in any event, can it be taken from that that
 17 you are positively approving the terms of the press
 18 notice, are you not?
 19 **A.** Oh yeah, I wouldn't -- they wouldn't put out a press
 20 notice in my name without my having approved it. Nor
 21 would they answer a written. I mean, I would have to
 22 clear a press notice being put out in my name; just
 23 like a written question, I would have to clear the
 24 answer. I think nothing was put out without -- or
 25 should not and should never have been -- and I don't

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1 think ever was -- nothing should be put out in my name
2 without my actually signing up to it.
3 **Q.** And then final document in relation to the September
4 press release is DHSC0002321_031. This is a minute
5 which we didn't look at yesterday which I don't think
6 would have come across your desk. It's 2 August 1983
7 from Mr Parker to Dr Walford.

8 What it refers to in the second paragraph is
9 a paragraph from one of the ministerial submissions
10 had been missing, and so the relevant paragraph is
11 attached. I just want to go over the page and see
12 what that paragraph was. Again, just so we can see
13 what the Department's thinking was in relation to
14 the --

15 **A.** I don't know what this is all about.

16 **Q.** -- in relation to the press statement.

17 **A.** This is from a Mr Parker to Diana Walford, is it?

18 **Q.** Mr Parker to Dr Walford, that's right. And if we just
19 go to the second page --

20 **A.** I think I (*unclear*) --

21 **Q.** -- this was the paragraph that had been missing from
22 one of the submissions sent to you and I think -- sent
23 to Lord Glenarthur and I think you:

24 "The draft Ministerial statement [so that's the
25 press statement] enclosed is low key, puts the problem

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1 So would it be right to understand -- and again
2 I'm conscious you probably didn't see this at the time
3 but I anticipate there may be nothing here that
4 surprises you -- it's being suggested here that there
5 are two reasons for putting out a statement or press
6 notice: one is political and media interest and the
7 other is to show that the Government is taking
8 a positive step.

9 **A.** Mm-hm. I don't -- I don't think I've ever seen that.

10 **Q.** No, I think you probably haven't. So that was the
11 first time you used the phrase, I think, "no
12 conclusive proof".

13 **A.** Which we carried on using for quite a long time.

14 **Q.** Yes, and we'll just look at the second time you used
15 it. I've already asked Lord Glenarthur about the
16 occasions he used it.

17 **A.** Well, it was used by all ministers repeatedly for many
18 months. We're not going to go through them all, I
19 hope.

20 **Q.** No, we're simply going to go through the two
21 statements you made, Lord Clarke. PRSE0000886, and
22 you'll see if we zoom in towards the top half of the
23 page --

24 **A.** This is Hansard, yes.

25 **Q.** -- 14 September 1983, and then if we look top right

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1 of AIDS into perspective, and justifies the leaflet
2 initiative. If Ministers agree that the leaflet now
3 be printed, it should be ready for publication by the
4 middle of August and the statement could be
5 incorporated in a Press release to coincide with
6 this."

7 And we've seen that that was done.

8 "The question arises, however, as to whether
9 there is any need to publicise the leaflet's
10 availability. Arguments for a statement [to be
11 released by you] would appear to be" --

12 **A.** Yes, this is why we're putting out a press release.

13 **Q.** Yes, exactly.

14 **A.** It seems to have succeeded, with headlines like "Docs
15 ban gay blood".

16 **Q.** So the reasons being set out for a press release or a
17 statement from ministers:

18 "(a) Political and media interest including

19 Lord Glenarthur's statement in the Lords that we are
20 considering a leaflet points to the need for
21 a statement during the recess.

22 "(b) The need for the Government to be seen to
23 be taking a positive step in an area where, because of
24 the lack of knowledge of the cause of the disease and
25 its treatment, there is limited scope for action."

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1 hand corner, under the heading "Blood Products
2 (Imports)":

3 "Mrs Currie asked the Secretary of State for
4 Social Services what advice has been given to
5 hospitals concerning the use of imported factor VIII
6 in the light of recent concern about its possible
7 contamination with the causative agent of acquired
8 immune deficiency syndrome."

9 Then here is your written response:

10 "There is no conclusive evidence that acquired
11 immunodeficiency syndrome (AIDS) is transmitted by
12 blood products. The use of factor VIII concentrates
13 is confined almost exclusively to designated
14 haemophilia centres whose directors and staff are
15 expert in this field. Professional advice has been
16 made available to all such centres in relation to the
17 possible risks of AIDS from this material."

18 **A.** Right.

19 **Q.** Now, before we come back to the use of the phrase "no
20 conclusive evidence" or "no conclusive proof", I just
21 want to ask you about what's said in the last sentence
22 of the written answer. I think I am right in
23 understanding we don't have the briefing documents
24 that would have --

25 **A.** Well, that makes it difficult, doesn't it?

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1 Q. -- been provided to you. But I think you addressed
 2 this in your statement and we'll have a look at it.
 3 So "Professional advice has been made available to all
 4 such centres in relation to the possible risks of AIDS
 5 from this material", looking at that now, would you
 6 have understood that to be a reference to professional
 7 advice being made available by a government or not?
 8 A. Well, one might, but if you wanted to know, that's
 9 a question you'd ask, isn't it? Well, I might, but it
 10 isn't altogether clear, I agree. I say, the real --
 11 the decisions that mattered had to be taken by these
 12 haemophilia doctors. I mean, that's where the key
 13 decisions were taken. And they would rely on,
 14 firstly, the professional conferences, they'd all
 15 explained -- all have views. They'd rely on the
 16 medical journals and keeping up to date in their
 17 speciality and they'd rely on anything else that was
 18 put out by way of advice, including advice from the
 19 Department. And I, obviously, with the draft thing,
 20 was told that professional advice had been made
 21 available to all the haemophilia centres.
 22 Q. Just so we can see what you've said about this in your
 23 witness statement, Soumik, could we have Lord Clarke's
 24 first statement up on screen, WITN0758 -- you're ahead
 25 of me, thank you. Page 90.

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1 Chairman and Secretary of the UK Haemophilia Centre
 2 Directors Organisation, Professor Bloom and Dr Rizza,
 3 wrote to all Haemophilia Centre Directors summarising
 4 the discussions at a meeting of the UK Haemophilia
 5 Reference Centre Directors on 13 May 1983."
 6 Then you say in the last sentence:
 7 "I am further informed that this advice
 8 continued to be discussed and kept under review by the
 9 UK" --
 10 A. Yes, this was by the Department of Health legal team
 11 who drafted answers to questions. I didn't go --
 12 I didn't produce these hundreds of -- answers to
 13 hundreds of questions. We gave as full answers as we
 14 could, in order to try to be helpful. And -- so when
 15 I say understand, it was the legal people working on
 16 this who told me that. I'm sure they did more to be
 17 helpful, and the legal people -- I mean, I hadn't
 18 heard of this until, really -- until you asked the
 19 question. I'd forgotten I'd ever answered this
 20 written question.
 21 Q. That's really what I wanted to understand, Lord
 22 Clarke. When you refer in your statement to this June
 23 letter, and I can put it up on the screen --
 24 A. Yeah, I've never seen the June letter.
 25 Q. You hadn't seen it at the time. Is it right that this

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1 A. As you'll see, every day we would answer large numbers
 2 of written questions --
 3 Q. Yes.
 4 A. -- on every subject under the sun --
 5 Q. Sorry, page 90 --
 6 A. -- was in our Department.
 7 Q. So it's the bottom of the page, paragraph 7.117:
 8 "I am asked what the 'professional advice' was
 9 that was made available to the designated Haemophilia
 10 Centres in relation to the possible risk of AIDS from
 11 this Factor VIII concentrates. In the absence of
 12 having seen the explanatory brief which would have
 13 accompanied a draft of this answer, I cannot say what
 14 information about this was provided to me at the
 15 time."
 16 So you don't know what that's based on, in other
 17 words, that statement in Hansard?
 18 A. No, I can't -- I mean, for 40 years I can't remember
 19 what explanation the brief gave for the phrase --
 20 Q. No, and it's one of the --
 21 A. -- and one sentence in a written answer.
 22 Q. Yes, and it's one of the number of briefs that have
 23 not been located.
 24 You go on to say this:
 25 "However, I understand that on 24 June 1983, the

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1 is being suggested now as possibly material that your
 2 answer could be --
 3 A. Well, I might be -- I mean, one of the daft things
 4 about this is you're asking such detail about events
 5 40 years ago in a busy Government Department where
 6 this was a tiny, tiny proportion of my activity. And,
 7 I'm sorry, the truth -- the only truthful answer I can
 8 give is right now, 40 years later, I haven't a clue
 9 whether I then saw the letter from the chairman and
 10 the secretary of the Haemophilia Centre. If I told
 11 you I had or hadn't, you very sensibly would not
 12 believe me. You wouldn't believe I could remember
 13 that. You know, with great respect, it's quite
 14 obvious that no one can answer these questions.
 15 We're engaged in historical research here, with
 16 the elderly survivors, the ones that hadn't died so
 17 far, of those who are in the Department at the time,
 18 and in meticulous detail, which it's inconceivable
 19 that any witness could possibly remember. This was
 20 true for half of yesterday.
 21 SIR BRIAN LANGSTAFF: Lord Clarke --
 22 A. You've got the documents, why don't you use the
 23 documents?
 24 SIR BRIAN LANGSTAFF: Lord Clarke, it's quite useful for
 25 me to know, because you yourself have said, a moment

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1 or two ago, that the central decisions were taken by
 2 the clinicians who were treating individuals.

3 **A.** Yes, that's ...

4 **SIR BRIAN LANGSTAFF:** This press release says that they
 5 had been given professional guidance. So you
 6 understand it's quite useful for us --

7 **A.** Yeah, they were specialist haemophilia doctors. They
 8 were the world's experts on the whole subject.

9 **SIR BRIAN LANGSTAFF:** It's quite useful for us as an
 10 Inquiry to know what the professional guidance was,
 11 and --

12 **A.** Yeah, I agree, well, the --

13 **SIR BRIAN LANGSTAFF:** You have --

14 **A.** I understand that, but expecting me to remember
 15 content of letters that I might or might not have seen
 16 40 years ago, with great respect, is slightly wasting
 17 time.

18 **SIR BRIAN LANGSTAFF:** Bear with me for a moment. I think
 19 the point that counsel was exploring, as I understand
 20 it -- she'll tell me if I am wrong -- was that this
 21 part of your statement isn't actually coming from
 22 recollection because no one would expect you to
 23 remember this.

24 **A.** Yes, as I say, it begins by saying "I cannot say what
 25 information about this was provided to me at the

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1 statement, to which he'd has signed and attested
 2 a statement of truth.

3 **SIR BRIAN LANGSTAFF:** It is --

4 **A.** I mean, that -- what we don't know is how many
 5 documents have -- which documents have been kept and
 6 which haven't from that time. The real -- if you want
 7 the full answer to what happened in 1983 and what
 8 advice went to -- is, unless you've got some direct
 9 evidence from someone who claims to remember, nobody
 10 knows, all you can do is do your best from such
 11 documents that still survive.

12 **MS RICHARDS:** Indeed.
 13 Lord Clarke, you've referred to the
 14 difficulties --

15 **A.** You're doing historical research, really, in such
 16 documents as you've been able to recover, thousands of
 17 them.

18 **Q.** You've referred to the difficulty of an inquiry
 19 investigating matters decades later. This is an issue
 20 which we may touch on when we look at your involvement
 21 as Secretary of State for Health and the haemophilia
 22 litigation. Can you recall whether you gave
 23 consideration to the possibility of establishing
 24 an inquiry rather closer in time to the events when
 25 you were Secretary of State for Health, when everything

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1 time".

2 **SIR BRIAN LANGSTAFF:** The --

3 **A.** There's the answer.

4 **SIR BRIAN LANGSTAFF:** -- information therefore that is
 5 put --

6 **A.** I thought -- I did obviously agree with the people
 7 helping me draft the answers, that it might be helpful
 8 to add information which they told me about, which was
 9 that this letter had been sent, and so on.

10 **SIR BRIAN LANGSTAFF:** I think what is particularly helpful
 11 to me about that is that the best that those advising
 12 you, at the time when you made this statement, could
 13 do, by way of identifying any form of professional
 14 advice, is to refer to the letter on 24 June 1983 and
 15 to nothing else.

16 **A.** Well, I don't know how many documents are left by
 17 which they could research what had been done.

18 **SIR BRIAN LANGSTAFF:** The letter means something to us for
 19 other evidence that we've had in this Inquiry, and it
 20 is a support, I think, for the Inquiry's conclusion
 21 that it can find no other reference to any other
 22 professional advice. That was the point you were
 23 making, was it?

24 **MS RICHARDS:** Indeed, sir, and conscious that Lord Clarke
 25 had identified this particular letter in a witness

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1 would have been fresh in everyone's minds?

2 **A.** No, we didn't have these public inquiries then, if
 3 anything they were -- I can't remember when it
 4 started, this habit of having them. But no, I don't
 5 think I did. I don't think I did. There were
 6 inquiries, there have been two inquiries already. But
 7 they were set up by people outside the Department.
 8 I can't remember who held them now, there was one in
 9 Scotland and there was an English one as well --

10 **Q.** Lord Archer's Inquiry in England.

11 **A.** Unfortunately, both came to the wrong conclusion from
 12 the point of view of the campaigners. I didn't give
 13 evidence to either because I wasn't the minister
 14 responsible, so they couldn't see the need for calling
 15 me.

16 **Q.** Can I ask you to look at another paragraph in your
 17 witness statement, please.
 18 Soumik, it's page 89 of the witness statement,
 19 paragraph 7.113. You refer in your answer to:
 20 "... a memo from Ms Sibellas to Dr Field
 21 relating to known AIDS cases as of 9 September 1983,
 22 which included the information that two patients were
 23 haemophiliacs who had received American Factor VIII
 24 ..."

25 I'm not going to, unless you want me to, take

20

1 you to that. You say you probably would not have seen
2 that table at the time. You then go on to say this:

3 "However, from memory it was not clear at the
4 time that the very few haemophiliacs that were being
5 reported to have contracted AIDS at this stage had
6 contracted it from their treatment for haemophilia, as
7 opposed to by other means, as other AIDS patients had,
8 for example through sexual activity. It was only when
9 reports of haemophiliacs being infected in much higher
10 numbers came to light that the position became
11 clearer."

12 Is it right to understand from that, Lord
13 Clarke, that in terms of your thinking in autumn of
14 1983, you understood that it might be the case that
15 the haemophilic cases were actually cases of people
16 who had contracted AIDS through sexual activity and
17 not their treatment?

18 **A.** Well, that obviously was a possibility. Until, as
19 I go on to say, once it became obvious that
20 haemophiliacs were -- suddenly the numbers increased
21 and they were disproportionately being infected,
22 there's no reason to believe that the haemophiliacs
23 were any different to any other members of the public,
24 in terms of their personal relationships, and so on.
25 So when you've only got one or two, three, perhaps,

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1 of, to start with, recollection of any discussions
2 about it but it seems to be obvious, when you get the
3 first one or two and they're haemophiliacs, I mean,
4 for anybody, that first question you ask is: is this
5 case any different from other cases we have? I mean,
6 does the fact that the patient has the misfortune of
7 being a haemophilic actually mean the way they caught
8 AIDS is different to anybody else? That seems to be
9 a perfectly obvious question that would cross
10 anybody's mind when you had the first one or two
11 cases.

12 **Q.** Do you think you would have asked that question of the
13 officials in the Department?

14 **A.** I can't remember what -- again, as I'm afraid I --
15 sorry, I should have -- I must not -- I shouldn't be
16 quite so combative but, as I said a few moments ago,
17 I can't conceivably remember details of conversations
18 from 40 years ago on such an offbeat subject.

19 **Q.** No. You say it was a perfectly obvious question, so
20 I appreciate entirely you can't remember as a matter
21 of fact --

22 **A.** No.

23 **Q.** -- whether you asked it but, if it's an obvious
24 question to your mind, do you think it's likely that
25 you would have asked it?

23

1 it's just possible that, you know, as you're beginning
2 to acquire other people who had acquired AIDS, as
3 other people -- so one or two of the people getting
4 AIDS were haemophiliacs. That was -- it was -- one
5 possibility. I mean, that's not the only reason why
6 it was unclear at first. But the opinion of the
7 medical profession was it was unclear. That's why
8 they didn't stop giving the treatment.

9 **Q.** I know I'll be corrected by your legal team if I'm
10 wrong when I say this, Lord Clarke, I don't think
11 we've seen any evidence from within the Department,
12 documentary or otherwise, to suggest that it was being
13 advanced or considered that the cases that were known
14 about, Cardiff case and other cases, were thought to
15 be anything other than cases caused by treatment for
16 haemophilia, rather than sexual activity on the part
17 of the individuals concerned?

18 **A.** Well, the scientific and medical advice we got is
19 summed up the phrase "there is no conclusive proof
20 that AIDS is transmitted" or whatever it is that --

21 **Q.** You seem to be recalling in this paragraph of your
22 witness statement a positive recollection that this
23 was something that was -- at least going through your
24 mind at the time?

25 **A.** Well, yes -- I mean, not -- I don't -- I haven't, sort

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1 **A.** I have no idea. I just don't know whether I'd have
2 the opportunity. How on earth could you view -- if
3 you say you've only got one case, how on earth could
4 you be certain that this case was not sexually
5 transmitted like all the others? No one could
6 possibly have come up to that conclusion.

7 **Q.** Why use the phrase "no conclusive proof" or "no
8 conclusive evidence" in the first place?

9 **A.** Well, has anybody found any record of the meeting
10 where the medics and scientists agreed on that?

11 **Q.** No.

12 **A.** Because it came -- it wasn't drafted by a minister.
13 Our advice was -- the advice to us was, and the phrase
14 they obviously -- we obviously -- I can't remember us
15 doing it but somebody somewhere decided that was the
16 best, most accurate line to take. So, as I discovered
17 when answering your questions, you know, it was
18 repeatedly used by every minister as it were obviously
19 to have been settled on by somebody as the best, most
20 accurate line to describe where we were. And, you
21 know, ordinary use of the English language, it plainly
22 meant there's a strong possibility that at the moment
23 we can't be certain or sure. And we kept repeating
24 that because that was the scientific advice we had,
25 until whenever it was, a few months later, when it was

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1 becoming increasingly clear to the medics that there
2 was, in fact, sufficient proof to be pretty certain
3 that they were being *(unclear)*.

4 But we weren't playing down the possibility --
5 indeed, the probability -- because the background, the
6 context of it all, was we were putting out a leaflet
7 asking gay people not to give blood. And not only
8 getting reported, but getting rather sensationalised
9 reporting in bits of the press for doing so, because
10 it was quite -- I can't think of any -- you
11 immediately find some precedent, but off the cuff now
12 I can't think of any precedent for such a dramatic
13 thing as telling a particular section of the
14 population to stop donating blood to the Health
15 Service.

16 And the phrase we used to explain the medical
17 background was, you know, was we're doing this because
18 there's a strong possibility that it's transmitting
19 AIDS. But it's -- although we can't be certain or
20 sure about that.

21 **Q.** Dr Walford --

22 **A.** It's perfectly accurate, the phrase. It seems to me,
23 from what I -- looking at it now, and seeing these
24 documents, it's a perfectly accurate description on
25 where medical opinion was. That's presumably why the

25

1 startling is put to you, you know, "Is that really
2 so?" And even say, "But surely this -- last week you
3 told me X", or something like that, my habit, I think,
4 was rather to do that sometimes. So you can see from
5 the documents, sometimes I'm asking questions. That's
6 your role, that's your duty, and that's certainly what
7 I used to do. But you don't start substituting your
8 own amateur medical opinion for that of the experts,
9 including, presumably, the experts who have consulted
10 specialists in the whole field of haemophilia and
11 specialists in the subject of AIDS.

12 The ministers -- no minister can possibly start
13 substituting his or her judgment for what comes up in
14 the end. And it was -- and the trouble, as I've said
15 earlier on, I've said the idea that every medic
16 agrees -- you usually find with new diseases --
17 I mean, this is the only one I've ever been involved
18 with but with a new disease, presumably, that
19 there's -- from Covid, it's looking obvious as the
20 Covid thing has gone along, there's a range of
21 opinions even amongst the experts about exactly what's
22 going on, or what's likely to happen.

23 That's resolved in, you know, things like the
24 obscure sub committee we were talking about yesterday.
25 It's -- the medics and the scientists go to the

27

1 real experts, the haemophilia doctors, were still
2 using Factor VIII.

3 **Q.** Dr Walford told us that it was her own view that
4 blood/blood products were a likely cause of
5 transmission --

6 **A.** A likely cause, yes.

7 **Q.** -- from early 1983, and that that was the mainstream
8 view within the Department really by the middle of
9 1983. Can you help us with understanding why, then,
10 the line to take was not "it is likely that AIDS is
11 caused by" --

12 **A.** Well, it wouldn't matter --

13 **Q.** -- "blood and blood products but" --

14 **A.** -- we tend to go on to say there is a possibility, it
15 can't be ruled out.

16 I don't know. Only Diana Walford could answer
17 that. She would certainly have been involved in any
18 meeting which settled this line to take. Ministers --
19 I mean it's true today in Covid, you know, ministers
20 protest this publicly now: on clinical matters,
21 scientific matters, any sensible minister has to be
22 guided strongly by the advice you get from the
23 clinical and scientific experts. You don't start
24 inventing your own medical opinion.

25 And you may challenge it, if something very

26

1 best -- or the colleagues they want to consult, they
2 do the best they can to explore what's happening, and
3 then they put up to ministers -- the laymen --
4 a consensus they've reached in the end and what the
5 line to take is.

6 And of course you find outliers. You found this
7 Mr Galbraith yesterday. But in the end, if the
8 balance of opinion is X or, you know, if they decide,
9 as a team, that is the best they can do, that is what
10 they put to ministers. And that's where "no
11 conclusive proof" came from. And until the medics
12 changed their advice, it would have been positively
13 irresponsible for a minister to change the use of the
14 words.

15 **Q.** Did you ever challenge your officials on why this
16 phrase was being used?

17 **A.** I can't remember.

18 **Q.** Do you think you would have asked your officials, "Is
19 it likely" --

20 **A.** Well, if I doubted it, but it seems to me -- it seems
21 to me now a perfectly accurate description of the
22 position we were in then. I mean, it's a strong --
23 it's -- when you look at the other sentences with it,
24 what the Government was then saying was: a strong
25 possibility, probability perhaps, that it's being

28

1 caused, but there is no conclusive evidence so we
 2 can't be certain or sure. But the Government was
 3 actually implementing a policy -- the only really
 4 strong precaution we could take so far as British
 5 blood donation was concerned -- asking gays to stop
 6 giving blood.

7 **Q.** Let's just put back on the screen, please, the two
 8 statements, Soumik. Can we have side by side
 9 DHSC0006401_006. Then PRSE0000886.

10 **A.** Did this go out in my name, this one?

11 **Q.** They're the documents we've already looked at,
 12 Lord Clarke --

13 **A.** Oh, yes, it quotes my announcement.

14 **Q.** Just want to go back to the language that was used.
 15 So if we look on the left-hand side, the press
 16 release, there's a reference to -- and this is four
 17 lines down into it -- "possible risk of transmission":
 18 "We must continue to minimise any possible risk
 19 of transmission ..."
 20 It's right, isn't it, that there's no reference
 21 there to "probable" or "likely"?

22 **A.** Well, obviously. You just have to read it.

23 **Q.** Yes, I am just trying to pick up on it in light of
 24 your answers a few moments ago, Lord Clarke. If we
 25 look on the right-hand side --

29

1 medical advice by the -- collectively the lot of them
 2 that we should use the phrase "there is no conclusive
 3 proof" and the ministers carried on using it until we
 4 were advised to stop using it.

5 **Q.** Lord Clarke, you may also think -- you may think it's
 6 also perfectly obvious, with or without an epithet
 7 attached, that the phrase "probable or likely" is not
 8 used in your written Parliamentary answer. It's not,
 9 is it --

10 **A.** Well, I can see that. Anybody who reads that can see
 11 that. What a pointless question.

12 **Q.** Why --

13 **A.** We're not going to go long all day like this, are we?
 14 It doesn't -- I mean, doesn't this Inquiry wish to
 15 reach a conclusion? I don't know how many years
 16 you've been going. Extraordinary.

17 **Q.** Might it be said, Lord Clarke, that you and the
 18 Department repeatedly using the line to take of "no
 19 conclusive proof" were not being straightforward and
 20 candid with the public because you were not
 21 acknowledging the likely causal connection between
 22 AIDS and blood products?

23 **A.** But the word doesn't say -- the line to take did not
 24 say "blood products don't cause AIDS", it doesn't say
 25 that at all. That would be quite wrong, inaccurate

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1 **A.** I mean, you're taking words out of one press release
 2 to try to cogitate an answer I've given 40 years
 3 later. If you look at the whole thing, the reason for
 4 all these documents is there was genuine concern that
 5 these American blood products were causing AIDS, but
 6 there was no certainty. There was no medic giving
 7 advice that it was certain or sure, and one of the
 8 (*unclear*) we'd gone through was setting out the
 9 various ways -- there were very limited ways in which
 10 this risk could be minimised.

11 And actually this is quite a dramatic step we
 12 were taking. I mean -- in fact, the reason we were
 13 worried about, the tone, it's hardly surprising that
 14 the popular press took off. We were telling gays, who
 15 were the victims of a very great deal of public
 16 prejudice at that time, to stop, you know -- asking
 17 them to consider stop giving blood and things. Now
 18 it's no good taking one phrase out of my answer and
 19 then pointing to one word in a press release you've
 20 found from 1983. I think I -- I am answering the same
 21 question over and over again, but it's perfectly
 22 bloody obvious what we were doing, and we know
 23 perfectly well from all the evidence yesterday what
 24 the state of play was as far as the risks were
 25 concerned, and using -- it was the agreed presumably

30

1 and untrue. The meaning, in my opinion, if you give
 2 the ordinary meaning of the words, "there's no
 3 conclusive proof", and if you look at the sentences
 4 round it, it is quite clear we're saying, you know,
 5 there's a strong possibility at least that it causes
 6 AIDS, and -- but there is, at the moment, no
 7 conclusive proof. We might find that -- presumably it
 8 implies haemophiliacs are acquiring it in some other
 9 way. I mean, that doesn't just mean sexual activity,
 10 there might be some be peculiar reason -- turn out to
 11 be some other way in which haemophiliacs -- that's --
 12 I mean, it's not my -- I mean, I used it but it's not
 13 my medical opinion. That is what -- I'm using the
 14 English language. This is how I interpret the phrase.
 15 And if you look at the whole documents, that is
 16 plainly what the Department was saying. And I'm
 17 convinced. That was -- it doesn't matter what
 18 individual doctors -- that was the collective view of
 19 the scientific experts in the Department and those
 20 they consulted outside.

21 **Q.** I'm going to invite you to consider giving a "yes" or
 22 "no" answer to this question, Lord Clarke.

23 **A.** I'm giving you long answers, I know, and I'm getting
 24 exasperated far too early in the morning. But it's
 25 quite obvious what "there is no conclusive proof"

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1 means.

2 **Q.** Was the Department being less than straightforward and
3 candid in pursuing the "no conclusive proof" line to
4 take?

5 **A.** Most definitely not. It's an absurd tabloid newspaper
6 spin you're putting on it.

7 **Q.** What was the purpose, in your view, of expressing the
8 Government -- the Department's line to take in those
9 terms?

10 **A.** The purpose was to do the best we could to inform
11 people of an alarming situation which would -- and
12 explaining why we were taking such a drastic step as
13 telling homosexuals, please, to stop giving blood.
14 Which, as you can see from other documents, one of the
15 things we were all concerned(?), we did not want to
16 feed homophobic reactions to all this. Hence my
17 disgust, really, at some newspaper putting a headline
18 "Docs ban gay blood", which shows how little they were
19 taking notice of the sensitivities.

20 **Q.** Was the "no conclusive proof" line to take designed to
21 encourage haemophiliacs to continue with their
22 treatment?

23 **A.** That was the advice of their doctors. It was their
24 doctors who decided. Obviously, they would have the
25 consent of the patient. It was the experts in

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1 a detailed chronology prepared in collaboration with
2 Dr Smithies.

3 Then if we go to DHSC0002375_035, we'll see the
4 chronology. I want to invite your attention to two
5 parts of it. The first is the --

6 **A.** I don't think I've ever seen this before, have I?

7 **Q.** It's been provided to you in advance of you giving
8 evidence, Lord Clarke; whether you've read it or
9 not --

10 **A.** Well, I've got thousands and thousands --

11 **Q.** -- is something only you can answer.

12 **A.** -- folder on folder of that.

13 **Q.** So if we look at page -- sorry, paragraph 2. It says:
14 "Throughout 1983 the Government's public line in
15 Private Office cases and Parliamentary replies was
16 that there was no conclusive evidence that AIDS was
17 transmitted by blood products. This statement was
18 strictly true and in view of the very small number of
19 UK cases was intended to reduce public anxiety."

20 Is that your view of what, in part, the purpose
21 of the statement was?

22 **A.** Well, whoever did -- whoever produced this had done
23 some research into the background to it all.

24 **Q.** So reducing public anxiety would have been part and
25 parcel of the thinking?

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1 haemophilia medicine. The doctors -- usually in
2 expert centres -- who were treating them who advised
3 them and allowed them to carry on taking blood
4 products, including Factor VIII, more than half of
5 which I think was imported from America.

6 **Q.** With respect, Lord Clarke, that's not an answer to the
7 question. I'll repeat the question.

8 Was the line to take of "no conclusive proof"
9 designed in part to encourage haemophiliacs to
10 continue with their treatment?

11 **A.** No, not particularly. It was the best explanation we
12 could give of the risk that was making us take this
13 precautionary step.

14 **Q.** Was it designed in part to allay public concern or
15 avoid panic?

16 **A.** I assume -- you'll have to ask whoever was the author.
17 I don't know which -- you know, which meeting,
18 which -- where the -- I mean, I didn't invent the
19 phrase. I don't know where the phrase came from when
20 it was put in front of me. But it strikes me, as --
21 as a layman, a non-medical, as a one hundred per cent
22 accurate description of where we then were.

23 **Q.** Can we look at DHSC0002375_034, please. This is not
24 a document from your time in office, Lord Clarke.
25 This is a minute dated 20 October 1987 and it attaches

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1 **A.** Well, presumably -- there was no point -- yes -- as
2 I say -- I was saying yesterday, just causing panic,
3 you know, would not have helped at all. But it's not
4 misleading, the phrase, in my opinion.

5 **Q.** If we go, please, to page 5, paragraph --

6 **A.** Now you left out the last bit, when you said, "little
7 positive action could be taken (except by [limiting
8 the] ... donors)" -- that was the problem, as you set
9 out one of the earlier ones, I admit.

10 **Q.** Yes, what --

11 **A.** I mean, again, what exactly is it being suggested
12 anybody could have done?

13 **Q.** Lord Clarke, I think we went over this ground in some
14 detail yesterday afternoon.

15 **A.** No, we didn't, really. We went round hair-splitting
16 analysis of 40-year old documents. The point we
17 should be getting to is, with the benefit of
18 hindsight, of course: what do we now think should have
19 been done? What could have -- what might have been
20 done, if only we'd known how big the risk was, that
21 would have saved lives? That is what I hope the
22 Inquiry is concentrating on, because the purpose of
23 this Inquiry is to see if there are any lessons that
24 could be learned if ever the situation arise again in
25 future pandemics.

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1 So obviously you've spent some years already,
 2 and had lots of witnesses, you must be arriving at the
 3 stage, given we have full one hundred per cent
 4 hindsight now, of the tragic death of nearly 3,000
 5 people, what, if they'd known what the risk -- what
 6 was going to happen, if they'd known what we now know,
 7 what might have saved it? What could have been done?
 8 And I think, had we known then what we knew only
 9 two years later, the haemophiliac doctors would have
 10 stopped using Factor VIII and would have faced the
 11 storm that would have been faced by stopping such
 12 a treatment of haemophiliacs, doing great damage to
 13 the quality of life of the haemophiliacs, but saving
 14 their lives.
 15 That's the -- if only we'd realised what the
 16 scale of the risk was and how contaminated this
 17 American stuff was, I can't think of anything else
 18 that might have been done, but, as it's quite obvious
 19 from the documents, nobody had taken on board that the
 20 tragedy that was about to happen was going to happen.
 21 Because it was a new, completely new, unprecedented
 22 situation.
 23 Q. Lord Clarke, we did go over those issues yesterday
 24 afternoon --
 25 A. I know, it seems to me they are the only issues to go

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1 some stage, by March of 1984, there's no --
 2 A. Abandoned in March 1984, was it?
 3 Q. I'll show you the documents in a moment, Lord Clarke.
 4 Does it surprise you that there's no public
 5 utterance acknowledging Factor VIII as an infectious
 6 agent until that point --
 7 A. That's surprising, mm.
 8 Q. In terms of the abandonment of the line to take, I'll
 9 just show you --
 10 A. And then it's in December, is it, that the Chief
 11 Medical Officer actually does publicly refer to heat
 12 treatment? Because that was the other thing that came
 13 too late, but that would have saved lives if we'd had
 14 heat treatment earlier. But I don't know where it
 15 came from, which scientists, which research had
 16 produced heat treatment which stopped it being
 17 infectious.
 18 Q. If we look at PRSE0001580, this is a newspaper article
 19 from 25 March 1984. This is actually from a version
 20 that appears in the Department of Health's own files.
 21 You'll see that it reports, in the first
 22 paragraph, transfusion -- this is in the States --
 23 transmission of AIDS "to a hospital patient through
 24 a blood transfusion".
 25 If we go --

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1 over. This who said what in a conversation sometime
 2 in 1983, with great respect, I -- you may gather, I'll
 3 shut up and I'll count to ten and calm down -- if
 4 we're going to spend a day on who said what to whom in
 5 a conversation, you know, in June 1983, I shall just
 6 have to, you know, stop being a grumpy old man. I'm
 7 sorry if I'm upsetting -- being rather upsetting but
 8 I must just settle down and answer the damn questions.
 9 Most of which I can't remember because I can't
 10 remember who said what in conversations and I can't
 11 remember these documents until you put them in front
 12 of me.
 13 Q. Lord Clarke, it may assist if you listen to the
 14 question and answer the question. It may be a quicker
 15 process.
 16 If we look at paragraph 13 --
 17 A. On the whole I've answered the same questions over and
 18 over again.
 19 Q. Well, I don't think this is a question I've asked you
 20 yet, Lord Clarke, so if I may.
 21 "We have no record of any public utterance from
 22 the Government which acknowledged the infectivity of
 23 Factor VIII until 20 December 1984."
 24 Does that surprise you, Lord Clarke, that
 25 although the "no conclusive proof" is abandoned at

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1 A. And it's from Los Angeles.
 2 Q. It is. I'm just showing you that because it's the
 3 context for the next document, which is
 4 DHSC0002239_089.
 5 A. Sorry, can I just have a look at this press release?
 6 Q. Yes, of course.
 7 A. There's nothing else, is there?
 8 Q. Keep that on there. Perhaps if we go towards the
 9 bottom of the page, if you look at the last
 10 two paragraphs on the left-hand column, Lord Clarke.
 11 A. Mm-hm.
 12 Q. You'll see it says -- this is referring to the States:
 13 "Most of the victims are homosexual men who
 14 contracted AIDS through sexual contact. But at least
 15 70 are people who had blood transfusions -- either
 16 haemophiliacs or hospital patients, some of them
 17 babies. The suspicion that blood was to blame" --
 18 A. So they're in the same position in America. The
 19 suspicion that blood was to blame has now, March 1984,
 20 "become proof".
 21 Q. Well, that's what a journalist is saying --
 22 A. If that's what The Sunday Times says, I've no reason
 23 to doubt that.
 24 Q. And --
 25 A. So before that they'd been in the same position that

40

1 we were.

2 **Q.** Well, I think the fact of people becoming infected
3 through transfusions or blood products is --

4 **A.** Well, I think --

5 **Q.** -- already known about but let's --

6 **A.** -- if I may say so, I think it's relevant to ask what
7 other countries were doing, because there were whole
8 lots of ministers and whole lots of doctors facing
9 exactly the same problem across Western Europe and,
10 most particularly, in the United States, where it all
11 came from.

12 **Q.** Very good point, Lord Clarke. Did you ever ask, in
13 your time as Minister for Health, what other countries
14 were doing?

15 **A.** No, I don't think I ever did because I wasn't the
16 minister responsible for this, but I was having --
17 with hindsight it might have been a good idea to have
18 asked.

19 **Q.** Would you have expected those questions to be asked at
20 least within the Department, leaving aside the
21 question of who --

22 **A.** I have no idea. You'd better ask the people who
23 the -- as I say, the medics say. Whether it's --
24 presumably you've done a lot of research on what was
25 being done in the other countries in the course of

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1 with the wisdom of hindsight 40 years later. We'd no
2 idea, probably on neither side of the Atlantic, the
3 scale of the catastrophic tragedy that was about to
4 hit thousands of people.

5 **Q.** If we go to DHSC0002239_089. This is again -- this
6 a note written in the Department of Health files and
7 our understanding is that it's associated with the
8 newspaper article. But what it actually says is:
9 "We dropped 'there is no conclusive proof that
10 AIDS is transmitted through blood or blood products'
11 from our standard line some time ago."

12 **A.** Okay.

13 **Q.** Do you have any knowledge or recollection, Lord
14 Clarke, of the circumstances in which or the reasons
15 for which that line was dropped.

16 **A.** No, I do not. I say, I don't know which -- where the
17 phrase was first drafted. I don't have any
18 recollection of when or how it was dropped or how
19 ministers were advised to drop it. I just can't
20 remember after all this time.

21 **Q.** We can take that down. Thank you.
22 Do you accept, Lord Clarke, that the line to
23 take should have included express recognition of the
24 likelihood, the probability, that AIDS could be
25 transmitted through blood and blood products?

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1 this inquiry?

2 **Q.** Indeed. I'm not asking you what, as a matter of fact,
3 discussions did take place on that issue because
4 I think --

5 **A.** Well, the answer is no, I didn't ask at the time.
6 Perhaps, looking back, I wish I had.

7 **Q.** Would you -- my question --

8 **A.** We were told the Americans were taking steps, quite
9 understandably, to try to improve the -- they were as
10 worried as we were, I'm sure, so they were taking
11 steps to try to solve this problem of their blood
12 products because the Americans were treating American
13 patients with the same stuff that we were treating
14 British patients. And America is not a backward
15 country in medical terms. I'm sure the American
16 medical establishment was making pretty desperate
17 efforts to try to minimise the risk.

18 And if this is correct -- I've no reason to
19 doubt it -- they became certain that this was how
20 people were getting AIDS in March 1984.

21 **Q.** Would you have expected that the Department would be
22 investigating what was happening in other countries?

23 **A.** Well, it might, yes. As I say, too easily -- it's too
24 easy for us all to sit here and say "Ooh, of course
25 I'd have expected them to do that", because this is

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1 **A.** Well, every time you've used it it's in the context
2 where it's quite obvious that that likelihood, that
3 possibility, was exactly why we were taking the
4 actions we were taking. I mean, it's a drafting
5 point.

6 **Q.** Do you accept, Lord Clarke -- I'm going to repeat the
7 question because I'm not sure you've answered it --
8 that the line to take should have included an express
9 recognition of the likelihood or probability that AIDS
10 could be transmitted through blood or blood products?

11 **A.** Not really. It's perfectly bloody obvious that
12 everybody was working on that basis. This is just
13 a drafting argument.

14 **Q.** These are the statements that your Department elected
15 to make --

16 **A.** I know.

17 **Q.** -- to the public --

18 **A.** And there's no secret --

19 **Q.** -- the Parliamentarians --

20 **A.** There's no secrecy --

21 **Q.** -- the press --

22 **A.** -- about the fact that there's a serious worry that
23 people might be getting AIDS from blood products.
24 That's -- hundreds of documents are concerned with
25 that very problem and every statement to the public

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1 it's quite obvious, as the press were interpreting it,
2 quite clearly -- it's quite obvious what is causing
3 the concern. It is accurate, it seems to be, unless
4 you can find some medical opinion that I've never seen
5 before.

6 It seems to me, having looked at these
7 documents, that the "no conclusive proof" phrase,
8 these three words are taken out as though they're
9 loaded with significance. The "no conclusive proof"
10 is a perfectly accurate description of the then
11 medical opinion. And to start making arguments by
12 taking three words out of context out of a paragraph
13 and then, when the three words -- it seems to me you
14 can't demonstrate they're inaccurate, you spent half
15 an hour on this.

16 **SIR BRIAN LANGSTAFF:** I think by now --

17 **A.** You know, when tabloid journalists do this, they don't
18 usually take half an hour labouring it, with the
19 greatest respect.

20 **SIR BRIAN LANGSTAFF:** I think by now I have Lord Clarke's
21 answer very clearly in my head.

22 **MS RICHARDS:** I think you do, sir, yes.

23 I am going to turn on to the question of AIDS
24 screening tests and the introduction of those. So
25 this is testing blood donations for AIDS.

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1 **A.** "To start in October".

2 **Q.** -- "[Regional Transfusion Centre] to start in
3 October."

4 Then there's reference to there being a note to
5 go up to ministers.

6 So you'll see from this, in around the middle of
7 1984, the possibility of screening was being discussed
8 within the Department.

9 **A.** But there wasn't, by this stage, I think, a test which
10 had been developed which could be relied upon. Again,
11 it's just like Covid. You can't really make much
12 progress with testing and screening until you're
13 satisfied that the test is safe and that the test is
14 reasonably -- it's accurate to the required degree.
15 It's no good having false -- large numbers of false
16 positives and false negatives. And that, again, is
17 always a question of the progress of medical research.

18 **Q.** Yes, and we'll come onto that. I just, as I say, want
19 to just try and work through what was being seen when.
20 So if we go to DHSC0000443, this a minute of
21 31 August 1984 to Mr Cashman and Mr Joyce, and it's
22 a briefing note, it's here being sent, I think, to
23 Lord Glenarthur's private office rather than, I think,
24 your own. And if we just look over the page, and this
25 is to understand the state of knowledge with the

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1 **A.** Yeah, I remember all that.

2 **Q.** If we just pick matters up, and I'm going to show you
3 a handful of documents so we can see the chronology
4 and then ask you some questions about them. We can
5 pick matters up, I think, at DHSC0000445. This is --

6 **A.** Who is this to? Who is it addressed to?

7 **Q.** It's addressed to Dr Smithies --

8 **A.** Dr Smithies, yes.

9 **Q.** -- who was Dr Walford's successor.

10 **A.** -- and these people --

11 **Q.** It's really -- you may not have seen this particular
12 document but it's really just to help us start looking
13 at the chronology, Lord Clarke.

14 **A.** Okay.

15 **Q.** So it's 31 July 1984, it refers to a discussion of
16 a meeting, no suggestion that you would have been
17 present, Lord Clarke, on 31 July. We can just see,
18 picking it up in the second paragraph --

19 **SIR BRIAN LANGSTAFF:** That's 1984?

20 **MS RICHARDS:** Yes, I'm so sorry, sir, yes.

21 **A.** Sorry, when in 1984?

22 **MS RICHARDS:** "It was agreed [this is the second
23 paragraph] that Ministers should be made aware of the
24 arrangements to screen all blood donors at North West
25 London" --

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1 Department rather than your own, Lord Clarke:

2 "Publication of a paper in 'The Lancet' ... and
3 'The Guardian' ... on the use of a screening test for
4 AIDS devised by teams at the Institute of Cancer
5 Research and the Middlesex Hospital.

6 "Ministers are aware [this is under the heading
7 'Summary'] from the AIDS leaflet submission [which you
8 had seen] that a blood test for AIDS antibody is under
9 development ... This background note provides further
10 briefing to cover publication in the Lancet of a paper
11 on the results of the use of this blood screening
12 test."

13 Then there's reference to aspects of The
14 Guardian article being misleading.

15 We can see further down there's a description of
16 the test, I'm not going to go through the details of
17 that. Go to the top of the next page. We can see
18 under the heading "The Results" it talks about the
19 results of the tests seeming to confirm that:

20 "... individuals suffering from AIDS and a high
21 percentage of those who may be developing AIDS itself,
22 or a milder form of the disease, carry an antibody in
23 their blood."

24 Then the bottom of the page --

25 **A.** It says, "it is not yet known what this means".

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1 Q. "Use of the test in the UK to ensure our blood
2 donations are free of the risk of causing AIDS
3 "The preliminary reports of the test are very
4 encouraging in that they showed that none of the
5 1000 UK blood donors tested carried any antibody to
6 AIDS. It is hoped that this test will be extended, as
7 we learn more about its meaning, to a larger number of
8 donors. It is in a very early stage of development
9 and the reagents necessary to carry out the test are
10 in short supply."

11 Then there's a reference to trying to address
12 that situation.

13 Then heading "Conclusion":

14 "Officials consider that the identification of
15 the presence of the antibody should not be a cause for
16 alarm, but rather is positive proof that useful
17 research and development of this test is going ahead
18 with the ultimate aim of an increase in knowledge of
19 this condition and the protection of our UK blood
20 supply."

21 Lord Clarke, that's the understanding within the
22 Department as at the end of August 1984. I then want
23 to show you one more document that --

24 A. Yes, research and development of the test was going
25 ahead.

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1 every blood donation (whether for immediate blood
2 transfusion and/or subsequent manufacture of blood
3 products) is free from AIDS contamination.

4 "It is anticipated that Ministers, to secure the
5 credibility and reputation of the [National Blood
6 Transfusion Service], and BPL's blood products, will
7 wish to instruct [Regional Health Authority's]
8 Regional Transfusion Centres to adopt the new test.
9 Presentationally this would be better done with offers
10 of funding assistance rather than as the imposition of
11 a Ministerial priority to be funded from within RAWP
12 allocation."

13 You'll see there, Lord Clarke, that what's being
14 said within the Department is support for the
15 introduction of a test, wanting to instruct Regional
16 Transfusion Centres at the appropriate stage to adopt
17 that --

18 A. *(Unclear: overspeaking)*

19 Q. -- but the suggestion there that there should be
20 central funding is the issue being canvassed in this
21 document. Would you accept that?

22 A. This particular document yes, that's what it seems to
23 suggest. They're discussing making a bid --

24 Q. Yes, a bid.

25 A. -- for central funding.

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1 Q. I want to show you one more document, again, that you
2 wouldn't have seen at the time before we look at,
3 then, your own involvement. So DHSC0101679.

4 A. Sorry, this -- who is this from and who is this to?

5 Q. Sorry, this might be the wrong reference. It's
6 from -- again, it's not copied to you. It's
7 26 October 1984 but in fact it's not, I think -- no,
8 I think it may be the right one. So it's from
9 a Mr Williams, I think, to a Mr Staniforth. Yes, it
10 does provide the background for the documents I want
11 to ask you about.

12 So if we look at the heading "Blood Test for
13 AIDS -- Bid for £2 million for 1985-1986":

14 "As discussed by telephone with Mr Lillywhite,
15 the relative impression of our bid (guestimate of £1
16 per test x 2 million donations [per annum]) should not
17 be confused with the high priority which we attach to
18 the need for such a test.

19 "At present a UK test is being developed, and it
20 is known that a USA commercial test (or tests) is
21 likely to be launched soon; it is thus almost certain
22 that some test will be available by the start of the
23 financial year 1985-86. The Department will be unable
24 to resist pressure (and indeed on policy grounds would
25 support the move) to introduce a test to show that

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1 Q. That's what I want to then ask you about because the
2 bid does come to your attention, so if we look at
3 WITN0758011, this is a minute, it's addressed to
4 Miss Bateman, who was in your private office, yes? Is
5 that right, Lord Clarke?

6 A. Sorry, is this?

7 Q. Addressed to Miss Bateman.

8 A. Yes, Miss Bateman. Yes, I think she was Sarah
9 Bateman -- was in my office.

10 Q. If we go to the fourth page we'll see the date.
11 Bottom of the page, 31 October 1984. If we go back to
12 the first page, we'll see in the first paragraph:

13 "This submission seeks Ministers' views on the
14 level of HCHS central reserves for 1985-86."

15 There are then various possible or anticipated
16 bids set out. I'm not going to go through most of
17 them which are unrelated to --

18 A. Well, it's always -- the whole day-to-day operation of
19 health policy, and the Health Service, always
20 competing bids for finite resources. And they're
21 perfectly worthwhile, demands for bids just rise all
22 the time you're -- like running upwards on a downwards
23 going escalator all the time. There are perfectly
24 worthwhile ways of spending money presented to you.
25 You have to choose which ones you're going to spend.

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1 Q. If we go to the third page and look at the top of the
2 page, paragraph 8, we'll see reference to some new
3 bids, and I'm going to pick it up in the fourth line:
4 "HS Division have advised that the proposed
5 central funding of AIDS tests (when a testing
6 technique is developed -- before 1985-86) will be
7 politically difficult to resist, though the cost
8 estimate of £2 million is provisional only."
9 Then it goes on to talk about other bids.
10 So that's the information being provided to you
11 in the submission. Then if we look at the
12 discussion --
13 A. Yes, it's giving opinions on various competing bids.
14 Q. Yes. If we look at the discussion or such record
15 of it as we have, at DHSC0002309_052. We can see from
16 the top of the page "Note of a meeting to discuss HCHS
17 central reserves held 13 November 1984. Present", and
18 we see that you, Lord Clarke, were present as MS(H):
19 "The meeting considered Mrs Banks submission of
20 31 October [the document we've just looked at]. The
21 following decisions were reached with regard to the
22 level and areas and expenditure of the central revenue
23 and capital programs ..." and then various ones either
24 agreed or not agreed.
25 Then we can see bottom of the page the heading

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1 a meeting we were discussing, even on this little bit,
2 special medical developments, central cleaning,
3 "clearing nurse scheme", that should be, problems
4 arising in primary care, Green Paper, thrombosis
5 research unit, blood products at Hammersmith Hospital.
6 I'm afraid I can't remember, firstly, how much was
7 discussed in detail. This was all based on the
8 recommendations of the so-called management group in
9 the Department who did all the detailed work and you
10 then wind up with a meeting at which I, because I was
11 responsible for these financial things -- but it's no
12 good asking me, if you go through all the items in
13 this document, do I remember who said what, or how we
14 arrived at the conclusion. It is merely my guess,
15 40 years later, that we came to that conclusion
16 because, you know, the Regional Transfusion Directors
17 and their teams meant we did organise the thing
18 regionally. So the Regional Health Authority budget
19 should be the place you looked for the money.
20 There seems to be no suggestion that anybody was
21 not going to buy AIDS tests if we did develop one that
22 worked.
23 Q. Can you recall more generally -- I understand you
24 can't recall the particular meeting or the particular
25 item -- but can you recall more generally was there

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1 "New Bids", and:
2 "The following new bids were agreed ..." and
3 a number there set out.
4 Then if we go over the page, we can see at 4 it
5 says:
6 "It was agreed not to make provision for the
7 following ..."
8 Then the fifth item there is:
9 "AIDS Tests -- Hypothetical. Additionally,
10 should be expenditure for regions, not Central
11 Pre-emption."
12 A. The Transfusion Service was organised on a regional
13 basis.
14 Q. Is it right to understand from this that the bid for
15 central funding for the AIDS tests that we saw
16 referred to in the earlier documents was rejected on
17 two grounds: hypothetical and --
18 A. Hypothetical means we haven't got a test yet,
19 I assume. I take it that's what it means. I don't
20 know what it means but that's what I assume it
21 means --
22 Q. Why was it your view or the meeting's view that it
23 should be expenditure for the regions?
24 A. Well, presumably -- I can't remember. I mean, if you
25 look at -- you're asking me to remember the details of

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1 an established practice or approach as to the kind of
2 criteria that would be used to decide if something was
3 going to be centrally funded or regional?
4 A. Well, I mean there was a whole variety of judgments.
5 It's very difficult. The problem with health policy,
6 I imagine in every -- ever since the Health Service
7 was founded, is the terribly difficult choices you
8 have to make between competing priorities. At any
9 given stage, I'm sure it's true for my successors as
10 minister, even as we speak, there are some -- lots and
11 lots of worthwhile bids to spend more money, an
12 ever-mounting pile of irresistible ones, which you've
13 got to allow because of clinical advance, and you have
14 a whole management team, and you have lots of
15 discussions in the Department. Finally, you have
16 ministerial meetings, and at some you can do now, some
17 are going to have to wait until you see how much you
18 can get out of the Treasury, for next year.
19 That's the day-to-day process of management of
20 a giant organisation like the National Health Service.
21 MS RICHARDS: Sir, we've got to nearly quarter past and
22 the next series of documents might take a little
23 longer so perhaps the right moment for a morning
24 break.
25 SIR BRIAN LANGSTAFF: Yes, we'll take a break and --

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1 A. I'm sorry if I'm getting exasperated. I'll take
2 a break and have a coffee and try to behave more
3 reasonably, but this really is an extraordinary
4 process in my opinion. And it is going a torturous --
5 **SIR BRIAN LANGSTAFF:** If I may, Lord Clarke, the process
6 involves looking, as is inevitable, at documents from
7 the past of which, because it is so far in the past in
8 many cases, there are few people left who can tell us
9 what actually happened --
10 A. Certainly.
11 **SIR BRIAN LANGSTAFF:** -- if they can remember. You've
12 told us repeatedly that you can't remember. I've got
13 that picture. But if you do remember, it would be
14 very helpful to have that memory. If you can't
15 remember, you can't remember and I shall look at the
16 document and draw conclusions from that. But that's
17 the nature of the process, and you're here because you
18 can -- you were there and you are still available to
19 answer questions, and that's why we've trespassed on
20 your time to be here.
21 A. Yeah, I understand all that.
22 **SIR BRIAN LANGSTAFF:** So enjoy your coffee and we'll see
23 you at quarter to 12.
24 A. But all I can say is if anybody tells you they
25 remember why a particular conclusion was reached on

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1 elsewhere."
2 Pausing there, do you think that is likely to be
3 an accurate reflection of your views --
4 A. I have no reason to doubt it. That was obviously my
5 view. Which, with hindsight, was a tragically -- an
6 incorrect opinion that I hold. It was a ... But that
7 was when we got just a handful of AIDS cases.
8 Q. Then, as you say, it records arguments being set out
9 by the civil servant or medical officer:
10 "... widespread use was a virtual certainty in
11 the US; demonstrating publicly we were doing all we
12 could to show our blood is safe; the parallel with
13 hepatitis."
14 So that was, in any event --
15 A. It normally shows that other people by then were
16 holding up the donor leaflet because the working group
17 wanted to consider it.
18 Q. Yes, I didn't ask you about that yesterday, Lord
19 Clarke, because that just accounts for a few days in
20 the overall time and so it doesn't seem particularly
21 useful to do so.
22 Can we then go to January of 1985, and look at
23 DHSC0000562. This is a minute dated 11 January 1985
24 from Dr Smithies to Dr Alderslade, and you'll see it
25 says in the first paragraph:

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1 one item in that consideration of central financing, I
2 would say don't believe them.
3 (11.15 am)
4 (A short break)
5 (11.45 am)
6 **MS RICHARDS:** Soumik, could we have DHSC0000435, please.
7 Lord Clarke, this is a document which might shed
8 some further light on what your thinking had been at
9 the time about funding and so, for the sake of
10 completeness, I'm going to show it to you and ask if
11 you have any observations to add.
12 It's a minute dated 23 November 1984 from
13 Dr Abrams to Dr Smithies.
14 A. I wasn't very keen on spending the £2 million.
15 Q. Yes. What it says, I'll just read it --
16 A. So they were advising each other:
17 "Clearly we will need to play the strong devils
18 advocate role with the Working Group next week."
19 Q. Yes.
20 "The briefing session last night with [the
21 Minister of State for Health] for his ITV interview
22 reveals he has strong views on spending money on the
23 blood test for HTLV-III. He felt that to spend around
24 £2 [million] was not cost-effective when there were so
25 few AIDS cases and that money could be better spent

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1 "CMO wished to consider this submission
2 preparing with administrative colleagues for Ministers
3 to obtain approval in principle for the introduction
4 of a screening test for AIDS antibodies in the
5 National Blood Transfusion Service."
6 Lord Clarke, this draft submission went to the
7 CMO, as far as we can understand, and not to you.
8 A. Mm-hm.
9 Q. But we don't have the final submission. Documents
10 that I won't bore you with suggest that there were no
11 material changes between the two, so I'm going to ask
12 you just to look at the draft submission, over the
13 page, as I say, on the basis our understanding is that
14 this is effectively the document that went to you on
15 January, so a few days later:
16 "Summary.
17 "This submission describes the public health
18 problems that the spread of AIDS presents and the need
19 to reduce as far as possible the risk of its
20 transmission by blood and blood products. It seeks
21 Ministers agreement in principle to the introduction
22 of a test to screen all blood donations for evidence
23 of infection with the AIDS virus."
24 Then we see the background is set out. I don't
25 think we need to go through the detail of that.

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1 A. Yes, just to comment. What we're talking about here
 2 is British blood donations, which I think before the
 3 break we saw there'd been a survey, and they'd tested
 4 a thousand blood donations and not found any case of
 5 AIDS. The strong suspicion was that the deaths that
 6 are set out here, were being caused by American blood
 7 products. So this question of screening British blood
 8 donors was actually -- you know, was at that stage, it
 9 appeared, concerning a tiny number of possible cases.
 10 And I don't know when or whether we ever had a case
 11 where anybody died as a result of blood transfusion.
 12 I'm sure we did. But they were very, very rare. All
 13 this has nothing to do with American blood products.
 14 Q. You're right, Lord Clarke, that this is concerned with
 15 the safety of blood safety in the UK. Perhaps we
 16 should look at paragraph 2.c.
 17 A. Yes, you'll find something which answers my question?
 18 Q. Yes, I hope so, and there are, indeed, other documents
 19 that answer the question too. But it says:
 20 "Whilst no cases of AIDS have arisen in the UK
 21 yet as a result of blood transfusion 3 recipients of
 22 blood donations given by a patient who now has AIDS
 23 are known to have been infected with the virus."
 24 So, Lord Clarke, by this time --
 25 A. Oh, so it's three, yeah.

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1 7,669 AIDS cases ..."
 2 So that's some of the information provided.
 3 Then if we just go to the next page --
 4 A. There is some more stuff here about expert groups
 5 considering applications to screening tests and the
 6 need to test heat treatment.
 7 Q. Yes, I'll ask you a little bit the expert advisory
 8 group on AIDS but not much --
 9 A. And they're producing:
 10 "A more widely based Expert Advisory Group
 11 [which] is meeting at the end of the month to consider
 12 ...", all this.
 13 Q. Yes.
 14 A. And we've already had advice from the Advisory
 15 Committee on -- I hope some of these people survived
 16 because these are obviously the people that your
 17 questions are best aimed at.
 18 Q. Some do, some don't.
 19 If we go to the next page we'll just see where
 20 it deals with the need for a screening test:
 21 "Whilst the campaign to dissuade high-risk
 22 groups from donating blood is an important interim
 23 measure it is not enough. Experience that is shown
 24 that people with the active disease and others who are
 25 infected have been donors. The confidence of patients

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1 Q. -- there were three known to be infected. There's
 2 a document from the Chief Medical Officer which
 3 addresses this. And it hadn't yet developed into the
 4 syndrome of AIDS.
 5 A. I mean, it has been used in Factor VIII as well.
 6 Q. Yes.
 7 "Plasma from one of these donations has
 8 contaminated a pool of plasma from many other donors
 9 and used to make Factor 8."
 10 A. Yeah.
 11 Q. There is some evidence of some 38 cases being --
 12 38 haemophiliacs I think had been treated with that
 13 batch.
 14 A. What does it go on to say about America?
 15 Q. Then, sorry, could we just say:
 16 "In Scotland a batch of Factor 8 has similarly
 17 been contaminated by an undetected donor."
 18 So Scottish Factor VIII --
 19 A. So that was -- it was beginning to emerge in the blood
 20 donations --
 21 Q. Yes. And then it goes on, in the United States, to
 22 talk about:
 23 "... a hundred cases of AIDS ... believed to
 24 have been caused through blood transfusion and ...
 25 over fifty haemophiliacs with AIDS out of a total of

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1 will be lost if they cannot be assured that they will
 2 not contract AIDS from transfusions."
 3 Then, next paragraph:
 4 "Moreover if patients receive contaminated
 5 transfusions the disease will no longer be confined to
 6 the high risk groups but be transmitted to the
 7 population at large."
 8 That the case that is being set out for
 9 a screening test.
 10 A. Mm-hm.
 11 Q. If we then look at the next paragraph it describes the
 12 screening test itself, and then we get down to the
 13 heading "Financial Implications":
 14 "No tests are yet available for use in Regional
 15 Transfusion Centres. They are expected to be ready in
 16 the Spring. Both American and British tests are still
 17 being developed but the likely cost will be ..."
 18 Then details there given.
 19 There's reference to the British test being
 20 "more sensitive and more suitable to install ... and
 21 ... likely to be cheaper".
 22 Then over the page we see what you were being
 23 asked to decide because this is a submission that
 24 we'll see goes to you, as well as others:
 25 "The test for AIDS anticipates will not

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1 guarantee the purity of donated blood. There is
 2 a time lapse between infection and development of
 3 a detectable antibody. Complete assurance will have
 4 to await development of a test for the AIDS virus
 5 itself. There is no doubt that despite these problems
 6 the balance of advantage lays clearly with the
 7 introduction of a routine test of donations as soon as
 8 possible."
 9 So that's the advice that was being set out.
 10 "Ministers are asked to agree in principle to
 11 the introduction of a screening test for AIDS antibody
 12 for all blood donations and to an announcement made to
 13 this effect at the appropriate moment indicating that
 14 the development of a test is being backed by the
 15 Department."
 16 There is some more detail in this submission,
 17 but I think, in terms of looking at the context of
 18 your response --
 19 **A.** Yes, it's still looking forward because at this stage
 20 we haven't actually got the tests available.
 21 **Q.** Then if we go -- and that's why the agreement is one
 22 in principle, yes.
 23 **A.** Yes.
 24 **Q.** If we go then to DHSC0002482, please -- sorry _012, my
 25 apologies, Soumik.

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1 **A.** Yes, but were they held up? I mean, I'm just asking
 2 as a matter of fact.
 3 **Q.** I'm not going to answer the question, Lord Clarke.
 4 **A.** I just don't think they were, were they?
 5 **Q.** That will be a matter for the chair to decide in due
 6 course, having heard --
 7 **A.** Is there any evidence that they were?
 8 **SIR BRIAN LANGSTAFF:** Well, put it this way: my
 9 understanding at the moment is that screening was
 10 introduced in October --
 11 **A.** Sorry?
 12 **SIR BRIAN LANGSTAFF:** Screening of blood donations was
 13 introduced universally in October 1985. That's
 14 ten months or so on from January 1985, obviously,
 15 which is a little while after tests were in the
 16 process of development. I have to consider that
 17 process, whether that was reasonable or not.
 18 **A.** Well, were they ready to be introduced in
 19 January 1985?
 20 **SIR BRIAN LANGSTAFF:** Well, I don't --
 21 **A.** I don't know --
 22 **SIR BRIAN LANGSTAFF:** I'm listening to the evidence in
 23 order to draw conclusions, whatever they may be.
 24 **A.** I'm not a witness who knows that.
 25 **SIR BRIAN LANGSTAFF:** You don't. And so it's -- I can't

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1 DHSC000 --
 2 **A.** Did any of this hold up the introduction of tests? My
 3 understanding is that the tests were started as soon
 4 as supplies had been adequately proved and as soon as
 5 we'd got the supplies available?
 6 **Q.** Lord Clarke, I'm afraid I ask the questions rather
 7 than answer them, but that is a point you make in your
 8 --
 9 **A.** But can't we get to the ones that are the point?
 10 **Q.** That is a point you make in your witness statement.
 11 You say in terms --
 12 **A.** I know. It seems to me the key point on testing: were
 13 they delayed in any way? I can't understand why we're
 14 going through all this tedious detail, on the
 15 interpretation of documents, most of which I've never
 16 seen in my life before until they were sent to me by
 17 the Inquiry.
 18 **Q.** Well, the document we've just looked at, Lord Clarke,
 19 was a submission sent to you, and the document we're
 20 now going to look at is a document authored by you.
 21 **A.** Right. I'm sorry, I won't slip back into expressing
 22 my exasperation.
 23 **Q.** You are perfectly entitled to say in relation to it,
 24 as you say in your statement, this did not in fact
 25 hold up the introduction of the testing.

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1 answer that at the moment. I hope to be able to
 2 answer that in due course.
 3 **MS RICHARDS:** Lord Clarke, it may assist if I explain.
 4 You're the first witness giving oral evidence who has
 5 had some -- some -- involvement in the introduction of
 6 this --
 7 **A.** I wasn't developing the tests.
 8 **Q.** No. Some involvement in the decision-making in
 9 relation to the introduction of the tests. And so the
 10 purpose of looking at these documents, in part, is to
 11 enable people to understand what the Department was
 12 and was not being asked to consider at the time.
 13 So if we look at your response of
 14 22 January 1985, it's addressed to the Chief Medical
 15 Officer:
 16 "Thank you for your submission of 15 January.
 17 This looks inevitable, I suppose.
 18 "Could I have drafts" --
 19 **A.** Is this my response?
 20 **Q.** This is your response.
 21 "Could I have drafts please of the proposed
 22 public announcement of both points.
 23 "Could I also have a draft of a letter to go to
 24 all Chairmen of" --
 25 **A.** Never seen this before.

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1 Q. "... [Regional Health Authorities] explaining our
 2 proposals.
 3 "How did Wellcome corner this market and why did
 4 they bring CAMR in?
 5 "Will the cost be met from the income now going
 6 to the blood transfusion service from the charges
 7 introduced for the handling of blood to private
 8 hospitals? I never did understand what else that
 9 money was to be spent on."
 10 Then you say this:
 11 "Before we all panic further, it is presumably
 12 the case that the ending of the collection of blood
 13 from homosexuals greatly reduces the risk from blood
 14 collected in this country? Also, as only
 15 haemophiliacs have died and they may have had
 16 Factor VIII from American blood, is it the case that
 17 we have not had one AIDS fatality from blood donated
 18 in this country yet? Do we need this and heat
 19 treatment of the blood?"
 20 Whatever effect this did or didn't have on the
 21 introduction, Lord Clarke, is it right to understand
 22 this as you expressing a degree of scepticism or an
 23 example of you challenging the advice --
 24 A. I'm challenging the advice we're having, we're
 25 getting. Because, as I say, there's -- the Health

1 destroy trust by not doing anything about the risk of
 2 AIDS or you can destroy trust by giving the public the
 3 impression that the blood supply being used by the
 4 Service was completely contaminated, and you've got to
 5 somehow strike the balance of informing the public and
 6 making sure that the reporting of it and the public
 7 understanding is between the two and they don't panic
 8 for either reason. The reason you don't want panic is
 9 because, if you do so, you suddenly start losing
 10 donations to the service and patients will be
 11 terrified to have an operation if it needs a blood
 12 transfusion and you will start doing terrible damage.
 13 That is why I -- I say I did keep using this
 14 word, probably influenced by the background -- I won't
 15 complain about it again -- of some -- some of the
 16 newspaper reporting we were getting.
 17 Q. Then I just want to ask you about the next sentence in
 18 that paragraph, where you say, "as only haemophiliacs
 19 have died". You say in your witness statement that
 20 that is a phrase that has been taken out of context
 21 previously.
 22 A. Well, the "only haemophiliacs" was taken out of
 23 context by a campaigner, as though I was referring as
 24 mere -- only merely haemophiliacs had died. It was
 25 a statement of fact that -- I was just checking. I

1 Service -- every -- I mean nowadays the Health Service
 2 spends three times, I should think, in real terms,
 3 what we were spending then, but however much you spend
 4 there were always endless competing claims -- worthy
 5 claims -- for more resources. So you do have to
 6 challenge things. That's -- I mean, I can't --
 7 I couldn't then give an expert opinion myself on the
 8 relative value of all these things; I had to be guided
 9 by the scientific advice. But this is me asking
 10 questions and just checking that they're satisfied
 11 that this is really necessary, and that it's going to
 12 work if we go ahead with it. And that this is -- it's
 13 just all part of the ordinary process of
 14 decision-making. Practically every -- any other
 15 decision within the Department you'd find the
 16 ministers, if they're doing their job, are doing this
 17 kind of thing.
 18 Q. Then can you help us with understanding what you meant
 19 when you talk about, "Before we all panic further"?
 20 A. Well, as you may gather, I was rather worried about
 21 causing panic, largely because -- to put it more
 22 sensibly, to use more formal words for an inquiry of
 23 this kind, the one thing everybody was concerned about
 24 was destroying trust in the Blood Transfusion Service.
 25 Now, there are various ways you can do that. You can

1 was asking the question, I was asserting my
 2 understanding was, so far, the only people who that
 3 died were haemophiliacs, and they may have had
 4 Factor VIII from American blood. So I'm asking the
 5 question, just in case it ever became relevant to any
 6 future discussions, is it actually the case that we've
 7 not yet had one AIDS fatality from blood donated in
 8 this country? And the whole context is that final
 9 question, I just wanted to know, is it the case that
 10 we have not had one case fatality from blood donated
 11 in this country?
 12 Q. It might be said that using the phrase "only
 13 haemophiliacs have died" might suggest thinking that,
 14 in the great scheme of things, a handful of
 15 haemophiliac deaths were relatively unimportant.
 16 A. No, that really is the most dreadful spin on two
 17 words.
 18 Q. I'm putting the proposition to you, so you have your
 19 opportunity to --
 20 A. Well, I'm answering you quite firmly. I do object.
 21 I mean, it's done -- it happens all the time. You
 22 must have heard countless ministers and politicians
 23 say "For God's sake, if you look at it in context, it
 24 plainly doesn't mean that". I mean, it's a technique
 25 that's used all the time in political debate.

- 1 Q. In your statement, you say that this was emphatically
2 not disparaging haemophiliacs or devaluing the
3 importance of haemophiliac fatalities --
- 4 A. I don't disparage haemophiliacs. I have the greatest
5 respect for haemophiliacs, as every other citizen.
6 And I'm not indifferent -- one death is a tragedy, I'm
7 not indifferent to the death of anybody. The fact was
8 that so far -- I was checking, I wasn't sure. Have we
9 so far -- have all the people who have died been
10 haemophiliacs who have had Factor VIII? Is it, or is
11 it not, I could have put in, the case that we've not
12 yet had one AIDS fatality from blood donated in this
13 country? And that's just seeing how far we can
14 reassure people that don't put off your operation
15 because you think you're going to be killed by the
16 blood transfusion.
- 17 Q. Unless --
- 18 A. We never did get to that. We avoided that panic.
- 19 Q. Unless you want me to, Lord Clarke, I'm not going to
20 take you to the responses from the Chief Medical
21 Officer to your memo. You've set those out in your
22 witness statement.
- 23 A. No, I'm sure I wouldn't challenge whatever he said.
- 24 Q. I just want to then look at the position as at
25 February 1985, so the month after this, in terms of

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- 1 will let you have it. We need to be able to assure
2 patients that treatment involving blood or blood
3 products does not expose them to the risk of
4 contracting AIDS. I should add that the Blood
5 Products Laboratory at Elstree hopes that all its
6 Factor VIII will be heat treated from April 1985
7 onwards."
- 8 If we just go over the page, we'll see this is
9 copied, amongst others, to your private office.
10 I haven't taken you through the various drafts but --
- 11 A. As I've said, we have no means of knowing whether it
12 was ever actually put in front of me.
- 13 Q. Yes, well --
- 14 A. I think it's obvious -- it looks to me like
15 a perfectly sensible message being sent out to
16 Regional Directors.
- 17 Q. Is this right: in terms of the action being taken by
18 the Department by February 1985, having decided not to
19 use central funding, you have, however -- when I say
20 you, the Department, and there is evidence to suggest
21 that you were aware of this, there is no criticism
22 implied, Lord Clarke -- the Department was writing to
23 Regional Health Authorities essentially to tell them
24 to plan ahead?
- 25 A. To say you do it, yeah.

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- 1 what action the Government was or was not taking. As
2 we've seen, you declined central funding for the
3 screening tests. That's the first decision taken.
- 4 A. I didn't decline funding but I thought it should come
5 out of the regional budget.
- 6 Q. Yes, hence my use of the word "central". Then if we
7 go to DHSC0002261_031. We'll see this is a letter of
8 20 February 1985 to Regional Health Authorities or to
9 the Regional General Managers. If we -- sorry, for
10 a moment -- look at the third paragraph you'll see it
11 says there:
- 12 "We hope that a reliable screening test,
13 compatible with existing equipment, will be available
14 within a few months. There is as yet no firm
15 indication of what this will cost. As a broad
16 indicator it would be prudent to assume for planning
17 purposes a cost of around £2 per test, though we hope
18 for a lower figure. Although there are many competing
19 calls upon your resources, this test, when available,
20 will be an important preventative development,
21 meriting a very high priority of time. We would be
22 grateful therefore if, in firming up the budgets for
23 1985-86, you would make suitable provision. As soon
24 as there is firmer information about when in 1985 the
25 test will be available and how much it will cost we

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- 1 Q. Then if we look at --
- 2 A. All these -- one of the things you had to decide, all
3 of these heads of expenditure should have come out of
4 the central budget, should have come out of the
5 regional budget but nobody seems to be stopping
6 spending the money on it.
- 7 Q. If we look at DHSC0002261_043, this is an extract from
8 Hansard, 20 February 1985. We'll see it's you from
9 the bottom right-hand corner. There's a long answer,
10 if we go over the page, there's just one bit I want to
11 look at, right-hand column, second paragraph. This is
12 where you refer to -- or you say:
- 13 "Fourthly, tests to screen blood donations for
14 HTLV III antibody are being developed and we are
15 co-ordinating the evaluation work needed to ensure
16 that such a test can be introduced routinely in the
17 national blood transfusion service as soon as
18 possible."
- 19 Then there is reference to the letter to
20 Regional Health Authorities.
- 21 A. This seems to be a long written answer setting out
22 everything we were doing.
- 23 Q. Yes. I'm just, at the moment, concentrating on
24 screening tests, so it would appear that as at
25 February 1985 the position, from the Department's

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1 perspective is "Ask Regional Health Authorities to set
 2 aside the money and coordinate the evaluation
 3 process"; is that fair?
 4 **A.** And a test will be introduced in the service as soon
 5 as possible. That's the key thing.
 6 **Q.** Now --
 7 **A.** Which budget it came out of doesn't, at the moment,
 8 strike me as frightfully material.
 9 **Q.** If we move on to later in 1985, you have an exchange
 10 of correspondence with Sir Philip de Zulueta. I may
 11 have mispronounced that. If we just have a look --
 12 **A.** I am familiar with that name. Who was he?
 13 **Q.** I am going to get the drugs company wrong if I don't
 14 check the document, DHSC0000221. Abbott, I think.
 15 **A.** He was in the pharmaceutical industry?
 16 **Q.** Yes.
 17 **A.** There may be another more famous one.
 18 **Q.** If we go, we see this letter written to you, you'll
 19 see he says he's on the Board of Abbott Laboratories,
 20 that's in the first paragraph, and he writes
 21 explaining that Abbott had developed a screening test
 22 to detect antibodies responding to the virus that
 23 causes AIDS. If we go further down the page, we can
 24 see in the second paragraph, he says:
 25 "... this is well known to your Department who

1 all part of showing you the relevant documents so
 2 I can ask you some general questions, you understand.
 3 **A.** All right.
 4 **Q.** So if we look at your response -- well, your response
 5 is at DHSC0001569, a response of 5 June 1985. You set
 6 out in the second paragraph that the intention is to
 7 carry out the evaluation of the tests in two stages,
 8 and you explain in the last sentence of that
 9 paragraph:
 10 "It is not ... possible to give a timetable for
 11 completing this task."
 12 You then set out in the third paragraph concern
 13 to:
 14 "... ensure that any test we do introduce is
 15 reliable and does not create more problems than it
 16 solves."
 17 I want to just show you a minute that refers
 18 this correspondence and then ask for your reflections
 19 on it. So it's DHSC0002311_016. We can see it's
 20 a minute from Mr Harris -- sorry, can we look at the
 21 date, thank you -- 30 May 1985. If we go to the top
 22 of the page, we can see it is addressed to your
 23 private office:
 24 "It may be helpful for MS(H) to have a little
 25 background since the reply is less helpful than

1 are ... evaluating" --
 2 **A.** And it has been licensed in America?
 3 **Q.** Yes. So:
 4 "All this is well known to your Department who
 5 are indeed engaged in evaluating the Abbott test for
 6 possible use in this country. The reason why I am
 7 writing to you at this stage is that, although I am
 8 myself no medical expert, I am getting a bit concerned
 9 at the rather slow progress being made in this, no
 10 doubt necessary, evaluation process."
 11 Then he sets out there a concern that two
 12 evaluations are being undertaken, the second of which
 13 would involve a number of tests in the Blood
 14 Transfusion Service. Then the last paragraph --
 15 **A.** And he says, "found no case of AIDS due to blood has
 16 been detected".
 17 **Q.** Yes, again, not correct if one substitutes HTLV-III
 18 for AIDS but, leaving that aside --
 19 **A.** Anyway, he is trying to sell his company's test.
 20 **Q.** Yes, and so he says, in the last sentence:
 21 "I should be much happier if I felt that there
 22 was a definite plan for evaluation of the Abbott test
 23 with dates to which the Department would try to
 24 adhere."
 25 I just want your response, Lord Clarke, this is

1 Sir Philip may like.
 2 "Abbott are one of the first companies to
 3 develop an AIDS antibody test. They would dearly like
 4 to tie up the NHS market.
 5 "We are evaluating tests as they become
 6 available. The work is being done by the PHLS. After
 7 an initial technical evaluation they will be tested
 8 again for operational acceptability in the blood
 9 transfusion context.
 10 "Technical evaluation of Abbott and one other
 11 will probably be completed by July. We will then be
 12 under some pressure to complete any extra evaluation
 13 quickly. Certainly the 10,000 test proposal referred
 14 to may well have to be truncated."
 15 Then this:
 16 "It would not be helpful to have no other choice
 17 than Abbott since their test requires special
 18 equipment. It would also be preferable to have
 19 a British test evaluated as a possible candidate."
 20 Then it goes on to say:
 21 "It is therefore not desirable to be precise
 22 about the timetable for testing Abbott's test in
 23 isolation."
 24 Are you able to assist us as to why it was
 25 thought preferable within the Department to have

1 a British test as a possible candidate?
 2 **A.** No, unless it was likely to be cheaper. I mean, this
 3 is one -- you know, this is all around an exchange
 4 of -- a letter, an exchange of letters amongst
 5 probably thousands of letters, hundreds of letters
 6 I sent that year. I'm afraid I can't remember the
 7 background to it. And, obviously, it's as -- this --
 8 whoever this official is says, Abbott are trying to
 9 move in quickly to try to corner the British market
 10 and he's explaining the process by which we need to
 11 test it, and obviously no minister can be asked to
 12 introduce the test until we are quite satisfied that
 13 it's safe, and then also quite satisfied that it's
 14 effective. But that's just my paraphrasing what the
 15 memo obviously says.
 16 **Q.** There's a further exchange of correspondence between
 17 you and Sir Philip but I'm not going to go to that.
 18 It's essentially along the same themes.
 19 You say in your witness statement I think that
 20 by this time it's Mr Patten leading on this policy.
 21 Are you able to assist us with why --
 22 **A.** I haven't checked with John Patten, no doubt you've
 23 asked him. It isn't altogether clear from the
 24 documents who -- I mean, presumably Simon Glenarthur
 25 was no longer -- he'd gone to another Department,

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1 **Q.** Then we can see, if we go to the text of it:
 2 "The attached paper sets out the proposed
 3 strategy for introducing a screening test for blood
 4 donations as previously agreed."
 5 Then we have a summary of the strategy:
 6 "... present plans should be confirmed ...
 7 before introduction available tests should be
 8 evaluated by the Public Health Laboratory Service ...
 9 and in the Blood Transfusion Service ..."
 10 So those are the two stages of evaluation, and
 11 then various other matters set out including funding
 12 of the Public Health Laboratory Service being
 13 increased. Then if we go over the page, we'll see the
 14 paper. Again, I'm not going to go to through all
 15 of it, Lord Clarke. If we just look at paragraph 2,
 16 to start with.
 17 "Screening has not yet started in the UK. It is
 18 in use nationally in Australia, widespread in the USA
 19 and the Netherlands. France and Germany will
 20 introduce it nationally later this summer. Cases of
 21 AIDS contracted through the use of UK donated blood
 22 have not yet occurred but can be expected. When these
 23 are announced the publicity may well draw comparisons
 24 between action abroad and apparent inactivity here."
 25 Then if we go to the top of the next page -- I'm

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1 I think.
 2 **Q.** Yes, he had been succeeded by Baroness Trumpington.
 3 **A.** There had been a reshuffle, a minor reshuffle, and we
 4 now acquired John Patten, who is still very much
 5 about. I haven't seen him for a long time but he's
 6 still about, I think.
 7 **Q.** Do you know whether there had been an express transfer
 8 of this allocation of special responsibility to
 9 Mr Patten?
 10 **A.** I wouldn't know but what normally happened -- as
 11 I say, we didn't alter these -- we didn't shuffle
 12 these responsibilities around wildly every time there
 13 was any change. So what would normally happen, if you
 14 did have a change of ministers, and Simon was moved to
 15 another job, is that whoever you succeeded him would
 16 take on his responsibilities. But I don't know,
 17 you'll have to look it up. The best way is to ask
 18 John Patten.
 19 **Q.** There is then a paper in June 1985 sent to ministers.
 20 If we look at DHSC0002311_019, you'll see, Lord
 21 Clarke, it's a minute dated 7 June 1985, and if we
 22 look at the bottom of the page, copies to
 23 Miss Bateman, so it goes to your private office as
 24 well.
 25 **A.** Certainly does.

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1 sorry, let me just take it a little more slowly,
 2 bottom of the previous page -- "Selection of a Test"
 3 sets out options:
 4 "select an available test on current knowledge
 5 as soon as possible;
 6 "select after evaluation of tests by [PHLS]; or
 7 "select after both evaluation and [Blood
 8 Transfusion Service] field trials."
 9 So three options: introduce now, introduce after
 10 the first evaluation or wait for both evaluations.
 11 Then we see the top of the next page,
 12 paragraph 5, the paper says:
 13 "The choice between these options will reflect
 14 the balance of advantage having a test in place
 15 quickly as a defence against criticism of tardiness;
 16 or waiting until we have a test which can be
 17 confidently recommended for BTS use."
 18 There's then a fairly detailed -- well, there's
 19 a --
 20 **A.** There's then a whole lot of analysis over the
 21 problems, if you start(?) getting it wrong.
 22 **Q.** Exactly. So the merits of each option are discussed
 23 in paragraph 7 onwards, and you'll see from what's
 24 underlined, Lord Clarke, that options 1 and 2 were not
 25 recommended by officials to ministers. If we go over

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1 the page, you'll see the recommended option at the top
2 of the page:

3 "Select after [the Public Health Laboratory
4 Service] evaluation and Field Trials in [Blood
5 Transfusion Service] ..."

6 **A.** Mm-hm.

7 **Q.** "... This may take 5 months to implement. This is the
8 recommended option. It will enable the level of false
9 positives to be measured. It will also allow
10 operational convenience" --

11 **A.** Is that the recommendation to ministers?

12 **Q.** This is the recommendation to ministers:

13 "It might leave us without a screening test for
14 up to 2 further months. It is hoped to bring forward
15 the field trials and thus reduce the period needed for
16 implementation."

17 Then if we go two pages further on, you'll see
18 there the summary of the suggested strategy in
19 paragraph 15.1 repeats the recommended option and
20 explains, so that means it's implementation in October
21 or November. Then under the heading "Advice Sought":

22 "Are Ministers content:

23 "with the strategy outlined above?"

24 I'm not going to ask you about the funding for
25 the Public Health Laboratory Service.

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1 concerned at PHLS do not yet have confidence that the
2 suppliers could produce testing kits which are
3 reliable on a large scale and which would continue to
4 be reliable on the shelf. It would be worse to be in
5 the position of having to withdraw a test once
6 introduced than to be in our present position of
7 carefully evaluating the tests. There could also be
8 ethical problems in refusing to tell donors (who are
9 volunteers in this country) the result of a test
10 carried out on their blood if they wish to have it.

11 "Ministers should recognise, however, that
12 support for a different have you is likely to appear
13 in the medical press (see Professor Bloom's letter
14 attached) and that considerable public pressure would
15 develop if in the meantime a case of AIDS develops in
16 a recipient of UK blood. Such a case or cases is
17 likely to occur sooner or later due to infection one
18 or more years ago prior to our warnings to people at
19 risk not to donate blood."

20 We've got to the stage, Lord Clarke, you've got
21 the submission from officials, that's the Chief
22 Medical Officer's view --

23 **A.** It's a pity we haven't got Donald Acheson alive at the
24 moment because he was the authority person in the
25 Department to express the final -- normally a decisive

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1 Just two further documents then, Lord Clarke,
2 and then I'm going to ask you some general questions
3 about the process, if I may.

4 There's a document from the Chief Medical
5 Officer and then a view expressed by clinicians that
6 I'm going to just ask you to look at so you can see,
7 as it were, the rival contentions. The document from
8 the Chief Medical Officer is at PRSE -- sorry
9 DHSC0002311_21. This from Donald Acheson, dated --
10 sorry, top of the page.

11 **A.** This is from Donald Acheson, yeah. Acheson. Chief
12 Medical Officer.

13 **Q.** Yes, I think the date is 10 June. It's to Mr Patten
14 but it's also, bottom of the page, copied to your
15 private office, Miss Bateman. If we just see what the
16 Chief Medical Officer says:

17 "There is a finely balanced decision here but
18 I am in favour of the suggested line. I think,
19 however, that we must do everything possible to ensure
20 that PHLS is able to keep to its schedule.

21 "As far as the option to introduce a partially
22 evaluated ELISA test forthwith is concerned I think
23 the prospect of wasting a relatively small quantity of
24 blood from false positive tests is not the major
25 objection. The major problem is that the scientists

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1 view on this subject.

2 **Q.** Then I just want to show you, then, that the letter he
3 refers to, the letter in the medical press from
4 clinicians, expressing a contrary view, which is
5 DHSC0003828_191. It's a publication in the British
6 Medical Journal, 22 June 1985, headed "HTLV-III
7 haemophilia and blood transfusion", if we just go down
8 to the text of the letter. If we pick it up, Lord
9 Clarke, in the middle column, last paragraph, the
10 authors of this letter say this:

11 "All these considerations" --

12 **A.** Who has written this?

13 **Q.** I'm sorry, let's look on the right-hand side:
14 professor Bloom, chair of the UK Haemophilia Centre
15 Directors Organisation; Dr Forbes, chairman of the
16 UKHCDO AIDS group --

17 **A.** Yeah, yeah.

18 **Q.** -- Dr Rizza, Secretary of the UK Haemophilia Centre
19 Directors Organisation.

20 **A.** Yeah, yeah, thank you.

21 **Q.** So haemophilia clinicians, leading haemophilia
22 clinicians.

23 So:

24 "All these considerations underline the need
25 rapidly to introduce screening for HTLV-III antibody

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1 for all blood donations. Three commercial test kits
 2 have now been approved by the American Food and Drug
 3 Administration and, although there may be a small
 4 number of false positives, it is unreasonable to delay
 5 testing until this possibility is eliminated.
 6 Donations which are found to be positive for HTLV-III
 7 antibodies should be discarded. The logistics of
 8 retesting, confirmatory testing, and donor counselling
 9 can be dealt with as separate important issues ..."

10 They refer to a particular review.

11 "We believe that donors would readily accept
 12 this interim measure because, after all, they are
 13 themselves potential recipients. Although such
 14 testing would be expensive, we think it should be
 15 implemented as soon as possible to protect recipients
 16 and to preserve public confidence in our blood
 17 transfusion services."

18 Then they refer to the fact that when testing is
 19 fully implemented, the role of single donor
 20 cryoprecipitate in the management of haemophilia can
 21 then be reassessed.

22 So the purpose of taking you to those, Lord
 23 Clarke, is, first of all, so you can see the material
 24 available to you and your colleagues.

25 A. Well, available to my colleagues. None of this would

1 "I am pleased to say that a test will be
 2 introduced within the next few months to screen all
 3 blood given by blood donors for antibodies to the
 4 virus which causes AIDS."

5 Then if we skip to the next paragraph:

6 "I understand and share the concern to get these
 7 tests in use as soon as possible. However, we must
 8 have tests which are accurate and can be trusted. A
 9 number of test kits are already available and in use
 10 abroad, but reports from those countries suggest that
 11 the tests are not entirely reliable. We believe that
 12 no test should be introduced in the United Kingdom
 13 until its reliability has been established. There is
 14 no point in introducing a test which often fails to
 15 detect antibodies in blood or detects antibodies where
 16 there are none. An evaluation programme is being
 17 undertaken by the Public Health Laboratory Service and
 18 National Blood Transfusion Service experts as a matter
 19 of urgency. It is essential to complete this
 20 programme if we are to have a sensible policy that
 21 really does protect the public. Contrary to reports
 22 in today's press, no decisions on choice of test kits
 23 have yet been made. We hope that we will be able to
 24 introduce a test within four to five months. We are
 25 also making arrangements to offer counselling to

1 have been shown to ministers at the time.

2 Q. The letter wouldn't have been shown to ministers. The
 3 Chief Medical Officer --

4 A. Yeah, but not -- the idea that we be taken through all
 5 this -- only -- this is a debate you're drawing my
 6 attention to, obviously going on between medical
 7 experts.

8 Q. Yes. This letter was --

9 A. None of that would have gone to ministers. It would
 10 have been pointless to put it to ministers.

11 Q. This letter was -- or an extract from it was expressly
 12 referred to in the Chief Medical Officer's letter to
 13 Mr Patten.

14 A. Well, kind of. It's an example of what he had in
 15 mind. He knew some people didn't agree, yes.

16 Q. Yes.

17 A. Which he very fairly told us, in the advice he gave.

18 Q. Now, the ultimate decision that's made --

19 A. We wouldn't have had the time to go through all this,
 20 at the time.

21 Q. I just want to show you the decision that was made and
 22 announced by you, then, in -- later in June 1985 at
 23 HSOC0018679. If we go to the third page, please, and
 24 we look at the top right-hand column, the date is
 25 27 June 1985, and you're announcing the decision:

1 anyone whose blood is found to be positive."

2 So the upshot is ministers have, as announced by
 3 you, have gone for the recommended option of waiting
 4 for the two evaluations to be completed; is that
 5 right?

6 A. Yeah. It's all rather familiar, isn't it, really?

7 I mean, as the present Covid thing, test and trace has
 8 caused the present Government unbelievable problems
 9 getting the test and trace system in over the last
 10 18 months and people will carry on arguing about it
 11 until kingdom come, and I have no doubt one day there
 12 will be an inquiry into it all, which will have
 13 a similar exchange about how test and trace was
 14 handled on Covid but we fortunately didn't get into
 15 that scale of difficulties and, as you see -- as you
 16 say, we -- that explains very carefully why you do
 17 have to be sure that the test is sufficiently
 18 accurate, and it -- there obviously wasn't a problem
 19 about this test being safe.

20 Q. I am just going to ask you some general questions
 21 without going to further documents, but just so you
 22 know there were then various other documents, some of
 23 which might have come to you, some of which probably
 24 didn't --

25 A. I probably wouldn't be able to help on which I'd seen

1 and which I hadn't.

2 **Q.** -- yes, which look at the outcome of the evaluation at

3 the first stage and then discuss the second stage, and

4 the question of which particular test to use. I'm not

5 going to take you to any of that.

6 **A.** Is the suggestion that they could have been introduced

7 properly and safely earlier than it was?

8 **Q.** Broadly speaking, that's what I want to ask you about,

9 Lord Clarke.

10 **A.** Ah.

11 **Q.** First of all, you will have seen, and your colleague,

12 Mr Patten, will have seen from the submission that, by

13 the time a decision is being taken looking forward to

14 introduce it in the autumn by the Department, a test

15 was already in operation in number of other countries.

16 Was the fact that other countries already had a test

17 in place and that several more months would elapse

18 before the UK was going to introduce it, something

19 that was a matter of concern, as far as you can

20 recall, to you or colleagues in the Department?

21 **A.** It also says, in some other countries there were

22 serious doubts about whether they should have

23 introduced it yet because there were serious doubts

24 about their reliability.

25 **Q.** Yes.

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1 **Q.** It could be said that with -- and, indeed, this was

2 the point being made by the haemophilia clinicians,

3 I think, in part, and brought to the attention of the

4 Chief Medical Officer, that where you have a disease

5 such as AIDS, no treatment, no cure, very high

6 mortality rate, that the better approach is to do what

7 you can, even if it is imperfect, to reduce risks

8 rather than wait until you have absolute conclusive --

9 **A.** The best approach is to take the best scientific and

10 medical advice you can, challenge it, if you wish to

11 or things occur to you, and if it seems sound on

12 authoritative advice, to act on it. Not start playing

13 amateur doctors and reaching your own judgment about

14 how to introduce it.

15 **Q.** You were provided with these materials for the purpose

16 of your statement, Lord Clarke, and your statement

17 goes through them in more detail than I'm going to in

18 terms of your oral evidence. Looking back now, do you

19 have any concerns about the length of time it took for

20 the introduction?

21 **A.** Not on what you've shown me, no.

22 **Q.** Can we then come --

23 **A.** Perfectly clear and good reasons are given, and

24 recommended by the Chief Medical Officer, for

25 following the approach that we adopted. That's why

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1 **A.** It always happens. Well, it appears to always happen.

2 Fortunately, it doesn't happen frequently, but it's --

3 half of this is a complete echo of the present Covid

4 debate.

5 **Q.** Yes. It's not, in fact, entirely clear what the

6 factual basis is for that but that's not a matter

7 you'll be able to help us on --

8 **A.** No, it's no good taking me through the factual basis

9 of that --

10 **Q.** And I'm not going to --

11 **A.** -- I don't know what testing was like in 1985, in

12 various countries.

13 **Q.** The question or the issue is really this, Lord Clarke:

14 you've described, and we've seen examples of how, you

15 want simply accept matters that were presented to you

16 but you would challenge, you would test --

17 **A.** Yes.

18 **Q.** -- you would ask questions. Do you recall any

19 testing, probing, challenging of why it was that it

20 was taking the UK rather longer to introduce tests

21 than other countries?

22 **A.** No, I don't. I mean, it happens all the time.

23 Different countries adopt slightly different

24 approaches. With hindsight, you see which have done

25 it best.

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1 I keep asking you: has anybody ever suggested we

2 delayed it? I've never heard before anybody has

3 suggested we delayed it.

4 **Q.** Well, it is an issue for resolution in the Inquiry,

5 Lord Clarke --

6 **A.** Probably the first time.

7 **Q.** -- for the Chair, in due course.

8 **A.** -- anybody has ever made that claim.

9 **Q.** Can I then turn to the question of --

10 **A.** If the Inquiry found that, I would reject the

11 conclusion.

12 **Q.** I am going to turn to the question of publications by

13 the Chief Medical Officer and just look at three

14 references to materials produced by the Chief Medical

15 Officer and then ask you more generally about that.

16 So if we could start with BART0000814, please.

17 **A.** I mean, going back to the testing thing, the

18 problem -- I understand the problem you face, because

19 they're not alive any more, you can't ask any

20 questions of a lot of the people who were actually the

21 key people, in making the decision. I mean, we're

22 just going through a collection of documents we happen

23 to have to try to see if -- to cast doubt on what they

24 were doing. It's very difficult, and I sympathise

25 with your problem. There's no direct evidence any

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1 more, but it reads all right to me, as I can't see any
2 reason why anybody should suggest that the testing was
3 held up.

4 **Q.** If we go to -- thank you, it's on screen.

5 You'll see, Lord Clarke, this is a communication
6 from the Chief Medical Officer, December 1984 --

7 **A.** To all Regional Transfusion Directors, yes.

8 **Q.** Yes, so it's a public --

9 **A.** So he used to send out these information things
10 occasionally.

11 **Q.** You'll see the accompanying minute reads:

12 "I enclose for your information a copy of CMO's
13 press release on 20 December 1984 -- this followed
14 media enquiries after the report in the Guardian on 2-
15 December 1984 of two cases of alleged AIDS
16 transmission through blood donations."

17 If we go over the page, we'll see the press
18 release from Donald Acheson dated 20 December 1984,
19 and he is recorded as saying this:

20 "... 'Donations of blood and blood plasma have
21 been given by a person who was subsequently admitted
22 to hospital in Wessex in October and later diagnosed
23 as suffering from AIDS.

24 "His donations of both blood and blood plasma
25 have been traced, and all possible remedial action

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1 traced and ... monitored ..."

2 Then top of the next page, we'll see then
3 Dr Acheson is recorded in the second paragraph as
4 continuing by saying:

5 "... 'I should like to stress that anyone who is
6 advised to have a blood transfusion, or has been given
7 a transfusion, should not worry because the risk of
8 getting contaminated blood is extremely small. Even
9 if a person has proved positive in the antibody
10 screening test it does not mean that he or she will
11 develop AIDS!'"

12 **A.** Yes, he's going in for the kind of reassurance that
13 used to bother me, yes.

14 **Q.** Yes. Then there's reference to selection of blood
15 donors, development of screening tests, and heat
16 treatment.

17 Now, I'm just showing you that really as an
18 example of a publication from the Chief Medical
19 Officer. There's one more document I want to show you
20 before I ask you a question --

21 **A.** Yeah, I mean there's nothing wrong with that, is
22 there? I mean, I just want to make clear, I'd be very
23 upset if 30-odd years later people start criticising
24 Donald Acheson, who was an extremely nice man, he was
25 very impressive, he was supremely conscientious -- in

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1 taken.

2 "His donations of blood were given to 3
3 recipients. They have been identified and are being
4 followed up. Two of these recipients were a mother
5 living in Birmingham and a 78 year old man living in
6 Wessex -- neither came from Brighton as reported in
7 the Guardian. The third is a man aged about 40 from
8 Wessex. All three recipients when tested have proved
9 positive in the HTLV III antibody screening test
10 [infected with HTLV-III, essentially] ... none of them
11 has AIDS."

12 In other words, it hasn't yet developed into
13 AIDS, Lord Clarke.

14 **A.** Yes, you can have the antibodies -- it keeps cropping
15 up. You can have the antibodies, it doesn't
16 necessarily develop into the full-blown disease, if
17 you are lucky.

18 **Q.** Yes, there was a question about that at the early
19 stages. Then we can see Dr Acheson goes on to explain
20 that this particular donor's plasma had also been used
21 in:

22 "... the manufacture of one batch of
23 Factor VIII ... 38 patients, in Wessex and South
24 Wales, suffering from haemophilia had already received
25 some of that is batch of Factor VIII. [They're being]

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1 total contrast with his predecessor. And if Donald
2 had been accused of carelessly handling the risk of
3 haemophiliacs or anybody else, he would have been
4 deeply, deeply distressed. He's dead. He can't
5 answer questions about it. He can't be
6 cross-examined. So I hope no one is going to go
7 through the tedious analysis of paragraphs in stray
8 documents in order to produce criticisms of Donald
9 Acheson and his colleagues for causing delays which
10 I do not believe for one moment they caused.

11 **SIR BRIAN LANGSTAFF:** The purpose of the questioning,
12 I hope, is not to criticise or put forward criticism,
13 because the Inquiry starts with no criticism to make.
14 It is inquiring and it needs to understand what was
15 happening. There may, in the light of that
16 understanding, be criticisms made later, there may
17 not, but I need to have understanding first. And this
18 is part of --

19 **A.** I agree that's your task. I never have -- quite
20 understand how you're meant to second-guess the people
21 on the ground handling it almost 40 years ago. But
22 there we are. Someone set up the Inquiry believing
23 you could do that.

24 **MS RICHARDS:** Lord Clarke, the purpose of showing you that
25 and one other document I'm going to take you to in

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1 a moment is nothing to do with the textual analysis of
2 the document.

3 **A.** All right, I'll stop interrupting you.

4 **Q.** So the second document is DHSC0000514. It's a minute
5 from the Chief Medical Officer dated 30 July 1985, and
6 if we just look at the second paragraph. Halfway
7 down -- well, no, actually, I'll pick it up at the
8 third line:

9 "Although it is unlikely" --

10 This is about the issue of the heat-treated
11 products, Lord Clarke:

12 "Although it is unlikely that there are any
13 stocks in the country of un heat-treated commercial
14 Factor VIII I am arranging that a letter will go to
15 all haemophilia centre directors in order to draw
16 their attention to the availability of heat-treated
17 Factor VIII and the need to avoid using any commercial
18 un heat-treated Factor VIII which may remain from
19 1984."

20 Lord Clarke, what we've seen in those two
21 examples --

22 **A.** This is what finally solved the problem. As it turned
23 out, some genius started trying out heat-treating
24 things actually stopped -- too late, unfortunately.
25 There were people being killed. But I know nothing

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1 that Donald Acheson thought it was an interference
2 with clinical freedom to send a letter along those
3 lines?

4 **A.** No, he -- he was well regarded. He was an expert. He
5 was a leading -- hence he did -- as I said yesterday,
6 he sent out information letters when he felt he could
7 add to what they could read from the medical press.
8 He was a clinician. And he drew on expert clinical
9 advice. What was an interference with the clinical
10 freedom of doctors will be for a politician,
11 a non-medical politician, a minister, to start
12 thinking his or her job was to tell doctors how to
13 treat their patients.

14 Sir Donald Acheson is an extremely distinguished
15 medic. He in a totally different position. Part of
16 his job was to keep track of these things, and as
17 I say, he was -- I'm not just being polite because
18 he's dead or anything. He was one of the more
19 impressive public servants I ever worked with. He was
20 a very -- and if you ever met him, you would like him.
21 He wasn't so easily irritated as me. He was a fine
22 guy.

23 And so I just -- I am a little concerned if
24 anybody starts, after all these years, going to
25 whatever -- the documents we happen to have left,

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1 whatever about the experimenting, the testing, and the
2 authorising of heat treatment.

3 **Q.** And I'm asking you no questions whatsoever about that
4 topic. But what I've shown you are two documents
5 emanating from the Chief Medical Officer, one
6 a statement to the public setting out what was
7 happening, what was known, information about people
8 being infected, numbers infected, and so on. That's
9 the first document we looked at, December 1984.

10 The second, referred to here, in the middle of
11 1985, is a letter that's going to go to clinicians to
12 draw their attention to, amongst other things, the
13 need to avoid using unheat-treated Factor VIII.

14 **A.** Mm.

15 **Q.** Now the reason I'm showing you those, Lord Clarke, is
16 to ask whether there is any good reason that you can
17 think of why similar communications could not have
18 been promulgated, whether by the Department or by the
19 Chief Medical Officer, doesn't matter which Chief
20 Medical Officer, at a much earlier stage.

21 **A.** Well, I can't answer that question. I played no part
22 in sending out such communications. You'll have to
23 ask whoever sent it.

24 **Q.** Well, I obviously can't ask Donald Acheson, but in
25 terms of this, would you agree that it doesn't appear

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1 start criticising Donald Acheson for this terrible
2 tragedy, because I'm -- he would -- nothing would --
3 he'd be deeply distressed if that had been suggested.

4 **Q.** I am going to move to a separate topic now and that's
5 the collection of blood or practices for the
6 collection of blood in the United Kingdom.

7 Now, you told us yesterday that you were aware,
8 in relation to imported blood products, that blood was
9 collected from prisons in the States --

10 **A.** That was what started the whole thing off, when we
11 first discovered that -- I think I saw -- read in the
12 newspapers that the Americans were apparently paying
13 for blood donations.

14 **Q.** I want to show you one document relating to the UK's
15 blood collection.

16 PRSE0004729, please.

17 Now, this is not a minute, as far as
18 I understand, you would have seen at the time, Lord
19 Clarke.

20 We can see it's dated I think 23 August 1983,
21 it's from Mr Winstanley in the Health Services branch.

22 **A.** So a Mr Winstanley to a Mr Parker.

23 **Q.** Mr Brown --

24 **A.** Neither of whom I can remember.

25 **Q.** To Mr Brown. And then you'll see it's copied to

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1 various people in the Medical Division and the
 2 Administrative Divisions. If we look at the top it
 3 says:
 4 "Use of blood from prisons."
 5 It refers to a minute that I'm not going to take
 6 time looking at but which raises the question of blood
 7 being collected from prisons. And then you'll see in
 8 the response in paragraph 2:
 9 "It is difficult to advise any particular
 10 Departmental policy on the collection of blood from
 11 borstals and prisons at the moment. It is for
 12 individual Regional Transfusion Directors to determine
 13 how and from where donations are sought in the light
 14 of the targets they need to achieve and the numbers of
 15 donors on their panels.
 16 "However, Transfusion Directors have been aware
 17 of the dangers of relying too heavily on prisons as
 18 a source of donation for some time ie prior to the
 19 advent of AIDS as a cause of concern, because of the
 20 risk of hepatitis in prisons (also connected with the
 21 higher incidence of homosexuality) which can be spread
 22 through blood transfusion. Nevertheless, although
 23 most Regions, especially those with no shortage of
 24 donors, may not need to use prisons, there is at least
 25 one which has to view them as a major source of

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1 might have been aware of it but you can't now recall
 2 that, or do you think you were aware of it at the
 3 time?
 4 **A.** I simply can't recall. I've no idea.
 5 **Q.** Does it surprise you that this was still ongoing
 6 apparently as at August 1983 and that ministers were
 7 not involved in the issue?
 8 **A.** No.
 9 **Q.** Why?
 10 **A.** It's not the sort of thing that goes to ministers,
 11 unless some official thinks it ought to go to
 12 ministers, because there's a problem that can't be
 13 sorted out.
 14 Going back to right when I started, the job of
 15 the private office is to ensure that the minister gets
 16 involved in things which the minister needs to get
 17 involved in, and which the minister will, you know,
 18 probably think he ought to be involved in and wants to
 19 see. If every, every detail of every policy in the
 20 Department -- in the DHSS all had to go to a minister,
 21 and every minister, including the minister not
 22 directly responsible for the subject, had to be told
 23 this, you'd need hundreds of ministers to handle it.
 24 And as a way of taking decisions and running the
 25 Health Service, it would be chaotic. The Health

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1 donations in order to meet targets."
 2 Then there is a reference in paragraph 4:
 3 "AIDS has now of course called the wisdom of
 4 continuing to view prisons as a source of blood even
 5 further into question ..."
 6 Then there's a suggestion that the Directors
 7 will consider it at their next meeting.
 8 So that would appear to suggest that as at
 9 August 1983 it was known within the Department that
 10 there was some collection that had been ongoing from
 11 prisons, at least in one area, and no particular --
 12 **A.** Well, it's perfectly self -- it speaks for itself,
 13 yes.
 14 **Q.** It does.
 15 Now, I just, then, want to ask you what you say
 16 about that in your statement.
 17 If we can go back to Lord Clarke's statement,
 18 please, Soumik. WITN0758001, and go to page 86.
 19 And we see, paragraph 7.104, you were asked
 20 about this. You say in the second sentence:
 21 "I do not have any recollection of involvement
 22 in this issue at the time."
 23 Then you refer to one of the documents that we
 24 just looked at.
 25 Can I just check whether your position is, you

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1 Service was chaotic enough in the 1980s.
 2 You have to -- ministers do what ministers are
 3 for. They don't spent their time delving into
 4 documents, going into tedious detail about every
 5 medical problem and things which is being handled by
 6 people in the office. We've got -- you've got
 7 thousands of civil servants. I never did quite
 8 understand what they all did. I used to think we had
 9 too many civil servants. Bureaucracy was one of our
 10 troubles in the old DHSS. But they were very good
 11 ones, the ones I worked with. The medical officers
 12 were very good.
 13 But the minister wasn't expected to -- ministers
 14 weren't expected to be involved in absolutely
 15 everything that anybody was doing.
 16 I mean, if we'd had this Inquiry at the time,
 17 I would have got just as exasperated. It's completely
 18 dotty to suggest that the Minister of State for
 19 Health, one of the junior ministers, who was not the
 20 minister responsible for blood products, should
 21 somehow expect to have been involved in all this.
 22 It's just crazy.
 23 **Q.** Lord Clarke, that's not in fact the factual basis of
 24 my question.
 25 **A.** Sorry?

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- 1 Q. I'm not suggesting --
- 2 A. Well, I'm sorry, but I've given the answer to your
3 question. I would not have expected all this to have
4 gone to some minister unless and until the officials
5 decided that they really should clear this with
6 ministers so they needed ministerial approval for some
7 action they were proposing to take.
- 8 Q. Just so I can understand, I'm not talking about that
9 particular minute and I'm not talking about something
10 going to all ministers including yourself.
- 11 Is it your view that the fact that blood was
12 being collected from prisons in England and Wales,
13 that was not something any minister needed to know
14 about?
- 15 A. Well, probably, yes. I mean, prisons have got lots of
16 time on their hands, and as long as healthy prisoners
17 are volunteering as blood donors I'm not deeply
18 shocked. The trouble in America was anybody could --
19 they were getting paid for it, so anybody with any
20 kind of infection, drug addicts, all kinds of
21 people -- I mean, I don't know, presumably somebody
22 ultimately found out how big the problem was in
23 America. I don't know how big it was in America. But
24 they were actually paying -- we weren't paying people
25 in prison -- at least I hope we weren't, to give

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- 1 establishment of something called the Expert Advisory
2 Group on AIDS. You noted it in one of the earlier
3 documents we looked at, one of the papers referring to
4 an expert advisory group was going to be set up. And
5 it was -- I'm not going to take you to lots of
6 documents about it. If I tell you, Lord Clarke -- and
7 again, no doubt, your legal representatives will tell
8 me if they think there's particular documents you need
9 to look at -- arrangements for it to be set up were
10 being made in late 1984 and it met for the first time,
11 EAGA, the acronym, Expert Advisory Group on AIDS, in
12 early 1985.
- 13 I don't think there's any evidence you were
14 asked to take a particular decision about it at any
15 stage or any earlier stage?
- 16 A. The person -- the person who made the ultimate
17 decision about expert groups, which you would normally
18 call in once you had a serious problem like this,
19 would be the Chief Medical Officer.
- 20 Q. That answers my first question. My second question
21 then is: do you have any concerns about or are you
22 surprised at the fact that, given everything we've
23 looked at from 1983 onwards, this particular expert
24 group in relation to AIDS wasn't meeting until
25 January 1985? Does that strike you as rather late in

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1 blood. They were volunteers. And there were lots of
2 perfectly healthy people with nothing to do,
3 unfortunately, in prison. And if in -- some Regional
4 Transfusion Director, who was the best person to make
5 a judgment of that kind of thing, decided that it was
6 safe to take blood donations from healthy prisoners,
7 I don't think that's a matter of any excitement or
8 concern.

9 But obviously, because we acquiring this
10 terrible knowledge of the AIDS problem, you showed me
11 an official -- an exchange between two unknown
12 officials showing that some people in the Department
13 were beginning to get a bit concerned about this.
14 Presumably until then, nobody -- it was just part of
15 the routine.

16 As it happens, I don't think, until I got my
17 questions, I ever knew that we did collect in prisons
18 here. I don't know whether we collect in prisons now.
19 Do you? I haven't a clue. And I've been Justice
20 Secretary, I've been -- and Home Secretary. I've been
21 responsible for prisons twice in my career. But if
22 you ask me, do prisoners get asked to volunteer for
23 blood donation? The answer is, as I sit here at the
24 moment, I don't know.

25 Q. Can I then move to a slightly different topic. The

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- 1 the day?
- 2 A. I mean, I don't have an opinion on it, no. I'm
3 not ...
- 4 Q. Then it --
- 5 A. There were lots of other expert groups as well. We
6 touched on all sorts of bodies, not all of whom I've
7 ever heard of until we were going here. It was up to
8 Donald and his team to decide what expertise they
9 wished to call in, how to organise it.
- 10 Q. It would appear that there wasn't direct communication
11 between ministers and the expert groups --
- 12 A. No, there wouldn't be.
- 13 Q. Is there any reason why that couldn't have taken
14 place, with ministers attending meetings, or ministers
15 asking to have experts come and speak to them?
- 16 A. Well, I don't think it had been banned. If you
17 remember, people got very upset because
18 Dominic Cummings insisted on attending the meetings of
19 SAGE, and a lot of the members of SAGE objected to
20 this political figure turning up at their meetings
21 because they strongly suspected he was -- you know, he
22 might be tempted to start trying to politicise the --
23 or, you know, the findings of SAGE. So I would have
24 been very surprised if I'd heard that some minister
25 was insisting on turning up at a medical advisory

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1 group of this kind.
 2 **Q.** So would it be --
 3 **A.** As I say, I keep quoting Covid but it's fresh in
 4 everybody's memory and it's a good example of the
 5 precise point you're making. There was fuss last
 6 year -- coming from the medics -- about Mr Cummings'
 7 insistence on going to -- I think he probably stopped
 8 it eventually -- attending these expert advisory
 9 groups when they were discussing it.
 10 **Q.** So would it be right to understand the practice or
 11 convention, certainly at that time, possibly still,
 12 would be ministers would be provided with information
 13 about recommendations of expert advisory groups,
 14 really if and only if it went through the chain of
 15 medical officers --
 16 **A.** Yeah, eventually. The advice given to you by the
 17 medical officers --
 18 **Q.** -- policy officers --
 19 **A.** -- would be based on the advice they were getting from
 20 these expert advisory groups.
 21 **Q.** Can I then move, just before we break for lunch, to
 22 a different topic now entirely, and the issue of the
 23 policy of self-sufficiency and the redevelopment of
 24 BPL.
 25 When --

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1 Factor VIII, when it started being routinely
 2 prescribed as a prophylactic, meant that whatever they
 3 did in the -- I don't know what they did about it in
 4 1978 but it wasn't sufficient to catch up. So
 5 Geoffrey, Geoffrey Finsberg -- again, nothing to do
 6 with me -- obviously decided that we really needed
 7 major -- we needed major investment in the Blood
 8 Products Laboratory at Elstree.
 9 As far as I'm aware -- you can point out some of
 10 the -- my only involvement in the whole thing from
 11 beginning to end was -- as I usually did quite often
 12 in the Department, was to start enquiring when it
 13 started being delayed a bit and you had cost overruns.
 14 And I was, you know, as usual asking, you know, "Who
 15 is in charge of this? What are we doing to keep to
 16 the timetable and control the cost?" And that was,
 17 I think, taken out of my hands when -- it's in the
 18 documents somewhere -- the permanent secretary, who is
 19 the chief accounting officer -- it's his main job,
 20 he's the chief civil servant and he keeps cost
 21 controls, and spending he's meant to keep a direct
 22 day-to-day control on -- it turned out that my memos
 23 alerted him and he -- I got a little memo from him
 24 saying, "This is all news to me", I think. No one had
 25 even bothered to tell him that this major project was

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1 **A.** I didn't have anything to do with that.
 2 **Q.** The redevelopment of BPL was a decision taken by
 3 Mr Finsberg in 1982. I'm not going to ask you about
 4 the detail of that.
 5 **A.** Yes, I've seen that from the papers.
 6 **Q.** When you were Minister of State for Health, first of
 7 all, did you understand that there was a formal policy
 8 of achieving self-sufficiency?
 9 **A.** Yeah. I referred to it sometimes in Parliamentary
 10 questions.
 11 **Q.** Yes. And there are some statements, we can look at
 12 them if it would assist, but there are some statements
 13 where it seems to suggest that the Government decided,
 14 in 1982, upon a policy of self-sufficiency --
 15 **A.** Yes, this is David Owen's point. It got drawn to my
 16 attention some time ago. I mean, I'm sorry if David
 17 has taken offence. David appears now to have taken
 18 offence that it is not acknowledged -- we didn't -- my
 19 parliamentary answers didn't acknowledge that he had
 20 had such a policy four or five years before.
 21 I had no idea he had such a policy, I had no
 22 idea what went on in the 1970s, and it's pretty
 23 obvious from the answers I gave that I didn't know
 24 we'd had that policy. We hadn't achieved
 25 self-sufficiency. I suspect the surge in demand for

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1 in danger of slipping over cost. And I assumed the
 2 permanent secretary intervened and made sure that
 3 something was done to make sure that the contractors
 4 and the Blood Products Laboratory people weren't just
 5 being allowed to spend money as it came along, you
 6 know.
 7 But I don't recall that the -- otherwise the
 8 expansion of the Blood Products Laboratory had
 9 anything to do with me as Minister of State at all.
 10 **Q.** I think you, as you've referred to, did make
 11 statements from time to time in the House about the
 12 policy --
 13 **A.** Well, yes, because --
 14 **Q.** -- in general terms and the redevelopment works.
 15 I think this almost certainly follows logically
 16 from what you've said about not knowing there was
 17 a preceding policy from the seventies, but I think it
 18 probably follows that you can't shed any light on what
 19 happened to the self-sufficiency policy between the
 20 mid-seventies and 1982?
 21 **A.** Haven't a clue.
 22 **Q.** You may not remember this now, Lord Clarke, but do you
 23 recall whether at the time, in the period '82 to '85,
 24 that there was a clear understanding within the
 25 Department of what was meant by self-sufficiency?

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1 A. That we'd stop -- the aim was to stop being dependent
2 on imports from United States of America.

3 Q. Do you know whether it was based upon self-sufficiency
4 in terms of having enough blood products to provide
5 for home treatment and prophylactic treatment of
6 haemophiliacs, or whether it was based upon a less
7 ambitious treatment programme?

8 A. It was presumably based on what was thought to be the
9 necessary demand for the product. Other than that,
10 I don't know.

11 Q. And you didn't have any involvement in the analysis of
12 demand?

13 A. I had no involvement, but I -- if you've found -- my
14 memory is playing tricks with me, I apologise. I
15 mean, if you've found some documents suggesting that I
16 had anything to do very much with Elstree -- I think
17 I made a visit to it once -- I can't remember why
18 someone invited me to visit it -- and I met the
19 Director. But it was fairly inconsequential because
20 I wasn't involved. But I'm not sure about that. I
21 think I did but I just don't recall that the thing was
22 regarded -- it had been decided by Geoffrey Finsberg,
23 it was going ahead, and the main problems were -- as
24 they are with every public sector project, major
25 capital project -- trying to make sure that as far as

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1 SIR BRIAN LANGSTAFF: So we'll take a break now until --

2 A. By that time the tragedy was all over and I was
3 involved then in financial -- the finances of it.
4 That was my involvement there.

5 SIR BRIAN LANGSTAFF: Two o'clock.

6 MS RICHARDS: Thank you, sir.

7 SIR BRIAN LANGSTAFF: Two o'clock.

8 (12.58 pm)

9 (The Luncheon Adjournment)

10 (1.59 pm)

11 MS RICHARDS: Lord Clarke, just dealing for a short period
12 with BPL. You've described in your statement, and I'm
13 not proposing to go through the documentation
14 in relation to this, your involvement when there was
15 a significant -- a request for a significant increase
16 in funding. Basically a large amount of extra money,
17 some 10 million or so I think sought in the first
18 instance roughly.

19 A. That was bound to come to me.

20 Q. You became involved and, as you've said, the
21 Permanent Secretary Sir Kenneth Stowe became involved.
22 I think you had a meeting with the -- one of those
23 involved with the CBLA hauled into the office, so to
24 speak, and asked to explain what was going on.
25 The question I just wanted to ask you to

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1 possible kept to time and kept somewhere near the
2 cost. That's always been a big problem and it was
3 a very big problem in the 1980s, a very big problem in
4 the strangely managed National Health Service.

5 Q. Do you recall having any information or being told
6 anything about the position in relation to Scotland or
7 Northern Ireland in --

8 A. I have absolutely -- then and now, had no idea what
9 the position was in Scotland and Northern Ireland.

10 MS RICHARDS: Sir, there are a couple of documents I'm
11 going to ask Lord Clarke to look at before we then
12 move on to his second period in office, but if we do
13 it at two o'clock, I can probably cut down on the
14 number of documents that we need to usefully look at.

15 SIR BRIAN LANGSTAFF: Yes. Well, shall we --

16 A. I don't think there's much more I can tell you about
17 my involvement in this, when I was Minister of State,
18 except to repeat what I said when I started:
19 that I don't think anybody -- hardly anything ever
20 came to me for my personal decision. I was not the
21 minister -- I was a junior minister in the Department.
22 I was not the minister responsible for blood products.

23 MS RICHARDS: We will, shortly after lunch, move on to
24 your time as Secretary of State for Health,
25 Lord Clarke.

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1 consider is this: we can see from the various
2 parliamentary statements that you or others made that
3 the expected date of completion shifted. So it went
4 from the end of 1985 to the beginning of 1986 to
5 sometime in 1986, and then I think, by the time you
6 left office, the beginning of 1987 was the
7 expectation. Do you have any thought as to whether
8 the lack of proper cost control, and you describe it,
9 as does, I think, Sir Kenneth, in fairly scathing
10 terms, both in terms of the developers and the
11 Department's own lack of control over the issue --

12 A. That was me trying to put the pressure on, from the --
13 I think what they were doing was to get control over
14 it, that's why in the documents I may have used
15 scathing terms.

16 Q. Do you have any sense of whether that contributed to
17 the delays in the redevelopment?

18 A. No, the delays were probably just they'd
19 underestimated -- it happens -- I say, you name me
20 a major capital building project in the Health Service
21 where it didn't happen in the 1980s. And it does
22 today. Just think of some of the major projects we've
23 got, you know. I'll take a big one, like HS2, we all
24 know what is happening to it. It's just something
25 about the management of public sector building

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1 projects.
2 As it happens, the delay to the Blood Products
3 Laboratory made absolutely no difference whatever to
4 the infection of patients, because long before it was
5 finished we'd started heat treating the blood
6 products, the Factor VIII, so people were no longer
7 getting infected with HIV and AIDS. But it was still
8 very wise to move on -- to protect us against future
9 risks, to move to self-sufficiency.

10 And by the standards, I'm afraid -- I mean,
11 without being too cynical -- by the standards of major
12 public spending capital projects, it wasn't actually
13 that spectacularly over costs and over time. There
14 were far worse. But I fear, I don't think it made any
15 difference to the subject matter of this Inquiry.

16 **Q.** Without going into the detail of the sums involved,
17 broadly speaking, the Department and the Treasury, as
18 I understand it, did decide to pay (*unclear*:
19 *overspeaking*) of some sort?

20 **A.** Yeah, it was never held up for financial reasons. We
21 had no choice, really, unless you were going to
22 suddenly start to abandoning the policy altogether.
23 We'd got so far that we -- one could grumble and try
24 to get them to exercise greater control in future, but
25 they got the money, and it was just built, over cost

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1 **A.** Yes, she was --
2 **Q.** She was Minister of State?
3 **A.** She did -- she did Social Services. That's what
4 Virginia -- she did other things as well but her main
5 thing was Social Services.
6 **Q.** When you arrived back in --
7 **A.** As you say, David Mellor was the nearest equivalent to
8 the job I'd previously done.
9 **Q.** It was David Mellor and then Virginia Bottomley?
10 **A.** And then Virginia, that's right.
11 **Q.** And you have given the dates in your statement.
12 To what extent, when you arrived back in
13 Department in 1988, had there been any changes --
14 leaving aside the huge change of no longer being
15 Social Security, being the Department of Health, had
16 there been any changes that you detected in the way it
17 operated, the way in which the civil servants operated
18 and ministers were briefed?
19 **A.** Well, no, I can't remember anything too startling, no.
20 I don't think so. I think my predecessor had had
21 quite a difficult time there. John Moore.
22 **Q.** And that was John Moore, I think.
23 **A.** Mm.
24 **Q.** Can we just go to your second statement.
25 Soumik, it's WITN0758012.

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1 and delayed.

2 **Q.** I want to come next to your second period in office as
3 Secretary of State for Health. This was from
4 25 July 1988 to 1 November 1990. And as I think you
5 explained yesterday morning, Lord Clarke, this was now
6 simply the Department of Health, not the Department of
7 Health and Social Security?

8 **A.** That's right.

9 **Q.** Two separate departments. Then, in terms of the more
10 junior ministers, the Minister of State in the
11 Department of Health, so the role that you had
12 originally performed in the period we've just been
13 looking at, was David Mellor, from July '88 to
14 October '89, and then Virginia Bottomley.

15 **A.** Mm-hm.

16 **Q.** Then the Parliamentary Secretary of State was
17 Edwina Currie for a period in 1988, then
18 Roger Freeman, and then Stephen Dorrell. And I think
19 you've identified in your statement, in terms of
20 Parliamentary Under-Secretary of State in the Lords,
21 Lord Trafford for a very short period of time, and
22 then Baroness Hooper?

23 **A.** Baroness Hooper. And Virginia Bottomley was there as
24 well, I think, is that right?

25 **Q.** Yes, I've mentioned her.

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1 If we go to the bottom of the second page,
2 you've talked about the immediate topic on the agenda
3 being NHS reform. If we go to the top of the next
4 page --

5 **A.** That was the dominant issue and activity of my period
6 of office.

7 **Q.** I just want to ask you about what you say in the last
8 sentence of this first paragraph. You say:

9 "I was also conscious of the fact that control
10 of the NHS, through Whitehall, was over-centralised
11 and there was a need to separate policy and
12 operational decision-making."

13 What did you mean by that in terms of the --

14 **A.** Well, as I said yesterday, I think it was the
15 Department of Health on its own had about 6,000 plus
16 civil servants who were spending -- quite a lot of
17 them were just spending their time second-guessing
18 decisions that should have been -- were being made in
19 Wakefield and they weren't really in a very good
20 position to second-guess them because we -- all the
21 criticism and all the rows seemed to come back to us,
22 and the system kind of encouraged channeling them in.
23 And some -- the decision making that I tried to
24 introduce was I -- one of the phrases I'd started to
25 use slightly, not bad -- not particularly political

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1 phrases -- was "responsibility downwards" and
 2 "accountability upwards". I wanted more
 3 responsibility for decision taking to be moved down to
 4 the people actually on the ground, although you had to
 5 change the management structure and get rid of this
 6 consensus management so you could actually have
 7 a sensible business-like management structure locally,
 8 and then you gave them more responsibility for taking
 9 their own local decisions on how they developed
 10 services, where they provided them, and all that.
 11 At the same time, as you'd devolved it, what
 12 matters -- the sense of it was, as I say,
 13 "accountability upwards". So you held them to
 14 account, that's one of your jobs in the centre, and
 15 then I was particularly anxious that we got into
 16 a mood whereby what we meant when we were holding them
 17 accountable was: what is the quality of the patient
 18 care you're delivering? What improvements in patient
 19 care, what benefits are the patients getting from the
 20 way you're running the Health Authority?
 21 So I'm sorry to give you a little speech, but
 22 that was what that little phrase, Whitehall was --
 23 "the control of the NHS through Whitehall was
 24 over-centralised."
 25 I've given you a slightly more detailed

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1 So we can see this is the submission:
 2 "Ministers are asked to agree that a new body to
 3 advise the Health Departments on the virological
 4 safety of the blood supply should be set up."
 5 Then we can see under the heading "Background",
 6 it says:
 7 "1. The screening of blood donors is important
 8 both for the safety of blood used in transfusion and
 9 for the safety of blood-products made from donated
 10 plasma.
 11 "2. Historically the Blood Transfusion Services
 12 (BTS) have adopted new screening procedures in an
 13 ad-hoc fashion in response to advances in clinical
 14 knowledge. In some cases the advice of specially
 15 constituted expert groups has been sought eg as with
 16 Hepatitis and AIDS.
 17 "3. Concern to maintain the safety of the blood
 18 supply has been heightened by the greater public and
 19 clinical awareness of the potential for viral
 20 contamination and the new developments in product
 21 liability legislation."
 22 There's then, under the heading "Interested
 23 Parties", a description of various other bodies
 24 involved in issues relating to the blood supply. I'm
 25 not going to ask you about that but if we go over the

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1 explanation of what -- the idea I particularly had
 2 got -- you know, the bee I'd got in my bonnet on that.
 3 **Q.** Can you recall whether, for this second period in
 4 office, relationships between the Department of Health
 5 and the devolved administrations in particular --
 6 **A.** I don't think it was any different.
 7 **Q.** No, that's -- well, you've anticipated the question,
 8 so you can't recall any particular --
 9 **A.** I really do not recall having anything to do with the
 10 Health Service in Scotland, and I don't remember much
 11 in Wales either.
 12 **Q.** Now if we look at WITN0758013, you will see,
 13 Lord Clarke, that this is a minute dated
 14 6 December 1988 in relation to a proposal to establish
 15 a new Advisory Committee, the Advisory Committee on
 16 the Virological Safety of Blood. It's copied to your
 17 private office as I understand it.
 18 **A.** Mm-hm.
 19 **Q.** I think that's the name, Mrs Goldhill, we see there
 20 for your private office; is that right?
 21 **A.** Yeah.
 22 **Q.** Then if we go to WITN -- sorry, no. I've got two
 23 references for it. Let me just try both of them.
 24 WITN075 -- no, try this one: PRSE0003956. Sorry,
 25 Soumik. Yeah.

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1 page to the heading "Need for a New Advisory Body",
 2 paragraph 7 says:
 3 "Decisions on testing for particular viruses
 4 involve a range of disciplines. Clinical and
 5 scientific expertise must be balanced by the expertise
 6 representing the practicality and the cost/benefit of
 7 testing. Neither the ..."
 8 Then it refers to three of the existing bodies:
 9 "Neither the [Committee on Safety of Medicines],
 10 the [Central Blood Laboratories Authority] nor the
 11 [Blood Transfusion Service] have the remit or
 12 expertise to take this broader approach. Their
 13 conflicting interests are ultimately in no one's best
 14 interest.
 15 "The new advisory board will embrace the
 16 expertise of all interested groups. It's remit will
 17 be to advise on measures to minimise virological
 18 contamination whilst maintaining adequate supplies.
 19 It will therefore embrace the cost/benefit concept."
 20 Then paragraph 9:
 21 "There is no suitable existing body. All of the
 22 UK must be covered."
 23 Then if we go to the bottom of the page under
 24 the heading "Early Tasks":
 25 "The new body will be able to advise on current

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1 practice and policies for screening for infections
2 which include the following ..."

3 You'll see it includes hepatitis B, non-A,
4 non-B, CMV and so on.

5 **A.** All right.

6 **Q.** Then over the page, paragraph 13 is the decision
7 that's sought:

8 "Ministers are asked to agree that the new body
9 should be established with the remit ..."

10 Now, this was, as you'll see from that,
11 essentially, the first time a body with this
12 overarching oversight of the safety of the blood
13 supply was established. Do you have any views on
14 whether it would have been a good idea to have a body
15 such as this much earlier on so that you could have
16 drawn on it and the difficult decisions being taken in
17 '83, '84, '85.

18 **A.** Well, you can debate that if you like. I mean, with
19 the wisdom of hindsight you obviously could argue, you
20 know, it would have been useful to have had it a few
21 years before, but you can say that about practically
22 everything. I mean, people do make worthwhile changes
23 and reforms as things move on. It reads as though it
24 was an extremely good idea to have this. As it
25 happens, of course, it was being set up after the

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1 asked, Lord Clarke, part of this Inquiry's terms of
2 reference is not simply to look at how people came to
3 be infected, but to look at the Government's response,
4 including the issue of financial support and --

5 **A.** Well, yes, I mean it was set up because the Government
6 30 years later was still facing these campaigns for
7 more money, and so they have slightly passed that to
8 you. Which is not an enviable -- whatever you ask for
9 will be regarded by some campaigners as not enough.
10 But you get used to that in the field of health. If
11 you're a health minister or an education minister, you
12 might have the naive belief that when you give people
13 money, they will say, "Thank you very much", you know,
14 "God bless you, Mr Clarke", or something. In fact,
15 whenever you give anybody money, the immediate
16 response of the lobby is it's not enough and they try
17 and get more. And, you know, they're still facing
18 that today.

19 **Q.** The Macfarlane Trust itself was established prior to
20 you taking up your appointment in July of 1988.

21 **A.** Yeah, I don't remember being involved in setting -- it
22 wasn't a government body anyway, I don't think, was
23 it?

24 **Q.** No. And again, so that others following understand,
25 the announcement of the £10 million what's called

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1 worse example of infected blood supplies had already
2 done its worst and we'd suffered the tragedy. But,
3 yes. I mean -- plainly, we'll never know -- it might
4 well have -- it probably would have been very helpful
5 if we'd had this committee some years before. But ...

6 In all kinds of areas of life you can say that.

7 Once you've made a change and something has been
8 improved, you can -- you know, quite often if it
9 works, people saying, "Oh, if only we'd had this
10 ten years ago", in every kind of way of life.

11 **Q.** And we'll look, probably tomorrow, at the -- one of
12 the issues with which it was particularly concerned,
13 which was the introduction of screening in relation to
14 hepatitis C, but I'll come back to that.

15 **A.** Hepatitis C, yes. We somehow got more aware of --
16 well, hepatitis is always there, it is today, but
17 hepatitis -- as we got past the dreadful AIDS crisis,
18 hepatitis began to be more important, as it were, and
19 the discussions -- and to dominate the discussions
20 more, yes.

21 **Q.** What I'm going to be asking you about really for the
22 rest of today's session, Lord Clarke, is about the
23 Macfarlane Trust, funding for the Macfarlane Trust,
24 and then about the HIV haemophilia litigation. Then,
25 just so you understand why those questions are being

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1 ex gratia payment to the Macfarlane Trust was made in
2 November 1987 by the then Minister of State for Health
3 Tony Newton.

4 **A.** Mm-hm.

5 **Q.** So some months before you then became Secretary of
6 State for Health.

7 Did you, when you then became involved and it
8 did fall to you to take some decisions about or be
9 involved in decisions about whether to provide extra
10 funding, did you gain any understanding as to why it
11 had been decided to establish an ex gratia payment
12 scheme via a charitable trust?

13 **A.** I think because, you know, I'm not past it yet. I've
14 never met anybody who doesn't feel sympathy with each
15 individual victim of this -- this tragedy, with so
16 many people dying of AIDS or hepatitis, in particular,
17 when we had this problem of infected blood products.

18 So, you know, the desire to do something to at
19 least alleviate any financial problems which might be
20 one of the consequences of the loss which people had
21 suffered, had obviously been the motivation. It's --
22 you had to be careful because, you know, it's
23 impossible to -- there's no way of saying, "What is
24 the right figure?" You can only seek to help. And
25 the Macfarlane Trust seems to have been chosen as the

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1 vehicle to actually make the individual decisions
2 about how to distribute it.

3 But I don't think I remember a particular
4 inquiry, particularly. I think that's fairly
5 obviously the reason for setting up the Macfarlane
6 Trust.

7 **Q.** But did you gain any understanding of why that
8 particular mechanism of a charitable trust had been
9 chosen?

10 **A.** I don't think I ever asked. It would have seemed
11 a perfectly reasonable way of doing it to me.

12 **Q.** And the point at which you were then first asked to
13 become involved, and we'll look at the chronology of
14 events in a moment, but do you recall there ever being
15 anything -- any attempt by the Department to ascertain
16 the actual needs of those who'd been infected or, in
17 particular, their financial needs --

18 **A.** Well, I think the Macfarlane -- in my understanding --
19 you tell me, because I wasn't closely -- being
20 Secretary of State, in the middle of all the rows
21 I was, I ended up spending a high proportion of my
22 time on the Macfarlane Trust. (*Unclear*) I got myself
23 involved and touched on it because it did involve, you
24 know, difficult questions of making ex gratia payments
25 out of our budget. But -- so I don't really know.

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1 the Secretary of State.

2 **A.** Is that so? I'd forgotten that.

3 **Q.** Was that something you were ever directly involved in?

4 **A.** I don't remember. I might have been.

5 **Q.** Can we then come to -- I think there was a publication
6 in October 1988 of a newspaper article and you
7 asked -- about being slow to pay out, and so on. You
8 asked for information about it. I'm not going to
9 trouble you about that, but if we can pick up your
10 dealings --

11 **A.** Well, the people we thought we were benefiting were
12 beginning to complain to us that it wasn't
13 distributing the money.

14 **Q.** I'm just going to pick things up in the middle of
15 1989, so a year in now to your post as Secretary of
16 State. If we look at WITN0758026, you'll see, Lord
17 Clarke, this is a letter from the Haemophilia Centre
18 dated 12 July 1989 and addressed to you. You'll see
19 by reference to the first paragraph the context is by
20 this time High Court proceedings have --

21 **A.** Yes, I -- it was group who started it, wasn't it?
22 I don't know how many plaintiffs there were.

23 **Q.** If we go down just towards the bottom of the page,
24 just looking at the last paragraph, it says:

25 "The purpose of this letter is to ask the

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1 But it seemed to be a perfectly satisfactory
2 mechanism, leave it to them to distribute it. They
3 were accepted, I think, by the families involved.

4 **Q.** Did you have any expectation, as Secretary of State
5 for Health, that the Macfarlane Trust would obtain
6 approval for its policies from the Department, or
7 seek --

8 **A.** I don't think I -- I'm not sure. I know -- I think --
9 I think I've said in my evidence, I think it was
10 independent to the Department, wasn't it? It wasn't
11 accountable to the Department, I don't think.

12 **Q.** And --

13 **A.** The only time we seem to have got disturbed by it was
14 when we gave it extra money and then people started
15 complaining because it was very, very slow in
16 distributing it. And there's appears to have been
17 a row -- or not a row, a debate within the
18 haemophiliac world as to whether the Macfarlane Trust
19 should be trying to assess the individual needs and
20 hardship of victims and their families, or whether
21 everybody should get a share and the same sums should
22 go to everybody. But I don't think that had anything
23 to do with the Government much.

24 **Q.** There was a process whereby a certain number of
25 trustees of the Macfarlane Trust would be nominated by

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1 Government to now take a compassionate view of people
2 with haemophilia who had been so tragically infected
3 through the use of contaminated blood products. The
4 Court actions which are only now beginning could take
5 a very long time to reach a conclusion. 149 people
6 with haemophilia have already contracted
7 fully-diagnoseable AIDS and of that number 93 have
8 died: this represents huge personal and family tragedy
9 and loss leaving widows and fatherless children as
10 well as couples who have lost their child."

11 **A.** Yeah.

12 **Q.** Over the page --

13 **A.** Sorry, when is this? Was this --

14 **Q.** July 1989 --

15 **A.** Was the Macfarlane Trust already set up?

16 **Q.** Yes.

17 **A.** Who is this letter from?

18 **Q.** From the General Secretary of The Haemophilia Society,
19 Mr Watters.

20 **A.** Oh, I see, yes.

21 **Q.** We'll see, top of the next --

22 **A.** They hadn't brought the legal action, had they?

23 **Q.** Individuals had brought the legal action.

24 **A.** Yeah, I think they'd taken legal advice and been
25 advised not to.

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- 1 Q. You see in the first sentence there, first paragraph:
 2 "While we are ever mindful -- and deeply
 3 appreciative -- of the £10 million granted on
 4 an ex gratia basis in 1987 and with which the
 5 Macfarlane Trust has been established, that is simply
 6 not enough to give people charge over their own
 7 affairs as they so rightly deserve in the
 8 circumstances understanding which they have to live.
 9 While, then, the Macfarlane Trust has been useful over
 10 the past two years it cannot take the place of
 11 compensation and, indeed any case, is chronically
 12 underfunded for the task it has to undertake.
 13 "We urge you and your colleagues to review the
 14 situation whereby those cases will have to drag
 15 themselves all the way through the Courts in a manner
 16 that will be both costly and deeply humiliating for
 17 both the litigants and the Government."
 18 That's the letter that would have been sent to
 19 you, July 1989. I just want to look at the reply that
 20 was sent, in fact, by Lord Trafford, rather than
 21 you --
 22 A. I -- I was saying it, you know, yesterday, that you
 23 got lots and lots -- they're not all replied by the
 24 Secretary of State.
 25 Q. If we look at DHSC0003989_067. This a letter of

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- 1 A. One of the problems that arose when we did eventually
 2 top it up was to try to make it clear that this was
 3 not -- you know, it had to be distinct from settling
 4 the legal action. I mean, it encouraged people to
 5 keep assuming that somehow we were under a legal
 6 liability to pay this.
 7 The problem was, it's very difficult to
 8 distinguish between this particular group of patients
 9 and other campaigns where, again, there'd been medical
 10 accidents, usually because of lack of medical
 11 knowledge, and so on. You always had those, at any
 12 given time, and much as one would like to, you can't
 13 just give ex gratia payments or compensate all the
 14 people whose treatment hasn't worked or has had
 15 undesirable side effects.
 16 We did distinguish between haemophiliacs and the
 17 others, but it's actually quite difficult. I think
 18 the ones that were alive at the time were Valium,
 19 which had been over-prescribed and given rise to,
 20 I think, addiction to far too many people.
 21 Intrauterine devices was a very nasty one, which we
 22 had a group campaigning about, and I mean other times,
 23 I can't remember -- they always happened over the
 24 years. Thalidomide was another, but I don't think
 25 that was at this time, that was later, I think.

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- 1 21 August 1989 from Lord Trafford "Thank you for your
 2 letter [to you]", then the second paragraph:
 3 "The Secretary of State shares the great
 4 sympathy we all feel, and my Ministerial colleagues
 5 have often expressed, for all those who have suffered
 6 this great misfortune. We demonstrated this sympathy
 7 in a tangible way by providing on an entirely
 8 ex gratia basis the £10 million grant to the
 9 Macfarlane Trust which you acknowledge in your letter.
 10 We were deeply anxious to do whatever we properly
 11 could.
 12 "However, it remains our view as we indicated in
 13 response to your Society's main campaign, that the
 14 question of compensation is a matter for the Courts to
 15 decide."
 16 Then reference is made to the proceedings.
 17 Two matters, Lord Clarke. First of all, is it
 18 right to understand this exchange of correspondence is
 19 essentially -- the Government is saying no to the
 20 particular plea put forward by The Haemophilia Society
 21 in its letter.
 22 A. That seems to be a polite way of declining. Yes, they
 23 obviously -- Tony Trafford is (*unclear*) in with the
 24 litigation.
 25 Q. We can see --

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- 1 The infected blood problem, for haemophiliacs in
 2 particular, it's just the only example I can think of
 3 of a campaign that has been sustained for decades, and
 4 none of the others have. Now, at the time, you know,
 5 it was a great tragedy, probably the worst tragedy of
 6 its kind, it's arguable, in the history of the Health
 7 Service, of people dying because of lack of knowledge
 8 of the medical problems we were facing with a new
 9 disease. But we wanted to help, but we had to be
 10 cautious. We couldn't establish the general
 11 principle. I'm sure the present Government will --
 12 somebody will start arguing that they should
 13 compensate everybody who caught Covid but they won't
 14 be able to do that.
 15 Q. Would it be right to understand from the fact that the
 16 second paragraph -- so the top paragraph on the
 17 screen -- refers to you, "The Secretary of State
 18 shares the sympathy we all feel", would it be right to
 19 understand that this decision to say no, at this point
 20 in time, to the Haemophilia Society's request for
 21 funding would have been a decision to which you would
 22 have been party?
 23 A. No, I don't think so.
 24 Q. So you wouldn't necessarily expect this decision to --
 25 A. No, not particularly.

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- 1 Q. Okay.
- 2 A. I mean, more likely to come to me if Tony had been --
- 3 or either minded to or had been advised to start
- 4 paying another few million. That would have come to
- 5 me because he wouldn't have felt quite within his
- 6 authority to do that without getting my approval. But
- 7 it's polite declining to increase the 10 million,
- 8 particularly, as I've said, while it's not exactly
- 9 a surprising letter to receive. Practically -- you
- 10 give ex gratia payments to anybody in the Health
- 11 Service and the reaction of the recipients will
- 12 usually be "it's not enough".
- 13 Q. I want to then just ask you to look at the way in
- 14 which a similar request was expressed later in 1989
- 15 through a Parliamentary debate. It's DHSC0002939_002,
- 16 please, Soumik. You'll see this is, I think,
- 17 an adjournment debate -- in any event, it's
- 18 13 November 1989, and you'll see the speaker on the
- 19 left is Mr Patrick Cormack.
- 20 Then if we go down the page, just a little
- 21 further down, if you see the long paragraph there,
- 22 Lord Clarke, beginning "We are dealing with a well
- 23 defined and inevitably sadly diminishing group of
- 24 people", I just want to pick it up --
- 25 A. Is this Patrick saying this?

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- 1 Was there anything in that description with
- 2 which you, as Secretary of State, would have
- 3 disagreed?
- 4 A. Not at all.
- 5 Q. If we then pick up around this time in November 1989,
- 6 it is the point in time when you were asked to take
- 7 decisions about the possibility of increasing funds
- 8 for the Macfarlane Trust, and we can pick that up at
- 9 DHSC0004415_156. This is a note from Mr Heppell
- 10 7 November 1989, and it's addressed to Mr McKeon. So
- 11 your --
- 12 A. He was my principal private secretary, yes.
- 13 Q. We can see it says:
- 14 "This is a short note designed to act as
- 15 an agenda for tomorrow morning's meeting with the
- 16 Secretary of State. It reflects the discussion
- 17 between MS(H) and myself in the light of our meeting
- 18 this afternoon with Mr Robert Keys MP, who is also
- 19 Vice President of the Haemophilia Society."
- 20 Then it sets out the Minister of State's --
- 21 I think that's Virginia Bottomley, by now -- aim:
- 22 "... to identify proposals which:
- 23 "sufficiently meet the aspirations of the
- 24 Haemophilia Society so that they are prepared to
- 25 recommend their members not to proceed with legal

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- 1 Q. This is Patrick saying this, Patrick Cormack. I just
- 2 want to pick it up, just nearly halfway down the
- 3 paragraph, where he says this:
- 4 "No one can give back to those victims the hope
- 5 of a normal life that was once theirs. No one can
- 6 remove the uncertainty with which they and their
- 7 families live from day to day -- the uncertainty of
- 8 when the bell will toll. If any group of people live
- 9 in the shadow of death, they do. It is no wonder that
- 10 their story has been described as the most tragic in
- 11 the history of the NHS. Many of them carry the extra
- 12 burden of financial hardship, or the even greater
- 13 worry of not" --
- 14 A. Yes, this was obviously at the stage where we had not
- 15 yet developed -- there never has been a cure for AIDS,
- 16 and there is no vaccine for it, even today, but
- 17 eventually we developed a treatment which meant it
- 18 wasn't necessarily fatal and many people with AIDS now
- 19 live a normal life for years, and years, and years,
- 20 having to be treated to cope with --
- 21 Q. Yes, and you're right, this long before that:
- 22 "Many of them carry the extra burden of
- 23 financial hardship, or the even greater worry of not
- 24 knowing how their dependants will fare after they have
- 25 gone."

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- 1 action.
- 2 "are accepted by the public, and if possible the
- 3 campaigners, as being an adequate response to the
- 4 situation of haemophiliacs with AIDS/HIV.
- 5 "do not set any unacceptable precedents for the
- 6 future eg by implying NHS liability for treatment" --
- 7 A. Yes, the third is a problem which I referred to a
- 8 minute ago.
- 9 Q. -- "which reflects the best available medical
- 10 information at the time but turns out later to be
- 11 wrong or accepting a duty of care for the approval of
- 12 particular new drugs."
- 13 Then if we go over -- sorry, let me pick it up,
- 14 bottom of the page.
- 15 There are then proposals put forward. So the
- 16 first proposal, increasing the Macfarlane Trust's
- 17 funds by two-and-a-half or three times over the next
- 18 three to four years. Then if we go over the page, the
- 19 second option, this is the second paragraph:
- 20 "... quantifying and making public ... the
- 21 average value per family of social support on top of
- 22 any help from the Macfarlane Trust. This would cover
- 23 social security and social services but probably not
- 24 health care."
- 25 Then:

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1 "Third, explaining to the Haemophilia Society
2 ... the strain that a court case is bound to put on
3 the families concerned and that the Government cannot
4 give way on the principle of liability."

5 **A.** So they are Virginia's proposals?

6 **Q.** Yes, I think that's right or, in any event -- they
7 are, in any event, the civil servants' proposals to
8 meet the objectives identified by Mrs Bottomley.

9 Then we can see, financially, paragraph 4, it
10 says:

11 "there is no obvious money in our kitty for this
12 year ... but we will need to go through the budgets in
13 more detail.

14 "Treasury are likely to resist to any further
15 claim on the Contingency Reserve."

16 Then:

17 "we could find the money in future years by top
18 slicing the HCHS programme."

19 **A.** That's eventually what was done, wasn't it? By top
20 slicing other programmes, modestly?

21 **Q.** It may be. I'm not sure I'm going to need to ask you
22 about the mechanics but, in any event, as I understand
23 it the position both from the documents and your
24 statement, we don't have a record of the meeting that
25 was taking place with you to which this refers. Do

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1 the consequences, she obviously did get -- she was
2 minded to be sympathetic if we could be, try to -- we
3 couldn't compensate them in full, but to mitigate the
4 problems, the financial problems at least, that some
5 of the families were suffering.

6 **Q.** Then if we look at the text of your letter to the
7 Prime Minister, you say:

8 "As you are well aware, a fast escalating
9 campaign is being run on behalf of haemophiliacs with
10 HIV infection, and I thought you would wish to know of
11 my proposals for responding to the campaign in
12 a sympathetic way while containing the consequences
13 for the NHS generally.

14 "The facts are that about 1200 haemophiliacs in
15 the UK were infected with HIV through the use of early
16 commercial blood products (mainly American) which were
17 inadvertently contaminated with the virus, most of
18 them at a time when the threat was not appreciated or
19 poorly understood. It is a great tragedy, but it was
20 not occasioned by negligence either on the part of the
21 clinicians involved or on the part of the Government."

22 Then you refer to the litigation.

23 **A.** Yeah.

24 **Q.** Then you say:

25 "We believe the Court will find in favour of the

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1 you have any recollection of it independently?

2 **A.** No, no. As before, I don't have much recollection of
3 this. I can remember being involved. But I don't
4 have any recollection of who said what when, and
5 figures and things, except what I can extract from the
6 documents.

7 **Q.** Well, we can pick matters up, then, later in
8 November 1989 with a letter that you yourself sent to
9 the Prime Minister. It's at HMTR0000001_006.

10 **A.** Yes, because Margaret got quite interested in this as
11 it went along, didn't it? She too was sympathetic to
12 the haemophilia victims and their families.

13 **Q.** Lord Clarke, your reference to Mrs Thatcher has
14 reminded me of a question I wanted to ask before we
15 look at this document. Do you recall, in the earlier
16 period with which your evidence has thus far been
17 concerned, your period as Minister of State for Health
18 1982 to 1985, do you recall any particular interest or
19 involvement of the Prime Minister at that stage?

20 **A.** I don't, actually. I don't -- she must have been
21 aware of it because it was, you know, one of the
22 things in the newspapers. It wasn't the biggest
23 controversy we had at Health. I don't recall her, at
24 that stage, intervening. It's quite clear that at
25 this stage, when, you know, we were now dealing with

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1 defendants and I am strongly of the view that the case
2 should go to trial, and that we should not take any
3 action that implied an admission of fault."

4 **A.** No.

5 **Q.** Then, in the next paragraph --

6 **A.** That was my view at the time.

7 **Q.** Next paragraph, you then refer to the suggestion of
8 an out of settlement and say:

9 "... I am against this on two grounds. Firstly,
10 however it was presented there would be an implication
11 that we have accepted liability and this would have
12 implications for NHS treatment generally; and secondly
13 the cost consequences would be enormous."

14 You refer to what the likely --

15 **A.** That's if you start paying out full compensation
16 without any negligence or liability.

17 **Q.** Then you say:

18 "If we were, on behalf of this particular group,
19 to separate compensation from the need to establish
20 negligence, there is no doubt that the Department
21 would be joined in other litigious actions involving
22 licensed medicines, surgical devices, and so on."

23 You give a couple of examples. Then you say, in
24 the last paragraph --

25 **A.** Actually, I am mentioning the two -- I probably was

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1 reminded of it by this letter when I saw them.
 2 **Q.** Then you say:
 3 "Further, the present system by which medicines
 4 are licensed could be undermined if medical experts
 5 believe that they may be more open to litigation.
 6 They might be unwilling to attest that new drugs or
 7 medicines should be licensed, thus depriving patients
 8 of the opportunity of benefiting from medical
 9 advances. Finally if we were to offer what would in
 10 effect be no fault compensation to this group, we will
 11 rightly be accused of inequity. There are many others
 12 who (for no fault of the clinicians involved) are
 13 damaged as a result of medical treatment. The
 14 arguments were fully explored in the Pearson
 15 Commission of 1978 and little has changed since then
 16 to convince us that they are no longer valid."

17 So you were, is this right --

18 **A.** Yes, I was anticipating -- I mean, they're the reviews
 19 I was giving to you a minute ago. They were my views.

20 **Q.** You were opposed to a system of no-fault compensation,
 21 as is clear from the letter?

22 **A.** I just think it's impossible. I mean -- I'm sorry to
 23 keep referring to it, but a bigger -- it's quite
 24 a similar analogy, I think Covid is the obvious
 25 example. If you had no fault compensation, you'd have

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1 in actual financial need because of their HIV
 2 infection, and we made it clear then that the Trust
 3 Fund was not compensation."

4 So you then set out your proposal to
 5 Mrs Thatcher:

6 "What I have in mind is to announce a further
 7 allocation of £20 million. This raises the total
 8 provision to 30 million which is equivalent to an
 9 average payment of £24,000 per case. This is in line
 10 with the better European schemes although it is less
 11 than the Canadians will announce shortly [and
 12 reference is made to that]. Our further allocation
 13 would be front-end loaded to allow the Trust to give
 14 immediate help of £10,000 to each family unit
 15 affected, but would also help the Trust to continue on
 16 a more generous scale" --

17 **A.** Yes, by this time, they'd got to compromise between
 18 sharing it all out evenly and dealing particularly
 19 with those in particular need.

20 **Q.** Then, the next paragraph says:

21 "Since any increased allocation could not and
 22 should not be tied to any deal concerning the
 23 litigation it is not guaranteed to buy off the action.
 24 Even these sums, which will be widely seen as little
 25 more than a palliative will be difficult to find

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1 vast numbers of people who have had Covid who would
 2 all expect to be compensated once they'd calculated
 3 the financial effects on them. And that would be one
 4 way of bankrupting the Government, finally, if you did
 5 that.

6 **Q.** Then if you go to the next paragraph, you say this:

7 "However, I do recognise the degree of public
 8 sympathy aroused on behalf of this particular group.
 9 I therefore believe we need to act quickly to restore
 10 some perspective."

11 Can you assist us with understanding what you
 12 mean by that?

13 **A.** I'm not sure what I mean by that. I mean, I think
 14 everybody felt a degree of sympathy, so just can we
 15 find something -- it's almost like saying can we find
 16 some sensible way of at least doing something to help?
 17 That's what -- my understanding is, that's what we
 18 were doing throughout these discussions about the
 19 Macfarlane Trust.

20 **Q.** So you say:

21 "One solution, which involves no admission of
 22 negligence and creates no difficult precedent, would
 23 be to increase the funds available to the Macfarlane
 24 Trust. You well recall we allocated £10 million in
 25 1987 specifically to help those haemophiliacs who were

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1 within existing resources. However it should ease the
 2 Press campaign for a time at least and if we're
 3 successful in the preliminary issues to be heard in
 4 January the number of plaintiffs could be
 5 substantially reduced.

6 "I would propose that Mrs Bottomley makes
 7 a Statement in the House about the new cash injection
 8 for the Trust. I think it would be advisable to try
 9 to do this before the Canadian scheme is made public."

10 Just to try to understand your thinking in
 11 relation to the latter point, was the desire to get in
 12 ahead of the Canadian scheme because once the Canadian
 13 scheme was announced the pressure would be on to pay
 14 more.

15 **A.** Well, we were bound to be attacked for not giving
 16 enough, as I've just said. Indeed, we are still
 17 attacked for not giving enough. And, you know, the
 18 plaintiffs in the legal action had no sooner settled
 19 than they started denouncing the Government for not
 20 giving them enough by way of settlement. It's just
 21 predictable, I'm afraid, it's human nature and
 22 certainly it is in these sort of political things.
 23 And so, to have the unfortunate coincidence of making
 24 our further offer of help coinciding with the news
 25 that the Canadians had just done the same, and unlike

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1 other countries, they seemed likely to exceed what
2 we'd offered, you know, would be an unfortunate way of
3 presenting what we were doing, and would have just
4 excited stronger reactions to what we were doing.

5 **Q.** Then, in the preceding paragraph, where you refer to
6 the sums which "will be widely seen as little more
7 than a palliative" --

8 **A.** Well, that's what will be argued. It was bound to be.

9 **Q.** -- is that your own view?

10 **A.** Indeed, it still is being argued. That's why we've
11 got this Inquiry.

12 **Q.** Was that your own view or were you simply referring
13 there to --

14 **A.** No, my view was that we would -- I'm giving you my
15 view. I'm trying not to be -- I mean, I'm not --
16 I am -- as I get older, I get more cynical, but I'm
17 not just being cynical. The reality is that whatever
18 we gave would be denounced as not enough. I warn you
19 that if this Inquiry announces more money, it will be
20 one of those -- amongst those who react to it will be
21 people denouncing it for not giving enough. I mean,
22 it's non-stop, this. And this -- the haemophilia
23 campaigners have a persistence which dwarfs any other
24 campaigners I know. That's why we're hearing all this
25 40 -- almost 40 years later. It just goes on and on.

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1 concern for the position of those --

2 **A.** It was motivated by concern for the individuals.

3 I mean, the bad press you've got to watch out for the
4 way you do it. There's no point in helping and, you
5 know, at least responding to one's own feelings, you
6 know, that we should do something to help if we
7 possibly can, and then going -- you know, you might as
8 well mitigate the extent to which you're denounced for
9 it in the press.

10 With great respect to the Chairman, he faces the
11 dilemma we did. I'm sure the expectation of the
12 campaigners is he's going to recommend a large sum of
13 compensation is now given to the victims, and I just
14 warn him that -- I mean, maybe I won't go down this
15 any further but you won't find instant joy in doing it
16 because there will then be an argument about whether
17 it is enough.

18 **Q.** I just want to pick up what the Prime Minister's
19 response was to your proposal, and we can do that,
20 I think, by reference to CABO0100003_005.

21 **A.** Again, we did make more money available eventually,
22 didn't we?

23 **Q.** You did. I'm looking at the decision-making process,
24 Lord Clarke, and your evidence is a convenient way for
25 us to put that into the public domain, and we

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1 And the Government's latest reaction to it is to just
2 see if an Inquiry will handle it for a bit.

3 And we all want to give help. I mean, there
4 isn't -- I never met -- I don't think a man or woman
5 has been born who doesn't feel sympathy for the
6 victims of this dreadful tragedy. Turning it into
7 financial, you know, help is difficult, and the way of
8 the world is, that there will always be some people
9 who say whatever you give, it ain't enough, and it
10 will be described as a palliative. And if you're not
11 careful, if you rephrase it, it will be taken as "Ah,
12 you see, they admit it was their fault all along, so
13 we've now got to calculate everything we've lost and
14 have a sort of legal measure of compensation".

15 You can't win, which explains the caution you
16 see quite a lot of people exercising about how we
17 respond to the natural human desire to help but you've
18 got to be careful how you do it. And then, as I say,
19 I touch on -- what didn't happen, actually, in the
20 end, the way you will set off lots and lots of other
21 patients groups who all assume if you can do it for
22 haemophiliacs, you should do it for us.

23 **Q.** To what extent, at this stage, was the proposal that
24 you're articulating here motivated by a concern to
25 avoid bad press, or to what extent was it motivated by

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1 obviously can't ask Mrs Thatcher. So this is a minute
2 from Paul Gray, 17 November 1989, to the Prime
3 Minister. Just want to --

4 **A.** That looks like my underlining, funnily enough.

5 **Q.** It may be. I don't know. In any event, it talks
6 about that you:

7 "Ken Clarke has this evening sent you the
8 attached minute ..."

9 I think that's the document we'd just looked at:

10 "We had no warning this was coming; and there is
11 no evidence that it has been cleared with the
12 Treasury.

13 "You will want to consider the points made in
14 the letter. For the most part they repeat the dilemma
15 you have recognised in the earlier deliberations this
16 week; acceptance of liability at this stage would have
17 enormous repercussions, but public pressure for some
18 further action is intense."

19 There's then a reference to correspondence that
20 has been received, including heartrending examples.
21 Then:

22 "Ken Clarke's proposal for a quick further
23 injection of £20 million may be the right conclusion.

24 But there are counter arguments:

25 "-- is it enough?"

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1 "-- will it have any effect in buying off
2 pressure or merely encourage demands for more,
3 particularly if it is quickly followed by a Canadian
4 announcement ..."

5 The suggestion is there should be a discussion
6 involving the Treasury. I'm not going to --

7 **A.** John Major was the Chief Secretary to the Treasury at
8 that stage, who handled the public spending decisions.

9 **Q.** Then I think there is -- I don't think we need to go
10 to it -- there is a decision from the Prime Minister
11 to discuss the proposal with the Treasury and with
12 you. We can pick the picture up next at
13 HMTR0000001_008.

14 **A.** She obviously must have expressed some interest in it
15 for me to be doing this minute to the Prime Minister.

16 I suspect -- I gave my recollection -- she was like
17 the rest of us, she was anxious to do something if we
18 easily could, or if we actually could.

19 **Q.** We can see this is -- looks like a briefing note.

20 It's from RB Saunders, and I think it's a Treasury
21 document, so it's addressed to the Chief Secretary to
22 the Treasury.

23 **A.** Yes, it's going to the Chancellor.

24 **Q.** We can see it's dated 20 November 1989. It's copied
25 to the Chancellor and others, and it refers to the

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1 typical Treasury stance, is fine as long as it comes
2 out of the Department of Health's budget?

3 **A.** Absolutely, and can I tell you, if you have a spending
4 proposal it's their reaction to 90 per cent of the
5 cases, and I think that's what we eventually did.

6 That's one thing you have to be at mind when you are
7 our Health Minister. It's too easy to be frightfully
8 generous with other people's money. Every time you do
9 give money, there is some other health expenditure
10 that you're having to hold back or withhold or
11 restrain. There's no such thing as free money.

12 There's no open-ended supply of money to go to.
13 **Q.** Then we can see a reflection of the discussion at the
14 meeting between you, the Prime Minister and the
15 Treasury, on the 20 November 1989, at HMTR0000001_012.

16 This is a document from Paul Gray, so from
17 Number 10 -- so the Prime Minister's private
18 secretary -- to your private secretary, it's addressed
19 to Andy McKeon.

20 **A.** We obviously had a discussion --

21 **Q.** Yes. So, again, I don't need to go through all --

22 **A.** -- and my 20 million suggestion.

23 **Q.** Yes. We can see that there's obviously been
24 a discussion in the course of that afternoon with the
25 Chief Secretary to the Treasury, and the Attorney

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1 first paragraph:

2 "You are attending a meeting about this with the
3 Prime Minister this afternoon.

4 "Its genesis ... is a meeting which the Prime
5 Minister is having with The Haemophilia Society ..."

6 Then paragraph 3 is the recommendation:

7 "You should support Mr Clarke's proposals, so
8 long as he agrees to absorb the costs as in paragraph
9 5 below" --

10 **A.** This is the Treasury reaction.

11 **Q.** Yes.

12 **A.** This is wholly predictable. Yes, to this day, that's
13 how they react to anything in this country.

14 **Q.** "... and join with him in resisting any pressure for
15 more generous treatment."

16 Then it goes on to talk about what the actual
17 proposal is in relation to --

18 **A.** The Prime Minister was obviously sympathetic because
19 you wouldn't normally expect her to agree to a meeting
20 with The Haemophilia Society, she'd ask a Health
21 Minister to meet them on her behalf but she -- she
22 herself had obviously got interested in doing
23 something to help.

24 **Q.** Is it right to understand from this: the Treasury
25 stance, and you said, I think, it's probably the

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1 General also present, and I think that's probably
2 Norman Lamont at this stage. Then if we go further
3 down the page --

4 **A.** Yes, John Major wasn't there very long as chief
5 secretary. I think by this time Norman Lamont is
6 chief secretary.

7 **Q.** Yes, I think that's right. Then we can see there's
8 a discussion about the litigation, and then:

9 "Summing up this part of the discussion, the
10 Prime Minister said it was agreed that the issue of
11 whether or not to proceed with the further allocation
12 to the Macfarlane Trust need not be affected by the
13 position reached in the legal proceedings. The issue
14 therefore fell to be settled on political grounds."

15 Your proposal is then set out, and you say you
16 proposed to find it from within the new Departmental
17 budget, resulting from the autumn statement decisions.

18 Then if we go over the page, top of the page,
19 you're recorded as saying this:

20 "£20 million would undoubtedly fall well below
21 the aspirations of those campaigning for additional
22 help. But he [that's you] thought it struck the right
23 balance between the conflicting considerations."

24 **A.** Well, it's just -- it's impossible to make -- you
25 couldn't calculate an exact sum. It's just a question

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1 of every individual's judgment of, you know, all --
 2 I won't repeat anything that was said in the letter.
 3 You just -- in the end, it's just a question of what
 4 feels right and is actually affordable, without doing
 5 too much damage to other parts of the health budget.

6 **Q.** Then, just so we understand, the reference to
 7 conflicting considerations, are those the points we
 8 saw set out in some of the earlier documents that
 9 we've looked at, that you and others had raised?

10 **A.** Sorry, what am I being asked?

11 **Q.** If you look at that first paragraph, it says that:
 12 "... he [that's you] thought it struck the right
 13 balance between the conflicting considerations."

14 I'm just trying to understand what the
 15 conflicting considerations might be. Do you think
 16 that's a reference to the issues you've already
 17 alluded to, not wanting to set precedents, et cetera?

18 **A.** Well, what do we say to the people who are pursuing --
 19 the groups who are campaigning for, you know, what
 20 they would describe as compensation? For other
 21 groups? Yes. You have them all the time.

22 And it is -- it's not easy to distinguish the
 23 haemophiliacs from other groups of people who had
 24 sadly suffered as a result of either medical mistakes,
 25 whether you will -- you pay -- you're legally liable

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1 information about their life expectancy was
 2 available."

3 Can I ask you first, Lord Clarke, about the
 4 first sentence. I understand entirely, and I'm not
 5 proposing to ask you why at this stage you wanted to
 6 avoid acceptance of legal liability -- we'll look at
 7 the litigation later -- but it's also recorded there
 8 that it was -- would be desirable to avoid conceding
 9 any "moral obligation". Why was that seen as
 10 important?

11 **A.** It's not a phrase used, isn't it, really? But
 12 I think -- I think -- I mean, with -- reading the
 13 document and interpreting it with hindsight as you
 14 are, that the problem was to avoid, if we could,
 15 conceding that we accepted there was sort of "fault"
 16 on the part of the doctors, or the Health Service, or
 17 the Government. Because people don't understand
 18 the -- once you start conceding "fault", people don't
 19 understand why you're not accepting legal liability.
 20 Indeed, it is quite difficult to argue that there's no
 21 legal liability if you accept there's some fault on
 22 your part. There were obviously -- the thing -- as
 23 far as possible, the thing to try to make clear was
 24 this was being done as a gesture of what we believed
 25 to be public sympathy and desire to help if we could,

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1 if you make a mistake, but other medical, as it were,
 2 accidents when people had not -- hadn't been enough
 3 scientific knowledge of the full effect of particular
 4 medicines or particular treatments. I mean, in
 5 a rapidly changing health world, with the pace of
 6 clinical advance we have nowadays, it happens all the
 7 time, and it will continue to happen. And
 8 particularly when you have a new disease suddenly crop
 9 up.

10 **Q.** Then we can see the document continues:

11 "In discussion, the following points were
 12 raised ..."

13 And it's the first paragraph here I want to ask
 14 you about.

15 "In presenting such a package, it would be
 16 desirable, as well as avoiding any acceptance of legal
 17 liability, to avoid conceding any moral obligation.

18 Rather the emphasis should be on the special
 19 circumstances of this particular case - although
 20 distinguishing the position of the haemophiliacs from
 21 other difficult cases like vaccine damage was not
 22 easy. It was also reasonable to point out that,
 23 without the treatment they were given with the blood
 24 products, many of the haemophiliacs would have died;
 25 your Secretary of State would consider whether

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1 and -- which actually was the desire of the Prime
 2 Minister and ministers, to help if we could. Not to
 3 deal with every problem but to at least give something
 4 that might alleviate some of the problems of the
 5 families affected.

6 That's -- I mean, without trying to
 7 over-interpret one phrase, that's how I read it now.
 8 That's what I think we're on about here.

9 **Q.** Then if we look towards the end of that paragraph,
 10 it's recorded as a point of discussion or a point
 11 raised:

12 "... reasonable to point out that, without the
 13 treatment they were given with the blood products,
 14 many of the haemophiliacs would have died ..."

15 Now I explored this with you yesterday,
 16 Lord Clarke, to an extent, but I want to ask you at
 17 this point in time, are you able to assist us with
 18 what the factual basis is for what appears to have
 19 been your understanding articulated here?

20 **A.** No, I obviously had this understanding -- I still have
 21 this understanding. My recollection is that the
 22 haemophiliacs had quite a short life expectancy on
 23 average before this prophylactic treatment was
 24 produced and they -- you know, they were at less risk
 25 from severe bleeding incidents as they had been. But

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1 you have to ask a doctor what the factual basis is --
2 whether that's factually -- I mean, it's what
3 I thought at the time was factually correct, and what
4 I think was factually correct, and obviously the
5 person in the Prime Minister's office, producing this
6 letter, thought was factually correct. I mean, as far
7 as I'm aware, it is factually correct, but I don't
8 know. You'd need a medic to give you a definitive
9 answer to that.

10 **Q.** The source of the information recorded here, it's
11 likely to have been you, isn't it, or your department,
12 rather than the Prime Minister's department or
13 Norman Lamont at the Treasury?

14 **A.** Well, it's a doctor, isn't it, somewhere, the original
15 information? It is a medical judgment. I can't
16 remember what the source of it was, why we all
17 believed that. But again, unless you correct me,
18 I believe -- I still think it's true, but I mean
19 I haven't done research into finding out why it's
20 actually true.

21 **Q.** Then it continues:

22 "... your Secretary of State would consider
23 whether information about their life expectancy was
24 available."

25 I don't think the documents tell us if you did

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1 terrible tragedy and want to do what was possible."

2 In the absence of a mathematical calculation or
3 objective needs assessment, was this really an
4 exercise in looking at what kind of amount of money
5 can the Department find from its existing budget and
6 spare for the cause?

7 **A.** Well, it's all those things well, I'd say -- in the
8 end you are making a broad judgment. You know, how
9 much can we find that is likely to be of some help and
10 make a difference, to the people affected? You know,
11 what feels reasonable? The best reflection we can
12 afford without doing damage to other possible -- you
13 know, expenditure we might engage on worthwhile health
14 activities, how much is proper, as it were, for us to
15 see if we can find it to -- as I have said, we weren't
16 compensating everybody for their losses. We couldn't
17 do that. But what seems to be significant enough to
18 make, we hope, a difference, to be of some benefit to
19 the families connected.

20 So I think -- you will correct me if I'm wrong,
21 and I apologise if my maths is wrong, but I seem to
22 recall somewhere it's about £70,000 or £80,000 in 2021
23 money.

24 **Q.** You say in your witness statement the sum of £20,000
25 represents a little more than £44,000 in today's --

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1 seek or obtain any such information. Are you able to
2 help us in the absence of documents?

3 **A.** No. I couldn't, off the cuff, start answering
4 questions about the life expectancy of victims.

5 **Q.** No. In your witness statement, so if we go to the
6 second statement again, WITN0758012. If we go to
7 paragraph -- sorry, page 51. We pick it up halfway
8 through the bottom paragraph. You say here:

9 "Looking back, it seems the amounts offered were
10 the best solution available. There was no
11 mathematical calculation or objective needs
12 assessment; it was an exercise of a broad judgment in
13 which the overall sum of £24,000 per family seemed to
14 be a reasonable" --

15 **A.** It's about £80,000 in today's money, isn't it?

16 **Q.** Well, I think in -- I'm not sure whether that's right.
17 I think you give a different --

18 **A.** I'm not sure whether that's right, I haven't --
19 certainly an off-the-cuff ...

20 **Q.** In any event:

21 "... in which the overall sum of £24,000 per
22 family seemed to be a reasonable outcome, having
23 regard to the size of the funds that would have to be
24 made available by the Department. We shared the
25 widespread public sympathy for the victims of this

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1 **A.** Oh, do I? Well, in that case, I've got it grotesquely
2 wrong in my statements. I correct myself in my --
3 from my witness statement. It's £44,000 in today's
4 money, is it?

5 **Q.** To put it in context, in 1989 terms, £20,000 was less
6 than the annual salary for one year of a backbench
7 member of Parliament.

8 **A.** What, the -- the '89 one?

9 **Q.** £20,000 for --

10 **A.** That was then the annual salary of a member of
11 Parliament?

12 **Q.** In fact, it's --

13 **A.** Well, that may well be because, I mean, a member of
14 Parliament nowadays is paid £80,000 a year, say --
15 I can't remember what it is. I'm not a member of
16 Parliament anymore.

17 **Q.** £20,000, would you accept, wouldn't begin to
18 provide -- to compensate or recognise the kind of
19 financial losses sustained by people who, because of
20 their infection and the desperate consequences for
21 their health, have been unable to work, year in, year
22 out?

23 **A.** Oh, yes, some of them. That's what I'm saying. But
24 as -- if -- had we lost a legal action, then you would
25 have got down to the assessment of damages. And that

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1 would have included -- it would have taken a very long
2 time -- for every plaintiff trying to see what
3 particular consequences that plaintiff had suffered,
4 and some financial measure, if you could, of what they
5 had lost. I mean, had the Government fought the case
6 and lost -- we never thought we were going to lose --
7 I don't think the plaintiff's lawyers thought for one
8 moment they were ever going to win -- but had we
9 conceded or been found legally liable, that is the
10 kind of calculation you would then have made. And
11 when we paid this, we didn't go out making any sort of
12 great claim saying, "This should deal with everybody's
13 financial problems", and, "The right figure for every
14 victim". Sadly, we couldn't do that. And we were not
15 legally liable.

16 And even then, the consequences of starting to
17 pay out full compensation to people whose treatment
18 had gone wrong, regardless of fault -- the Health
19 Service only pays out if someone is found to have been
20 negligent. They are negligence claims. You have to
21 do that. You wouldn't have any money left to run the
22 Health Service otherwise.

23 And nowadays it's much worse. We're much more
24 litigious nowadays. Fighting litigation, paying legal
25 costs and compensation, is a quite significant

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1 Q. If we move to DHSC0002536_031.

2 A. Sorry, it's coming up, is it?

3 Q. It is, yes. DHSC0002536_031.

4 This is another letter from Paul Gray, at
5 Number 10, 22 November 1989. It's addressed now,
6 I think, to the -- it's Alan Davey, Minister of
7 State's Office, Department of Health, so it's
8 addressed, I think, to Mrs Bottomley's private office.

9 We can see it refers to a meeting:

10 "Robert Key MP this afternoon led a Conservative
11 Parliamentary delegation to see the Prime Minister
12 about the position of haemophiliacs who are infected
13 with the HIV virus."

14 And it identifies other members of the
15 delegation.

16 And then says:

17 "Your Minister was also present."

18 Again, as I say, I think that's a reference to
19 Mrs Bottomley.

20 If we can just go over to the second page,
21 there's just a point I want to ask you about. It
22 records the discussion and the various contributions
23 of members of the Conservative Parliamentary
24 delegation.

25 A. Yes.

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1 percentage of the full Health budget nowadays. It's
2 because society is more litigious nowadays, and also
3 because we made -- in my opinion -- I always
4 thought -- I was about the only minister who thought
5 it a mistake at the time, as I've been in Health, we
6 introduced this no-win-no-fee rule that people now sue
7 on. So lawyers, they go around organising cases, and
8 they don't charge a fee to the claimant, so anybody
9 can afford to do it, you just have to let them use
10 your name, and the lawyer goes on the no-win-no-fee
11 and either takes a percentage of what you win or, if
12 they negotiate a settlement, takes a substantial
13 percentage of the settlement for the legal costs.

14 I'm sorry I'm going on, but that is the reason
15 why -- I always anticipated that. That's why we had
16 to be so careful that we mustn't start admitting
17 fault, admitting blame, (*unclear*) legal liability.
18 Once you start doing that the floodgates open, because
19 sadly, the Health Service cannot guarantee to cure
20 everybody of every ailment for which it gives the best
21 possible treatment in the light of medical knowledge
22 at the time.

23 Q. If we just move to, then --

24 A. Sorry, I've given you a bit of a speech, but that's
25 the sort of background to all this.

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1 Q. If we then pick it up where it says, fourth paragraph
2 down, "The Prime Minister said":

3 "The Prime Minister said that the Government
4 recognised the need to provide additional assistance.
5 She could not, however, accept the case for action on
6 anything like the scale being suggested by some of the
7 pressure groups, not least because there could be no
8 question of the Government accepting legal liability
9 in the run up to the prospective court proceedings.
10 There was also a major problem in ring-fencing any
11 assistance given to haemophiliacs."

12 Then this:

13 "The position was that they had been given the
14 best treatment available on the then current medical
15 advice, and without it many of the haemophiliacs would
16 have died."

17 A. She had obviously been briefed as I was.

18 Q. Yes. I've already asked about the assertion many of
19 the haemophiliacs would have died and, Lord Clarke,
20 just so you understand, the Inquiry has received
21 evidence that would suggest that that is not correct,
22 but it will all be a matter for the chair to assess in
23 due course.

24 A. Well, that's a question for the medics to sort out.

25 Q. But it's the phrase to "the best treatment available".

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1 This becomes something of a mantra, Lord Clarke -- we
2 can look at it, it appears in other documents, it
3 appears in interviews you've given over the years --
4 the assertion that they received the best treatment
5 available on the then current medical advice.

6 **A.** Yes.

7 **Q.** Are you able to assist with how it was, or on the
8 basis of what it was you formed the view that that was
9 the factual position, "best available medical advice?"

10 **A.** Well, on the basis of all the evidence we've been
11 discussing for the last day and a half. It was --
12 there was -- as always, often again the case, there
13 was this balance of risk. We had begun to realise --
14 though we weren't certain but there was, you know,
15 a possibility of beginning ever more probable -- that
16 some people being adversely affected by being given
17 Factor VIII, because of the infected source that some
18 of the Factor VIII was coming from.

19 On the other hand, according to the medics, more
20 damage -- more people would be damaged, and the
21 quality of life of haemophiliacs very badly damaged,
22 if we stopped giving them the Factor VIII. And that
23 judgment -- that was -- we -- you know, we spent a day
24 and a half going through all the expert committees,
25 the meetings of medical experts and specialists in the

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1 **A.** What's then described there, that was broadly that --
2 the judgment that was taken. We know what -- there
3 was that sub committee when Mr Galbraith and all that,
4 which we went over yesterday. There were -- experts
5 had whole long sessions. Again, the only newspaper
6 report this morning, of course, completely misreports
7 what I said yesterday, some said -- subeditor has put
8 a headline on The Times saying, "Clarke says ignored
9 the advice of" -- it's actually Mr Galbraith they were
10 talking about. It wasn't ignored. It was considered
11 by some of the best medical experts in the country,
12 with Mr Galbraith there, and they appeared to have
13 come to the conclusion -- which they never forward to
14 ministers -- that actually, the advice he was giving
15 wasn't the best advice and the best -- and they -- one
16 had to keep on giving Factor VIII.

17 Now the judgment of that sub committee I suspect
18 you couldn't have found, globally, people with more
19 expertise than the members of the sub committee and
20 the people they had with them, the experts supporting
21 them -- I doubt whether you could have found a group
22 with more expertise as to what was the best way in the
23 light of current medical knowledge to treat
24 haemophiliacs.

25 So that's an example of what lies behind this

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1 field. That was the position. Nobody -- my
2 understanding -- and it remains -- nobody had a better
3 treatment, prophylactic treatment, for haemophiliacs.
4 And nobody knew, you know -- unfortunately, the
5 difference of being -- hindsight is we now know that
6 the risk of this contaminated product was absolutely
7 enormous because we discovered that so many people got
8 infected. But, I mean, you know, no doubt the Inquiry
9 will eventually decide what was the best judgment that
10 might or could have been made by the medics of what
11 the risk was.

12 **Q.** So this reference to "best available treatment", then,
13 is a reflection --

14 **A.** What other treatment was there?

15 **Q.** Well, can I just ask the question, please, first,
16 Lord Clarke?

17 This is a reflection, is it, of your
18 understanding that there were no alternatives and that
19 the consequence of not receiving Factor VIII
20 concentrates --

21 **A.** Yes, I mean --

22 **Q.** -- was death or serious damage?

23 **A.** -- we can't go back over it. It's a -- I don't know
24 whose -- I can't remember now whose letter this is.

25 **Q.** It's from Number 10.

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1 simple sentence as, I think you say, Paul Gray has
2 repeated in this letter.

3 **Q.** I'm just going to observe, Lord Clarke, so that others
4 understand why I'm not going to ask you further
5 questions along these lines, whether what you've
6 described is an accurate characterisation of the
7 decision-making, in particular on the Committee on
8 Safety of Medicines Biological Sub-Committee will be
9 a matter for the chair to decide, and me asking you
10 about your understanding is not going to improve
11 that --

12 **A.** But we've been over the decision-making --

13 **Q.** -- which is why I'm not going to ask you --

14 **A.** -- in considerable detail.

15 **Q.** -- about it.

16 If we go next, just and pick up and complete the
17 decision-making that led to the extra £20 million to
18 the Macfarlane Trust, at CABO0100002_008.

19 **A.** I mean we did give this 20 million, didn't we?

20 **Q.** Yes. I just want to pick up the handwritten entry at
21 the bottom. You've transcribed it, I think, in your
22 statement, but it says, as I understand it:

23 "Prime Minister subsequently discussed the
24 announcement with Mr Clarke this morning, and it was
25 agreed he would consider the possibility of increasing

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1 the initial across-the-board payment of £10,000 within
 2 an unchanged ... £20 [million] package."
 3 I think you say in your statement -- sorry, this
 4 was agreed to the Treasury. You say in your statement
 5 you don't recall the detail of how that came about.
 6 **A.** No. I mean, my -- my guess, reading that note that
 7 somebody has written, is that was the Prime Minister's
 8 idea which she was pressing me to go away and think
 9 about doing.
 10 **SIR BRIAN LANGSTAFF:** The words are actually "unchanged
 11 overall £20 [million] package", I think.
 12 **A.** Yes, the 20 million -- pay more of it quickly upfront,
 13 appears to be what the Prime Minister was asking me to
 14 consider.
 15 **MS RICHARDS:** Then if we go to the announcement of the
 16 payment, HMTR0000001_023, you make the announcement by
 17 way of a written answer on 23 November 1989.
 18 If we go further down the page, we can see you
 19 refer to the establishment, the initial establishment
 20 of the Macfarlane Trust. Then you say -- this is the
 21 bottom of the left-hand column, Lord Clarke:
 22 "The trust has been able to give significant and
 23 valuable help to a large number of infected
 24 haemophiliacs and their families. But the time has
 25 now come to reassess the total sum available to it.

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1 **A.** I don't know what that was about.
 2 **Q.** "The House will appreciate that, as before, this is
 3 not compensation but a payment which responds to a
 4 particular and tragic situation.
 5 "In making this new allocation the Government
 6 had two objectives in mind ..."
 7 Then we see the proposal: the individual payment
 8 of £20,000, as a one-off payment, and then, secondly,
 9 to enable --
 10 **A.** So we had altered it to 20,000 each? Yes.
 11 **Q.** Yes. And then the rest essentially would be provided
 12 on an individual basis by the Trust.
 13 **A.** That was a compromise on the, do you share it all out,
 14 do you look at the particular needs of families?
 15 **Q.** The -- it appears that -- if we just look at
 16 MACF0000002_020. Sorry, wrong document -- no, that is
 17 the right document. Sorry, Soumik.
 18 These are the minutes of a meeting, an
 19 extraordinary meeting of the trustees of the
 20 Macfarlane Trust --
 21 **A.** Trustees of the Macfarlane Trust, yeah.
 22 **Q.** 29 November 1989. But just picking it up, because it
 23 refers to a meeting with you, bottom of the page. It
 24 says:
 25 "On ... 21 November the Trust and the

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1 The true nature and extent of the needs of the
 2 infected haemophiliacs have become much clearer now
 3 that the trust is in operation and has been able to
 4 examine individual cases in detail. I am satisfied
 5 that the Government should now make extra resources
 6 available to the trust."
 7 Just pausing there. What did you mean by
 8 referring to "the true nature and extent of the needs"
 9 have been --
 10 **A.** I can't remember. It looks as though -- it looks as
 11 though the problem with the haemophiliac is to -- the
 12 Trust, the Macfarlane Trust, there had been -- they
 13 hadn't -- presumably, in distributing it, because
 14 they'd been looking at individual needs. They'd
 15 started by paying out, on an individual basis,
 16 everything. So in assessing different individuals. I
 17 can't remember the origin of it now but it looks as
 18 though we had got some information of the kind of
 19 financial problems that some of the victims and their
 20 families were suffering.
 21 **Q.** And then --
 22 **A.** But I can't remember now what that was based on.
 23 **Q.** And then we can see the additional payment is -- it's
 24 there recorded as being 19 million, bringing to
 25 29 million the total payments made --

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1 Haemophilia Society had been invited to a meeting with
 2 the Secretary of State for Health" --
 3 **A.** I don't remember this meeting.
 4 **Q.** -- "scheduled ... on Thursday 23 November. No
 5 detailed agenda or papers had been provided in advance
 6 of the meeting."
 7 Top of the next page:
 8 "At the meeting it quickly became clear that the
 9 Trust and the Society had been invited to be told the
 10 Government's intentions only just in advance of
 11 an official parliamentary statement and press
 12 release."
 13 **A.** Very wise.
 14 **Q.** "There had therefore been no negotiation and very
 15 limited scope for discussion, though the views of the
 16 Trust and the Society have been firmly presented to
 17 the extent that the draft statement and press release
 18 had been modified ..."
 19 I'm not going to ask you about the details of
 20 the draft statement or the press release, but is
 21 that -- the Inquiry has heard some oral evidence,
 22 I think, from Mr Watters of The Haemophilia Society,
 23 of his recollection of what might have been the same
 24 meeting. Do you have any recollection of it?
 25 **A.** I don't claim -- I'd forgotten I ever had a meeting

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1 with The Haemophilia -- this is the Trust, the
2 Macfarlane Trust. I don't remember it. But I am not
3 surprised at what he says. That was -- from the point
4 of view of the Government, that was a sensible line to
5 take. Otherwise, the moment you had them in and said,
6 "We're thinking of giving you X", it would turn into
7 a negotiation, and they would say "That's not
8 enough --

9 **Q.** So it was a fait accompli?

10 **A.** -- "could we have Y, you know?" So it was to give
11 them the courtesy of letting them know in advance
12 before we made a public announcement.

13 **Q.** So it was the presentation of a decision that had been
14 made, as opposed to a discussion?

15 **A.** Yes, that was the only way. You can't possibly --
16 well, you could if you wanted but you'd just be
17 starting a long negotiation, if you just called them
18 in to discuss it with them.

19 **Q.** If we just go back to your witness statement,
20 WITN0758012 --

21 **A.** I mean, if you were in their shoes, you would ask for
22 more, wouldn't you? I would if I was in their shoes.
23 If I was just brought in and told "We're thinking of
24 giving you X", and I'd say "Can't you give us Y?"

25 **Q.** If you go to page 63, this is of your second

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1 of need; and ... the Social Security assistance. It
2 has to be set against the background of the
3 constraints on public funds and that there were many
4 groups of people who suffered terrible diseases
5 without being able to claim additional support from
6 the State -- including other sufferers from AIDS."

7 Then you refer to the argument about whether
8 payments could be ring fenced.

9 That was your reflection in your relatively
10 recent statement. Does it remain your view that that
11 payment, as at November 1989, was an effective
12 response to the financial hardship of those.

13 **A.** It was a mitigation of the financial hardship. It
14 wasn't a measurement of the financial hardship. That
15 is what would happen if you had full liability, legal
16 liability, and you were trying to calculate what was
17 required to give full compensation. This was -- it's
18 essentially a judgment as to what has the right feel
19 to your judgment and your conscience, and bearing in
20 mind where you're taking the money from. What makes
21 a difference to mitigate problems caused by the
22 families. Is it sufficient to be helpful and of use?
23 And not so much that you're going to cause outrage to
24 other groups or you're going to do real damage to some
25 other worthwhile health expenditure that you could

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1 statement, Lord Clarke.

2 **A.** And you can't tell them too far in advance because
3 they'll leak it and start weeping to everybody that
4 it's not enough, I fear but I'm not being particularly
5 unkind to the Macfarlane Trustees, that's part of
6 human nature.

7 **Q.** I just want to ask you what you say here,
8 paragraph 43.1. You say:

9 "I have been asked to reflect on the increased
10 payments made to haemophiliacs in November 1989 and
11 whether they were an effective response to the
12 financial hardship of those who had suffered from
13 infection with HIV/AIDS."

14 **A.** Yes, you're quite. You corrected me. It was the
15 44,000. I was quite wrong.

16 **Q.** Just so people understand, you've been asked by the
17 Inquiry and the questions posed to you in your
18 statement to reflect in that way. Your response is
19 43.2:

20 "It seems to me that they were a reasonable
21 means of responding to and alleviating suffering and
22 hardship. The sum of £20,000 represents a little more
23 than £44,000, in today's money, which is a substantial
24 sum. It was coupled with ... the continuing ability
25 of the Macfarlane Trust to make payments on the basis

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1 embark on.

2 **Q.** And it wasn't --

3 **A.** It's bound to be a broad judgment -- I think the
4 discussion between ministers that led up to it, it's
5 what does it feel right? Is this about right? There
6 is no way of calculating it.

7 **Q.** It wasn't, as I understand it tied to actual
8 assessment of financial hardship?

9 **A.** No, that's what you do if you were legally liable. If
10 there was fault on your part. There obviously is no
11 fault on anybody's part, in my opinion, and I think
12 the plaintiffs' solicitors knew that. I suspect --
13 I don't know, but I've not seen their advice, but
14 I suspect the plaintiffs' lawyers in the legal action
15 were -- felt as confident as we did that it was almost
16 certain that they were going to lose, which is why
17 they started overtures for a settlement and, no doubt,
18 were advising their clients that it would be very wise
19 to settle this.

20 **MS RICHARDS:** We'll come on to the litigation, sir,
21 perhaps as the next topic after the break.

22 **SIR BRIAN LANGSTAFF:** Just before we do, I wonder if I can
23 clarify the figures with you, Ms Richards, because
24 there may be some who are watching who have wondered
25 and may have listened also to what Peter Stevens had

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1 to say earlier, when he gave evidence about the
2 Macfarlane Trust.
3 There were, I have been told 1,200 haemophiliacs
4 who might be eligible for compensation. £20,000 each
5 is £24,000. The sum which Mr Clarke was proposing was
6 20 million. The -- sorry, 24 million, I should have
7 said. The sum Mr Clarke was proposing was 20 million,
8 the sum mentioned in Parliament was 19 million, and
9 there is a reference in Mr Clarke's statement to it
10 having been subsequently increased, not to 24 million,
11 which I thought it might have been the figure, but to
12 25 million. What was the actual sum paid in the end?

13 **MS RICHARDS:** I think we'll have to check that, sir.

14 I don't want to give you an off-the-top-of-my-head
15 answer, not least because, as you say, there were
16 different figures mentioned in different documents.
17 I'm sure we'll be able to establish the answer to
18 that.

19 **SIR BRIAN LANGSTAFF:** I think we really -- it ought to be
20 a matter of record, even now, despite what may have
21 happened to some records, so if we can have some
22 clarity or certainty about it, it would be helpful.

23 **A.** I can't remember what led to these little adjustments.
24 I've noticed that as we've gone through this
25 questioning, and why we were £1 million suddenly

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1 going to ask you to look at that.
2 If I can pick matters up, then, at MHRA0017681,
3 this is a submission dated 26 June 1989. It's to the
4 Minister of State for Health rather than being
5 directed to you. And it's headed "AIDS Litigation".

6 I just want to ask you about one passage. If we
7 go to page 5, paragraph 11 says this, and it's
8 recording the advice received by counsel:

9 "Counsel has indicated that he will wish to
10 establish that, in respect of the choice of patient
11 treatment, the 'duty of care' laid with the [Health
12 Authorities] and not with the Department. He
13 recognises that there could be presentational
14 difficulties in this - it would be important not to
15 imply that the Department had no role in, for example,
16 disseminating expert guidance - but he regards it as
17 necessary to establish this principle both as
18 a precedent for future litigation, and for tactical
19 reasons so that he can argue that proceedings against
20 the Department should be withdrawn. Are ministers
21 content with this approach?"

22 Then if we just go to the response by the
23 Minister of State for Health, at DHSC00 -- no, sorry.
24 Sorry, Soumik. WITN0758058.

25 We can see this, I think, on behalf of the

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1 vanishes and then, as you say, it later comes back,
2 I'm sorry, I can't help. I can't remember what that
3 was all about.

4 **SIR BRIAN LANGSTAFF:** Anyway, we'll --

5 **A.** I do remember. I've tried to explain. On the whole,
6 you knew you weren't calculating the exact figure. It
7 was a broad judgment of what kind of feels right and
8 what at least helps to deal with this sympathy we and
9 most members of the public felt for the victims of the
10 tragedy.

11 **SIR BRIAN LANGSTAFF:** Well, we'll return to the
12 questioning, then, at ten to four, shall we?

13 **MS RICHARDS:** Thank you, sir.

14 **SIR BRIAN LANGSTAFF:** Ten to four.

15 (3.19 pm)

(A short break)

17 (3.50 pm)

18 **MS RICHARDS:** Lord Clarke, I'm going to ask you next about
19 your involvement in the HIV haemophilia litigation,
20 some of which was going on in parallel with the
21 decision-making process we've just been looking at.

22 **A.** Certainly.

23 **Q.** Your statement explains a letter before claim was sent
24 in July 1988, or a preliminary letter. You say it's
25 unlikely it was drawn to your attention and I'm not

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1 Minister of State for Health, 24 July 1989. It says:

2 "MS(H) has seen your submission of 26 June and
3 has commented:

4 "For the present ..."

5 And then it's the second bullet point:

6 "I am cautious about the line at Paragraph 11.

7 I believe [Health Authorities] act under our guidance
8 in such matters."

9 Then it goes on to consider other matters.

10 So, just looking at both those two documents
11 together, the first says it will be important not to
12 imply that the Department had no role in disseminating
13 expert guidance, and then the Minister of State's
14 response is saying, "I believe Health Authorities act
15 under our guidance in such matters".

16 Do you have any observations to make about that
17 position? Do you disagree --

18 **A.** Not particularly, no. I don't know what David was
19 relying on when he gave his opinions. And -- no,
20 I mean, there was no difference ... I take the view
21 in litigation of this kind, and obviously Government
22 departments get litigated against from time to time,
23 and it sometimes comes to the ministers, that by and
24 large you're very heavily guided by the counsel you've
25 instructed and the advice you get. Obviously the --

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1 whoever you've instructed starts asking for the
 2 clients, does the client agree and act on the advice?
 3 But it's extremely silly to get in a legal team and
 4 instruct counsel and then to start making your own
 5 views about what you're going to argue and what you're
 6 going to not in the case, and -- never mind
 7 governments, I think that's true generally. There's
 8 an old statement I think that any lawyer who decides
 9 to act on his or her own behalf in a case has a fool
 10 for a client. It's -- the whole point of a counsel is
 11 you have somebody with a detached independent view,
 12 able to give you their best advice they can on how to
 13 conduct the case.

14 And in the case of a government department being
 15 sued, I took the general view you can't take it upon
 16 yourself airily to not argue -- to pursue arguable
 17 lines of defence. It's no good being generous with
 18 others people's money. The question of legal
 19 liability, if your counsel thinks it's worth pursuing,
 20 and it possibly will succeed, I think, other things
 21 being equal, you should take the advice and pursue it,
 22 unless there's something particularly unpleasant about
 23 the course of action you're being urged to take.

24 **Q.** I think your statement suggests, and the documents you
 25 refer to bear this out, that in the early stages,

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1 Then if we go towards the bottom of the page we
 2 can see in paragraph 2 a reference to whether there
 3 should be a preliminary issue about whether there was
 4 a duty of care, you'll see that in the second and
 5 third lines, Lord Clarke, at paragraph 2.

6 If we go over the page, we can see reference in
 7 paragraph 3 to:

8 "Our counsel also wishes to take other
 9 preliminary points ..."

10 I don't propose to ask you about the details
 11 of those for present purposes.

12 Then paragraph 4 explains:

13 "If the preliminary points did not succeed, the
 14 defence would contest allegations of negligence at the
 15 main hearing ..."

16 And the view is set out that there would be
 17 a robust defence.

18 What I then want to ask you to look at, if we go
 19 two pages further on, are the options that were put
 20 forward.

21 So option A is "Out of Court Settlement", and
 22 paragraph 8 refers to:

23 "The Haemophilia Society, MPs, the Press and
 24 a substantial body of opinion within the NHS favours
 25 an 'out-of-Court' settlement, so that those suffering

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1 Mr Mellor, as Minister of State for Health, was the
 2 minister who was being asked to agree or disagree with
 3 matters. But in October of 1989 he asked that you
 4 consider the position.

5 And if we go to DHSC0002536_078, this is just to
 6 give the date and see who is copied in. So it's
 7 26 October 1989 from JC Dobson. It's addressed to the
 8 Minister of State for Health's private secretary but
 9 we can see now it's copied to Mr McKeon, "PPS to
 10 SofS", so your principal private secretary.

11 **A.** Mm-hm.

12 **Q.** It refers to a paper, in paragraph 2:

13 "... prepared in consultation with medical and
 14 legal colleagues, with Medicines Division, and with
 15 Finance."

16 If we can then go to the paper, it's at
 17 DHSC0002536 -- no -- yeah, 2536_079. We can see it
 18 sets out current policy, in paragraph 1:

19 "Following previous discussions with Ministers,
 20 the Department and the other 'central defendants' in
 21 this action (Committee on Safety of Medicines;
 22 Licensing Authority; Welsh Office) are presently
 23 acting on the policy that the Plaintiff's claims
 24 should be put to the Courts, and that all allegations
 25 of negligence should be contested."

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1 the effects of HIV infection can quickly be assured of
 2 financial security."

3 And further detail is given in relation to that.

4 If we can then go on a further three pages,
 5 please, Soumik. Option B, halfway down the page, is:
 6 "Explicitly increase funding to the Macfarlane Trust."

7 "The Macfarlane Trust could be given additional
 8 funds, again on an ex gratia basis."

9 If we go over the page, we can see option C is
 10 an "Ex-gratia Payment":

11 "An amount could be allocated on a 'no-fault
 12 compensation' basis that would provide an ex gratia
 13 payment to haemophiliacs without either admitting
 14 liability or involving the Macfarlane Trust."

15 Then option D, next page, is "Commission of
 16 Enquiry":

17 "An option mooted by an NHS Haemophilia Centre
 18 Director (attached to the Haemophilia Society) was
 19 that a Commission of Enquiry might be established."

20 **A.** I didn't realise -- I'd forgotten that that was
 21 being -- early days, sort of thing, wasn't it?

22 **Q.** And this is in part what I want to ask you about.

23 "This could either assess the Government's
 24 record over the relevant period, or consider the case
 25 for an ex gratia payment along the lines of Option C,

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1 or both. Officials believe this would need to be
2 linked to an interim ex gratia award ... The eventual
3 cost of this option might be similar to that to option
4 A (or C); the advantage is that it might be slightly
5 easier to avoid knock-on-effects, since we could
6 always refer back to the Commission of Enquiry (C of
7 E) judgement that haemophiliacs were a particularly
8 deserving group."

9 Just wait until we get to the top of the next
10 page:

11 "(But such a [commission of enquiry] would
12 itself be a precedent)."

13 Then option E is "Publicise the Government's
14 position". Reference is made to there having been "so
15 far a low profile in the face of critical Press and
16 public 'rehearsals' of the HIV litigation."

17 And there is a suggestion in paragraph 16 that:

18 "As a final option, on its own or in combination
19 with one or other of Options A & D, the Government
20 could take steps (within the constraints imposed now
21 the matter is before the Courts) to set the record
22 straight."

23 Then if we just --

24 **A.** Am I right in thinking the judge had made it clear he
25 thought the parties should try to settle?

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1 "i. whether they would wish to consider any of
2 the alternative options to be worked up in more
3 detail."

4 Now, Lord Clarke, it's evident from everything
5 that follows in terms of the documentation that this
6 strategy doesn't change whilst --

7 **A.** Well, it's all sort of options being put, isn't it.

8 **Q.** There are.

9 **A.** They're making rather a meal of it.

10 **Q.** So there is, we know, no commission of enquiry set up.
11 Can you recall any explicit consideration being given
12 within the Department to the possibility of
13 a commission enquiry?

14 **A.** I mean, I -- in the end, the final settlement was
15 nothing to do with me. I'd left the Department by the
16 time all this went on. I seem to recall -- I mean,
17 partly from the documents, which may have reminded
18 me -- I was one of the people inclined to say, "Look
19 this is a no-win situation", not that -- you know,
20 obviously, you fight a case, it's win or lose if you
21 fight it to the end. But what I mean is, in terms of
22 presentation and everybody being satisfied -- the
23 Government was going to win this and that you should
24 fight -- because it was pretty ... like most people,
25 I was very confident we were going to win -- fight the

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1 **Q.** Yes, and I'll have a look at --

2 **A.** Which -- I mean, in those days -- I practiced as
3 a lawyer. I did quite a lot of negligence claims.
4 I didn't do many medical ones. And if counsel didn't
5 see the common sense of it or some -- more often it
6 was their clients who didn't see the common sense
7 of it, the judge would often drop a hint saying --
8 because sometimes, as in this case, it's quite
9 obviously worth considering. The downside for
10 a Government is that you get such bad publicity when
11 you settle, because people immediately assume you're
12 admitting liability and so why isn't it a lot more
13 money?

14 **Q.** If we just go to the next page, we can see "Summary":

15 "In the light of difficulties with Options A, C
16 and D"

17 So that's an out-of-court settlement, ex gratia
18 payment and commission of enquiry:

19 "... our advice remains that the Department
20 should publicise the extra flexibility we have offered
21 to the Macfarlane Trust but continue to strongly
22 defend the Court action. Attempts could also be made
23 on the publicity front to counter the critical
24 reporting so far.

25 "Ministers may however wish to consider:-

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1 legal action, get legal liability dismissed, and then
2 almost certainly you'd be -- then you'd have to make
3 some ex gratia payment to show that you, you know,
4 were not insensitive and weren't just -- because there
5 would be huge criticism of the court and the minister
6 deciding no money should go to haemophiliacs.

7 So, that, I seem to recall was the course.

8 I tended to prefer -- I think Norman Lamont preferred
9 that course as well, but I haven't got the faintest
10 idea what led to the eventual settlement except I
11 imagine the plaintiffs' lawyers were desperately
12 anxious to get a settlement, because I felt they felt
13 equally strongly that they were certainly on a loser
14 here.

15 **Q.** Lord Clarke, as you rightly point out, you left office
16 before the settlement --

17 **A.** Yes --

18 **Q.** -- so I'm not going to --

19 **A.** As I say, I got indignant about The Sunday Times last
20 week which blamed me for the supposed inadequacy of
21 the settlement when I wasn't even there. But, I mean,
22 I'm not bothering about press reviews -- but I'm not
23 sure why we're labouring it so much when, in the end,
24 I wasn't party to the decision, I was way away having
25 other problems, as I say, at the Department of

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- 1 Education by then.
- 2 **Q.** Just to go back to the question of a commission of
3 enquiry, effectively a precursor to a public inquiry,
4 can you recall that ever then recurring as an idea
5 during your time in office?
- 6 **A.** I'd forgotten it recurred. I was slightly amused,
7 because in those days we didn't have -- nowadays we
8 have inquiries quite regularly, as you appreciate, but
9 they weren't usual in those days. It seems an early
10 precursor of what has become the habit now of
11 expecting a public inquiry. But I don't remember it
12 being pursued much. I don't think it ran. Did it?
13 You'll know. You must go to the documents.
- 14 **Q.** There was no commission of enquiry, no.
- 15 **A.** No, no, I don't think it ran --
- 16 **Q.** The question is what consideration was given.
- 17 **A.** This particular submission, say, from the officials is
18 slightly making a meal of it. It is tortuously going
19 over every conceivable option that someone might wish
20 to consider. The key question is: should we settle or
21 not?
- 22 **Q.** If we just then look at WITN0758068, this is a minute
23 dated 23 November 1989. It's addressed to the
24 Minister of State for Health's --
- 25 **A.** Yes, it's obvious that David Mellor was handling it at

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- 1 others understand, the question there is whether the
2 Government should advance an argument that this was
3 something the courts could not assess.
- 4 **A.** Yeah, all right, yeah. As I've said earlier, I know
5 what David's reaction -- I can't remember what David's
6 reaction to this advice was. It -- I don't want to
7 sound too critical of the -- it's very careful,
8 considered and no doubt extremely copious advice, but
9 the officials seem to be expecting the minister to
10 second-guess every piece of advice he has from
11 counsel, in which case you might as well not hire
12 counsel in the first place. So unless something
13 startles you and you feel particularly strongly, "Oh,
14 we couldn't possibly do that!", because you think of
15 some political reason or governmental reason why you
16 couldn't possibly do that, I mean, they are -- I hate
17 to but I've got the phrase stuck in my head now --
18 they are making a terrible meal of it, and inviting
19 David Mellor to make a terrible meal of it.
- 20 **Q.** In fact you express your view on this issue at
21 WITNO --
- 22 **A.** I hope it's coincides with my present view, does it?
- 23 **Q.** Well, it's a one-paragraph description. You can no
24 doubt tell us if that's the case.
- 25 WITN0758069. 1 December 1989:

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- 1 this stage, not me.
- 2 **Q.** Or it may even have been Mrs Bottomley, I'm not sure
3 by this stage, but in any event Minister of State for
4 Health. It's copied to you. If we go over the
5 page --
- 6 **A.** Presumably if you want to know more about this, you'll
7 get David to come and give evidence about it.
- 8 **Q.** Quite possibly, Lord Clarke. If we see here,
9 paragraph 7:
10 "[The Minister of State] is asked to advise on
11 whether ..."
12 Then you'll see that there are three
13 judgments --
- 14 **A.** I've seen that yes.
- 15 **Q.** -- that the Minister of State is asked to consider:
16 whether a duty of care argument should be run, in
17 other words that there was no duty of care owed by the
18 Licensing Authority and Committee on Safety of
19 Medicines; (b) whether there should be a duty of care
20 argument, in other words arguing there was no duty of
21 care on the part of the Secretary of State; and then
22 (c) is whether it should be argued that allegations
23 concerning questions of policy should be struck at as
24 non-justiciable.
- 25 I know you're a lawyer, Lord Clarke, but so that

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- 1 "S of S [Secretary of State] has seen
2 Mr Wilson's submission of 23 November. His view is
3 that Counsel should argue all three points listed at
4 paragraph 7 of the submission. This includes the duty
5 of care argument in respect of S of S's
6 responsibilities and NHS" --
- 7 **A.** Yes, well, my views -- my views then seem to be pretty
8 well what they are now.
- 9 **Q.** "[Secretary of State] has commented that it would have
10 wide implications for Government if the Government
11 itself, as well as the Health Authority, is found to
12 owe a duty of care to an individual patient."
13 So your instruction, as it were, to the legal
14 team is to argue no duty of care, argue the Court
15 should --
- 16 **A.** Any reasonable argument that counsel thinks is
17 arguable and is not wasting the court's time and has
18 a chance of success should be argued. Otherwise the
19 Government is going to be in frightful trouble in lots
20 of other litigation that comes along from time to
21 time. The Government is always involved in
22 litigation.
- 23 **Q.** Then we can see there are various other steps in the
24 litigation, which I won't ask you about, but if we
25 move on, then to May 1990 and look at DHSC0038699_023.

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1 We can see this is a minute of 30 May 1990.
2 Again, it's directed to the Minister of State for
3 Health but it's copied to Mrs Shirley-Quirk in your
4 private office, and we can see the heading is "Defence
5 under the Limitation Act 1980":

6 "We are seeking Ministers views on whether the
7 Department, Medicines Licensing Authority and
8 Committee on Safety of Medicines should plead the
9 defence that the haemophiliacs action for damages is
10 out of time."

11 Over the page --

12 A. Well, I've already given out -- just telling you, you
13 know, what my reaction -- I -- almost certainly would
14 have been to that.

15 Q. Yes, just so we can follow it through. The options
16 are there set out.

17 "(i) plead the limitation defence in all cases
18 where it is technically possible;

19 "(ii) not take the point at all;

20 "(iii). Reserve our position on limitation."

21 A. I'm trying to read what counsel's advice was. I think
22 the counsel's advice was it's not worth -- the courts
23 are going to give an extension if you start arguing
24 it, isn't it? I'd have thought it was highly likely,
25 myself.

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1 State's legal expertise in this."

2 So that brings us to your position.

3 DHSC0046957 --

4 A. Now you'll startle me by saying I took a
5 quite different position at the time. I can't
6 remember.

7 Q. DHSC0046957_026. Your response, in contrast, I think,
8 to Baroness Hooper's, but consistent with
9 Mrs Bottomley's --

10 A. Oh, I see. I thought we should pursue the --

11 Q. "... we should certainly not abandon the limitation
12 point and he favours option iii."

13 Which is reserve position.

14 A. Slightly different opinion in those days. I was -- if
15 counsel had said it's not worth pursuing, I would have
16 done -- I'm sure I would have abandoned it, agreed
17 that they should abandon it. Only if counsel -- only
18 if our lawyers thought it was worth arguing would
19 I actually, I think, have proceeded.

20 Q. Are you able to add at all to this, in terms of what
21 your (*unclear: overspeaking*) --

22 A. Not at all.

23 Q. -- process might have been?

24 A. No. I think all these exchanges, whoever is sending
25 all these minutes, as I say, is labouring away in a --

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1 Q. I just want to see what the response was from
2 ministers, including yourself. So if we go to
3 DHSC0046957_044.

4 A. I don't think -- I rather agree with whoever produced
5 this view at the bottom there, that -- not many judges
6 I think, would have let the Government argue the
7 limitation point --

8 Q. So this is --

9 A. -- in an action of this kind.

10 Q. This is 6 June 1990. We can see from this I think
11 that the Parliamentary Under-Secretary of State in the
12 Lords -- I don't know whether that's Baroness Hooper
13 or not, but whoever it is:

14 "... has seen your submission ... and feels
15 strongly that we should not plead the limitation
16 defence at all."

17 So that's the Parliamentary
18 Under-Secretary of State's view.

19 A. Sounds like Gloria Hooper, yes.

20 Q. If we go to DHSC0046957_043, this sets out
21 Mrs Bottomley's view:

22 "... on balance she would prefer to go for
23 option iii) ie reserve our position. She very
24 strongly feels that not to plead would be a sign of
25 weakness, but would like to defer to Secretary of

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1 about the conduct of the defence of a civil claim
2 which should largely be left to the counsel we've
3 instructed in the case to decide and get on with.

4 Q. Then I want to ask you to look at the intervention
5 from Mr Justice Ognall encouraging the parties to
6 settle. So this is now late June 1990,
7 DHSC0046964_024. Mr Justice Ognall sets this out:

8 "It is rare that I take an initiative of this
9 kind in civil litigation" --

10 A. I'm sorry to start getting impatient again. Where is
11 all this leading? Eventually it was settled, wasn't
12 it? I mean, long after I'd gone, but these are all
13 the things being considered about the handling of the
14 case and possible tactics.

15 What's the point of it all? What are you
16 wasting -- what are we taking time on all this for?
17 What matters is what eventually happened, which is for
18 some reason -- and no doubt the papers/documents for
19 that period will explain it -- the successors -- my
20 successor, Virginia Bottomley, I think -- went along
21 with a settlement. In the end, the Treasury and the
22 Department of Health must have decided that perhaps
23 after all it was better to settle the claim. All this
24 is mere history.

25 Q. Lord Clarke, it might just be quicker if you let me

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1 ask the questions and answer them.

2 **A.** I know, I'm just failing to see what the point of it

3 all is.

4 **Q.** Fulfillment of the Inquiry's terms of reference, Lord

5 Clarke.

6 If we look here:

7 "It is rare that I take an initiative of this

8 kind in civil litigation before me. But the

9 circumstances of these actions are such that I have no

10 hesitation in doing so, and in much more specific

11 terms than might normally be expected or considered

12 appropriate."

13 If we go to the bottom half of the page,

14 Mr Justice Ognall says this:

15 "But when all those factors are taken into

16 account, [and he has talked there about legal issues

17 and legal uncertainty], it seems to me that for

18 a number of reasons, it is not an abuse of language to

19 describe these actions as unique in their surrounding

20 circumstances. I hope that I will be allowed to

21 identify some of those circumstances.

22 "A government which takes upon itself the role

23 of public provider of medical advice and clinical

24 services is in a very different position to any

25 commercial organisation. It is clearly arguable that

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1 important. It also sets it apart from any other

2 action in my own experience. At best, these

3 plaintiffs will die uncertain as to the outcome. At

4 worst they will die deprived of money to comfort their

5 last days, or with the knowledge (for those with

6 dependants) that they will bring a measure of

7 financial security.

8 "(c) With the best will in the world it may be

9 the end of 1991 before the legal process affecting the

10 main cause of action has been exhausted. That is two

11 and a half years since the proceedings began - or

12 more. It may then be necessary -- in the event that

13 plaintiffs succeed -- to set 'bench marks' with

14 quantum, again no doubt with appeals.

15 "(d) It is common ground that all plaintiffs are

16 entirely blameless."

17 If we go to the top of the next page:

18 "It is in these circumstances that I have

19 thought it proper that the advisors to all parties

20 should be invited to convey to their respective

21 clients these observations. It might be said that I

22 have raised considerations of a political rather than

23 a purely legal character. I acknowledge that. But

24 I believe that the legal profession has a duty to do

25 its best to see that the legal system does not become

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1 their duty to innocent citizens who suffer injury

2 under the aegis of such treatment has a moral

3 dimension to it which should distinguish their

4 assessment of their position from that criteria to be

5 adopted by other defendants of a corporate character.

6 Government owes a duty under this to its shareholders

7 or insurers. It should also mean that the public may

8 be entitled to expect from government an appraisal of

9 their position which is not confined solely to legal

10 principles to be found in the law of negligence, or

11 problems of proof."

12 Over the page, picking it up in the second

13 paragraph:

14 "The plight of the plaintiffs -- or many of

15 them -- is a special one:

16 "(a) All of them suffer from or live in the

17 shadow of a fatal condition for which there is

18 presently no known cure. I am told that the evidence

19 will suggest that the 'incubation' may be as long as

20 15 years. Meantime, I suppose, most believe that

21 sooner or later they will succumb.

22 "(b) Many have already died, and in the nature

23 of things many more will die without knowing the

24 outcome of this litigation. It seems to me, at least,

25 that this factor who'd be treated as cardinally

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1 a scapegoat in the eyes of the public" --

2 **A.** Yes, he's --

3 **Q.** -- "for what I fear may be perceived as the unjust and

4 inhumane denial of any significant measure of

5 compensation to the plaintiffs. 'The law must take

6 its course' is not an attractive principle" --

7 **A.** Yes, he realised that if he found in favour of the

8 Government, which he must have realised, having read

9 the pleadings, that it was a very high probability

10 that he would, all that would happen is that he would

11 be blamed as well. My reaction, if I'd ever argued

12 with the judge -- he gave a very full account of his

13 views is I agree with all that. I mean, it's --

14 ideally, this should not just be -- the problem is to

15 avoid the criticisms of -- that if you start -- if you

16 start conceding fault and legal liability, then people

17 will just come back at you for full quantum. And I

18 would -- I would probably have said, if I'd ever had

19 the chance of discussing it with the judge, that's

20 precisely why we made the contributions to the

21 Macfarlane Trust. What you're setting out here is

22 a long description of the sentiments which led us to

23 give help via the Macfarlane Trust, because we agreed

24 with the judge that you can't just resolve all -- they

25 are different. He sets out some arguments as to why

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1 they are different to most other similar people,
2 because they had a pre-existing condition, and all
3 that.

4 And therefore -- but some payment, of some kind,
5 is what most civilised people would like to do.

6 And that's really what the judge is saying, I'd
7 rather not just decide this on the question of strict
8 liability for negligence, why don't you just think of
9 the wider picture and do something to help these
10 people, which is what we'd already tried to do a bit
11 in the Macfarlane Trust.

12 **Q.** This is six months on from the Macfarlane Trust
13 announcement. So one takes it, I think, that
14 Mr Justice Ognall would have been aware of that
15 announcement, so he's saying --

16 **A.** Absolutely.

17 **Q.** -- six months on --

18 **A.** So I would have pointed out to him, isn't that what
19 we've already done? No doubt, of course, then you
20 have the question can anybody ever decide what is
21 exactly the right figure you should give the
22 Macfarlane Trust? There isn't a right figure, it's
23 a matter of broad judgment as what's the best you can
24 do.

25 **Q.** Mr Justice Ognall, would you agree with this, is

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1 money wasn't enough, they went onto settle the action
2 but I lose touch with it by the time we get there.

3 **Q.** Is there anything in what Mr Justice Ognall set out
4 here that you disagreed with, as far as --

5 **A.** Not fundamentally, no. I'd say he's setting out the
6 same principles that had led us to give the money to
7 the Macfarlane Trust.

8 **Q.** Then if we go onto --

9 **A.** It was the plaintiffs who decided, it was the victims
10 of the haemophilia who decided to go to the law.

11 **Q.** If we go to HSOC0017025_004, we'll see what the chief
12 medical officer then said. So the Chief Medical
13 Officer, still Sir Donald Acheson, wrote to you and
14 Mrs Bottomley on 20 July 1990. I don't propose to
15 read it all out, but you'll see what he says in the
16 opening sentence:

17 "I hope Secretary of State will take account of
18 my view that the problem of HIV infection in
19 haemophiliacs can in fact be regarded as a unique
20 catastrophe."

21 **A.** Yes, he had the same sympathetic views, yes.

22 **Q.** If we go over the page --

23 **A.** I mean, I'm sorry to keep complaining about press
24 reports, but at least one of the campaigns keeps
25 putting out these daft reports. And Donald, just to

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1 taking what he describes himself as a very unusual
2 course of --

3 **A.** Mm.

4 **Q.** -- articulating what he saw as a very powerful case
5 for a moral rather than strictly --

6 **A.** He uses the word moral. He's taking the same view
7 that we took over the Macfarlane Trust.

8 **Q.** Is there any --

9 **A.** I've just answered your question. And we gave to the
10 Macfarlane Trust -- it's a great pity this action was
11 brought. It was the plaintiffs who decided.

12 I suspect they were just trying to publicise their
13 campaign. I suspect their lawyers had never
14 encouraged them to believe they were likely to win,
15 but we all agreed that this should not be resolved
16 just by a straight "Are they legally liable? Can you
17 satisfy the burden of proof to prove negligence?", you
18 know, legal decision, that's it. And I don't think
19 the public would have thought that was quite the right
20 way to resolve it.

21 We had tried to address exactly the same points
22 the judge is making with the Macfarlane Trust
23 allocations. Now, subsequently, obviously, somebody
24 changed their mind, they had still settled it because
25 people were already arguing that the Macfarlane Trust

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1 put it shortly, ^ sets out views which we all shared.

2 He too was sympathetic. This was -- some idiot had
3 briefed one of the newspapers two or three weeks ago
4 that Donald was trying to cover up secret documents.

5 There appears to be a conspiracy theory that there are
6 some hidden documents, the few thousand we've got are
7 not all the documents and, somehow, Donald Acheson was
8 wickedly inviting me to hide the documents. It's
9 quite obvious that Donald Acheson was a terribly nice,
10 sympathetic guy, was setting out his own humanitarian
11 sympathies with the victims of the tragedy.

12 **Q.** I think in relation to the allegation about the Chief
13 Medical Officer and documents you might be referring
14 to a witness statement you were asked to comment on in
15 your witness statement --

16 **A.** Is that so?

17 **Q.** -- rather than --

18 **A.** Well, I'm sorry if that's the case.

19 **Q.** -- press material (*unclear: overspeaking*) in any
20 event.

21 **A.** I thought at the time when I read it, I thought, well,
22 that's a daft parody of Donald's letter, and I'm sure
23 Donald wasn't the sort of bloke who was trying to
24 cover up documents. There are no missing documents.

25 **Q.** In any event, if we just go to his conclusion, the

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1 second paragraph on this page:
 2 "I hope therefore, that for humanitarian reasons
 3 the Government will find some way to make an ex gratia
 4 settlement to the infected haemophiliacs" --
 5 **A.** *(Unclear: overspeaking)*
 6 **Q.** -- "in relation to this unique tragedy."
 7 Pausing there, this is -- as I say, this is
 8 months after the --
 9 **A.** He cites some other examples of other people making
 10 similar claims.
 11 **Q.** Well, he says, "I cannot personally see how this could
 12 be regarded as" --
 13 **A.** Yes, and he tried to answer that. But I doubt whether
 14 the people campaigning about cerebral palsy following
 15 obstetric adventric(*sic*) would quickly agree with him.
 16 But, I mean, I think I agree. I agree with him, this
 17 is why we were making these payments to the Macfarlane
 18 Trust.
 19 **Q.** Lord Clarke, you've repeatedly said, "why we're making
 20 these payments to the Macfarlane Trust", at this point
 21 in time, Mr Justice Ognall's observations and the
 22 Chief Medical Officer's observations are being made
 23 months after that increase of payments.
 24 **A.** Yes, because they want to avoid the brutality of
 25 a litigation settling it one way or the other as legal

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1 If we go, then, to --
 2 **A.** Yes, he's -- further payments to the Macfarlane Trust,
 3 he suggests. Fight it out, but then make further
 4 payments to the Macfarlane Trust, so at least answer
 5 the people who will say we are hard-nosed and cruel.
 6 **Q.** If we can see also various views are expressed by
 7 various people. I'm not going to take you through all
 8 of them. If we just go to DHSC0046964_006, this was
 9 a view expressed by the Regional Directors of Public
 10 Health. Paragraph 2, says:
 11 "The RDPHs [so Regional Directors of Public
 12 Health] have been very concerned at the prospect of
 13 this litigation. They have recently considered the
 14 matter again and have asked me to pass their concerns
 15 to you. They agree our defence is sound, that is
 16 apart from a possible handful of cases" --
 17 **A.** Yes, everybody is saying the same thing.
 18 **Q.** Well, they're not, I think, necessarily, Lord Clarke,
 19 but we'll come to it. So you'll see, the last
 20 sentence:
 21 "[The] RMOs [Regional Medical Officers] consider
 22 that there were reasons why an ex-gratia settlement
 23 should be attempted for these haemophiliacs who have
 24 become infected with HIV through no-fault of their
 25 own."

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1 liability. The difficulty is, you know, if people
 2 decide to start litigating, you're not going to stop
 3 them until you have won or had a full and final
 4 settlement of their claim.
 5 **Q.** Donald Acheson's view as expressed here was that this
 6 was a unique catastrophe, which called for
 7 a humanitarian response. Is that a fair summary of
 8 what he's saying?
 9 **A.** Yeah.
 10 **Q.** Then if we just look -- I don't need to go --
 11 **A.** Sorry, if I'd had a conversation with Donald, I don't
 12 know whether I did, I would say well this is the basis
 13 on which we've already paid quite a lot of money to
 14 the Macfarlane Trust. Nobody is arguing with that.
 15 **Q.** If we just see the other observations made upon
 16 Mr Ognall's suggestion before we come to your own
 17 view, as expressed at the time, if we go to
 18 DHSC0046964_003, this is from Mr Heppell, so a senior
 19 civil servant within the Department 24 July 1990. If
 20 we go to the second page, I don't need to go through
 21 the detail of it. We can see in paragraph 5 his
 22 recommendation is against going down the route mapped
 23 out by Mr Justice Ognall. So you've got the Chief
 24 Medical Officer saying we should, Mr Heppell saying
 25 not.

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1 Then we can see set out the reasoning of the
 2 Regional Directors of Public Health:
 3 "(a) there is a particular moral case for the
 4 Government to settle with the HIV infected
 5 haemophiliacs. They argue that these unfortunate
 6 individuals were infected with a mortal condition as
 7 a direct result of treatment with the NHS ..."
 8 Then (b), I think, recognises the view you'd
 9 expressed:
 10 "accepting that the treatment given was in good
 11 faith, and that before this treatment was available
 12 the life expectancy of the haemophiliacs was greatly
 13 reduced. Nevertheless, RMOs do not believe that given
 14 the appalling human tragedy visited upon the
 15 haemophiliacs, this excuses the Government from making
 16 a generous settlement ..."
 17 Over the page, there are five reasons given,
 18 I think, or six reasons:
 19 "... the stigma associated with HIV and AIDS and
 20 the consequent difficulty in concluding their lives,
 21 singles out this group of individuals for such special
 22 treatment;
 23 "(d) the exceptional circumstances of the
 24 haemophiliacs would allow a publicly acceptable 'ring
 25 fence' to be placed around this litigation, and there

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1 should be no knock-on effect in other litigation" --
 2 **A.** That is arguable.
 3 **Q.** "(e) limited human professional and management
 4 resources are being diverted from patient care to
 5 paper work in preparation ...
 6 "(f) very substantial legal costs ..."
 7 Then paragraph 4 --
 8 **A.** And they want an ex gratia payment.
 9 **Q.** Yes:
 10 "The ... conclusion is that thrashing out these
 11 issues in Court will not be in the best interests of
 12 patients or the NHS. They would favour some
 13 mechanism, eg ex-gratia payment, which avoids this."
 14 **A.** They want to settle, they want an ex gratia payment.
 15 Yes.
 16 **Q.** So similar to the Chief Medical Officer, that's the
 17 view being expressed by the Regional Directors of
 18 Public Health --
 19 **A.** Well, everybody is expressing the same view so far.
 20 You've now given the same opinion, which I largely
 21 share, six different times.
 22 **Q.** Well, let's see then what Mrs Bottomley and you say,
 23 Lord Clarke. DHSC004696 --
 24 **A.** I, at the time, was inclined to think that you
 25 wouldn't resolve it that way, that we should fight it

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1 "[Secretary of State] has seen your submission
 2 of 24 July, together with Mr Dobson's paper, CMO's
 3 minute of 20 July and Mr Sand's minute of 27 July. He
 4 has commented that he is in favour of sticking to our
 5 legal defence and continuing to fight the action. He
 6 does not think it is necessary at this stage to send
 7 a minute to the Prime Minister and he considers that
 8 the decision should be communicated to the Judge and
 9 the Plaintiffs' solicitors in strict confidence."
 10 Then there is a suggestion of a drafting
 11 exercise to respond to the judge. You didn't agree
 12 with the Chief Medical Officer or the Regional
 13 Directors of Public Health or Mr Justice Ognall, did
 14 you, Lord Clarke?
 15 **A.** I did. I mean, by making a -- I -- you've taken me
 16 along -- my contribution to the contributions to be
 17 made to the Macfarlane Trust. It's just what I did
 18 not agree to was, you know, abandoning our legal
 19 defence. The difficulty -- in fact, that turned out
 20 to be wrong I think, because it didn't happen -- well,
 21 it has, it's still going on. The settlement of the
 22 legal action didn't resolve anything. I mean this
 23 Inquiry is being asked to give more money. I was
 24 basically -- you know, sought out there is no legal
 25 thing and then probably I -- the tactics to show that

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1 out. I think this was what I continued on the whole
 2 to think -- that no one would understand that settling
 3 did not actually concede that you were at fault and
 4 that you were negligent, and the problem is that
 5 people who had not been plaintiffs to the action --
 6 I don't know whether that was in my mind -- would
 7 promptly follow up with another negligence claim, and
 8 you'd have another group of claimants because not
 9 every haemophiliac victim was a party to the action.
 10 **Q.** DHSC0046964_008.
 11 **A.** You can never answer the question of how much is the
 12 right amount for an ex gratia payment, as I said. If
 13 this Inquiry recommends a payment, a pound to a penny
 14 somebody will argue it's not enough.
 15 **Q.** This is a minute, 27 July 1990 addressed to your
 16 private office, Mrs Shirley-Quirk, and we can see in
 17 paragraph 2 Mrs Bottomley's view -- Mrs Bottomley:
 18 "MS(H) has commented that she thinks we should
 19 maintain our present position. Once we move towards
 20 conceding on cases like these it will have inevitable
 21 long-term implications for the Department."
 22 **A.** That was Virginia. I thought Virginia agreed that,
 23 yeah.
 24 **Q.** Then DHSC0046964_007, this sets out your view, Lord
 25 Clarke:

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1 we'd -- this wasn't just heartless, that wasn't any --
 2 it's no good trying to prove it was somebody's fault
 3 in the Health Service or in the Department, or
 4 wherever. You know, there's no legal liability, but
 5 we're reasonable human people and we realise the
 6 circumstances of this case are (a) appalling and, in
 7 some respects, quite exceptional, and so we'll make
 8 ex gratia payments, insofar as we can to mitigate at
 9 least the financial consequences of what the people
 10 have suffered.
 11 **Q.** The --
 12 **A.** So that was my view. It remains my view.
 13 **Q.** The ex gratia payment, the increase to the Macfarlane
 14 Trust, whether it's the 20 or 24 million, had been
 15 made six months previously --
 16 **A.** Yes, and they'd taken an action because they didn't
 17 think it was enough.
 18 **Q.** So Mr Justice Ognall's recommendation, which you
 19 said -- or narrative, which you --
 20 **A.** To settle the case, yes.
 21 **Q.** -- said you agreed with, the Chief Medical Officer's
 22 plea --
 23 **A.** Ognall didn't want to settle it. If he was asked to
 24 by the parties, then he would make a decision on
 25 whether legally there was a burden of proof of

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1 negligence to be satisfied, but he also had the view
 2 that this wasn't quite the right way to sort out
 3 something like this.
 4 **Q.** Mr Justice Ognall, the Chief Medical Officer, the
 5 Regional Directors of Public Health, on the one hand,
 6 were all saying, were they not, at this point in time,
 7 something more than has already been paid should be
 8 made?
 9 **A.** Yes, I suppose, yes. You're saying they were more
 10 content than I was to make it definitely a settlement
 11 of the action.
 12 **Q.** You were saying in terms, "let's fight on". You
 13 weren't proposing any further payments, were you?
 14 **A.** Yes, that's true. We all came to the conclusion that
 15 ex gratia payment was the best way of handling this.
 16 We did think there was a case for using public funds
 17 to make some compensation. The settlement would not
 18 have been full compensation. It would, again, have
 19 been a negotiated sum of money, which it presumably
 20 was in the end. In the end, that's how they went.
 21 And we didn't satisfy the plaintiffs, which is why,
 22 30 years later, we're still arguing about how much
 23 money they should have.
 24 **MS RICHARDS:** Sir, I note the time. There are still a few
 25 more issues to explore with Lord Clarke, so perhaps we

1 **MS RICHARDS:** Yes. That's my best guess.
 2 **SIR BRIAN LANGSTAFF:** Yes. Well, I leave it to your
 3 experience, Lord Clarke, to know how well counsel --
 4 **A.** Well, you may gather -- yes, I won't rely on it,
 5 I won't anticipate it, we will see where we get
 6 tomorrow. But there we are. At least we're
 7 approaching the end.
 8 **SIR BRIAN LANGSTAFF:** Yes. Ten o'clock tomorrow, then.
 9 (4.33 pm)
 10 (The hearing adjourned until 10.00 am the following day)

1 could pick this up tomorrow morning.
 2 **SIR BRIAN LANGSTAFF:** Yes.
 3 **A.** Can we not dispose of this point of the settlement of
 4 the action?
 5 **MS RICHARDS:** Well, there's a few more documents to look
 6 at, Lord Clarke, which we'll do in the morning.
 7 **A.** What for? I wasn't -- the actual -- what matters is
 8 what happened in the end. And I wasn't even party to
 9 that. I played no part in the final settlement.
 10 **MS RICHARDS:** And I'm not going to be asking you about the
 11 final settlement for that very reason, Lord Clarke.
 12 **A.** Good.
 13 **SIR BRIAN LANGSTAFF:** So tomorrow morning at ten o'clock.
 14 **MS RICHARDS:** Sir, I should just say, because I'm
 15 conscious there will be people who potentially might
 16 be travelling to hear the evidence tomorrow, I don't
 17 anticipate that it would be a full day tomorrow.
 18 I anticipate I have probably got about another hour or
 19 so of questions, and then there will be the
 20 opportunity for Core Participants and their recognised
 21 legal representatives to ask questions, so it may be
 22 a half day or thereabouts tomorrow.
 23 **SIR BRIAN LANGSTAFF:** So there's a fighting chance,
 24 I think is what I'm being told by counsel, a fighting
 25 chance that we may be finished by lunchtime?

1 **I N D E X**

2 LORD KENNETH HARRY CLARKE 1
 (continued)
 3 Questions from MS RICHARDS 1

<p>MS RICHARDS: [30] 1/4 1/19 2/2 2/4 6/6 6/10 6/20 18/24 19/12 45/22 46/20 46/22 56/21 58/6 68/3 100/24 118/10 118/23 119/6 119/11 177/15 184/20 185/13 186/13 186/18 221/24 222/5 222/10 222/14 223/1</p> <p>SIR BRIAN LANGSTAFF: [46] 1/3 1/16 2/1 2/3 6/4 6/7 6/16 16/21 16/24 17/4 17/9 17/13 17/18 18/2 18/4 18/10 18/18 19/3 45/16 45/20 46/19 56/25 57/5 57/11 57/22 67/8 67/12 67/20 67/22 67/25 100/11 118/15 119/1 119/5 119/7 177/10 184/22 185/19 186/4 186/11 186/14 222/2 222/13 222/23 223/2 223/8</p> <p>'82 [1] 116/23 '82 to [1] 116/23 '83 [1] 129/17 '84 [1] 129/17 '85 [2] 116/23 129/17 '88 [1] 122/13 '89 [2] 122/14 168/8 'AIDS [1] 2/15 'bench [1] 207/13 'central [1] 190/20 'Donations [1] 97/20 'duty [1] 187/11 'His [2] 97/24 98/2 'I [1] 99/5 'incubation' [1] 206/19 'It [1] 2/20 'no [1] 192/11 'out [1] 191/25 'professional [1] 14/8 'rehearsals' [1] 193/16 'ring [1] 216/24 'Summary' [1] 48/7 'The [3] 48/2 48/3 208/5 'there [1] 43/9</p> <p>- -- in [1] 107/20 -- it [2] 24/12 72/21 -- you [1] 219/24</p>	<p>... 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(76) move - nothing

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(77) nothing... - organisation

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