

Friday, 16 September 2022

(10.00 am)

SIR BRIAN LANGSTAFF: Now, Ms Flint, just before I formally welcome you to the Inquiry, I think Ms Fraser Butlin has something more to add to something we have been looking at this week, which is the destruction of documents.

MS FRASER BUTLIN: Thank you, sir.

Before we start today I wanted to simply highlight the references for some witness statements we have received and some other work which the Inquiry team has done in relation to document destruction.

I wanted to highlight a set of seven witness statements, just so that people were aware that they were available addressing this issue. There is a statement from Yvonne de Sampayo, the senior personal secretary to Dr Metters, who was himself deputy CMO and chair of the ACVSB. That is at WITN7914001.

There is a statement from David Burrage, who was a Higher Executive Officer. The reference for that is WITN7149001.

Dr Patricia Troop, Deputy CMO, who was the successor of Dr Metters. WITN7169001.

John Rutherford, a Higher Executive Officer. The reference for that is WITN7224001.

And a statement from Laurence George, a former

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INQY0000380. And in relation to the public interest immunity documents, the reference is INQY0000379. It doesn't mean that work on these schedules is complete, the team continues to look, but they are in such a position that we think it is helpful that Core Participants can access them.

SIR BRIAN LANGSTAFF: So is the upshot of that that the Inquiry team has not yet found all the documents that we know were destroyed or mislaid or disappeared whatever it may be?

MS FRASER BUTLIN: That is correct. Where a reference on relativity is available, that's provided, but it is not complete. There are documents that we have been unable to track but the majority have been found.

SIR BRIAN LANGSTAFF: Yes. For those who have been listening, there are an awful lot of numbers there. They may not pick that up immediately, but of course what you have just said will be published, it will be on the Inquiry website, as indeed all the transcripts of proceedings are, and anyone who wants to find those numbers needs just to go to the start of today, Friday, 16 September 2022, and look at your opening words and they will see all those references set out.

MS FRASER BUTLIN: Yes.

SIR BRIAN LANGSTAFF: Thank you.

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internal auditor, WITN6963001.

The reason to flag the statements is that they have cropped up during the week and we have been asked just to make clear where they are available.

In addition, there are two further statements.

Lorraine Jackson, Director of Information Risk Management and Assurance at the Department of Health and Social Care, WITN7193001.

And a joint statement by her and William Vineall, director of NHS Quality, Safety and Investigations at the DHSC.

Those two final witness statements deal with the second element that I wanted to highlight, and that is that over a number of months the Inquiry team has sought to reconstruct the documents that made up the ACVSB papers, that is the GEB files that we have been discussing, and also the HIV Litigation public interest immunity papers.

The team have produced schedules setting out the understanding of what the papers were and references on relativity, on the database for the documents that we have been able to identify and I want to give, if I may, the codes for those schedules so that others can look at them.

In relation to the ACVSB files, the reference is

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Forgive me for that introduction. It has no bearing directly on your evidence. Can I just explain the arrangements for you. You are facing an audience which is a mixture of the public and Core Participants and participants, and beyond this room there is another where people will be watching on large screens in this building.

But beyond this room there will be around about a three figure number of people who throughout the day will be watching on either YouTube or live stream to listen and hear what you have to say. Ms Fraser Butlin will ask you the questions. Those behind her and to your left are lawyers. At the back of the room there is at least one representative of the press and there may be others during the day.

Now, in a moment or two I'm going to ask Ellie to invite you to take the oath and then we can begin with the questions.

Ellie.

CAROLINE LOUISE FLINT (sworn)

Questioned by MS FRASER BUTLIN

SIR BRIAN LANGSTAFF: Yes.

MS FRASER BUTLIN: Thank you, sir.

Ms Flint, you provided a witness statement to the Inquiry and I understand that there is one sentence that

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1 you want to amend. If we could put that immediately up
2 on the screen at WITN5427001, please.

3 If we turn to page 173. It is paragraph 3.249,
4 which starts at the bottom of this page and carries on
5 over the page. If we can turn to the next page.
6 Addressing a particular submission, and then there is
7 the sentence:

8 "A draft letter for Hugh Taylor to approve was
9 annexed but I have not seen a copy of it."

10 I understand that that needs to be removed from
11 your statement, is that right?

12 A. Yes.

13 Q. Ms Flint, I want to start then with a brief overview of
14 your career. You initially worked in public authority
15 roles including as the London Borough of Lambeth Senior
16 Equalities and Staff Development Principal Officer, is
17 that right?

18 A. Correct.

19 Q. And you became a Member of Parliament in May 1997?

20 A. Correct.

21 Q. And worked in various positions, including Parliamentary
22 Under-Secretary of State for Home Affairs between June
23 2003 and May 2005?

24 A. Yes.

25 Q. And then from 10 May 2005 to 5 May 2006, you were

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1 absorbing information, taking on decisions that have
2 been made before but also activities that have been made
3 before. So I do think that the churn of ministers in
4 government from one department to another is not
5 helpful.

6 Q. And this was your first role in the Health Department.
7 Do you know how you came to be chosen for the role?

8 A. No.

9 Q. Did you have any background or context in relation to
10 the Health Department that was seen as particularly of
11 assistance?

12 A. No.

13 Q. You have said in your statement that your portfolio as
14 Parliamentary Under-Secretary was the same or very
15 similar to when you were Minister of State. Can you
16 tell us broadly what was within your portfolio?

17 A. So I covered the public health portfolio, and that would
18 include all those issues around smoking, alcohol, diet,
19 exercise, health inequalities, and so the full range of
20 those areas. I also dealt with drugs and alcohol in
21 terms of addictions. That was something that I covered
22 when I was at the Home Office, so it was one of the
23 areas that I had some experience of before and continued
24 to work with the Home Office on that issue. I also
25 covered contraceptives, fertility, the Health Protection

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1 Parliamentary Under-Secretary of State for Public
2 Health?

3 A. Yes.

4 Q. And then Minister of State for Public Health from
5 5 May 2006 to 28 June 2007?

6 A. Yes.

7 Q. You then went on to other roles in government and in
8 opposition?

9 A. Correct.

10 Q. You moved throughout your time as a minister between
11 roles, every year or every two years, and that's
12 something we have heard from a number of other witnesses
13 as well. Do you have any reflections on the impact of
14 that churn, as it has been called, on policy making?

15 A. I think it does have an impact. In some ways looking
16 back, the period -- two years that I spent at the
17 Home Office and two years in the Department of Health
18 were the longest periods, and it did mean that some
19 subjects I could see from start to completion.

20 When you are entering a department, obviously you
21 have got to get up to speed. It can be a completely
22 different portfolio to one you have had before, it may
23 not be something in terms of your own personal work
24 experience that you have any particular knowledge or
25 experience of, so there is then a huge amount of

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1 Agency, and a whole number of other things that I put in
2 my statement. And bodies that I worked with as well,
3 external bodies too. And of course in relation to the
4 proceedings today, I also covered blood donor services
5 but also the issues around the Alliance health
6 organisations and those who were infected by blood
7 products and their families who were affected by it.

8 Q. When you started the role in the Department of Health,
9 what sort of briefing did you receive?

10 A. I can't remember exactly but the usual thing was that
11 you would have a series of different department heads
12 and members of staff coming to see you, giving you maybe
13 a written note but also some oral briefing, and usually
14 it would be a heads up, really, about the areas of
15 policy. As soon as you start in a department you
16 actually have to start work. So, if Parliament is
17 expecting to go and answer questions on day 2 of being
18 in the Department, you have to go and do it. So there
19 is not a huge amount of time to have an induction in the
20 way others might see it in their own workplaces. You
21 have to hit the ground running and then find the time
22 where you can. But the first few weeks, as much as
23 possible -- and you would also inherit the previous
24 minister's diary and often be asked, "Do you want to do
25 that or not?" And, you know, obviously, if it was

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1 something that had been in for a long time I would try
2 to do that. But essentially that's what it is like.

3 Then of course as you go on, you consistently get
4 the briefings. Again, you can ask more questions.
5 Obviously you do things. You have letters from MPs and
6 other Parliamentarians and from the House of Lords, and
7 that triggers also more conversations. But there's not
8 a structured programme per se in terms of what you do.

9 In your Private Office, in Health, my Private
10 Office, they had designated roles covering different
11 areas of my portfolio, and they would be key people
12 obviously who you would be able to informally ask about
13 things and where something had come from, what was
14 happening, what was coming up.

15 Essentially I suppose the most important thing
16 was -- to be aware of in the different policy areas you
17 covered, what projects were under way, what legislation
18 might be coming forward, what were the sort of headline
19 issues that you might face in the coming months.

20 **SIR BRIAN LANGSTAFF:** Can I ask you just to slow down
21 a little.

22 **A.** Sorry.

23 **SIR BRIAN LANGSTAFF:** It is nothing to apologise for, it is
24 just the stenographer has to keep up and you were
25 speaking just a little quickly.

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1 requirements for the trust. If we go over the page. We
2 see that there is a revised estimated need of
3 £7.25 million annually and in bold, at the end of the
4 page, we see this:

5 "To fulfil their quasi-agency role in a way that,
6 while doing credit to the [Department of Health],
7 properly meets the needs of registrants and their
8 families, MFT's Trustees recommend that the rate of
9 Departmental funding should rise to £7 million annually
10 for 5 years from April 2006, index linked to [Her
11 Majesty's Government's] referred annual cost of living
12 indicator."

13 In a covering letter dated 24 November 2005,
14 Peter Stevens asked to meet with you. When you came
15 into your post, what awareness and understanding did you
16 have of what the Macfarlane Trust had been set up to do?

17 **A.** My understanding was that the Macfarlane Trust was set
18 up to provide financial support granted by monies from
19 Government to support those infected because of blood
20 products but also affected by it as well, their
21 families, and that involved -- it was a mixture of
22 issues around lump sum payments that came from the
23 Department but also it provided support in different
24 ways with day-to-day needs that registrants needed
25 support with.

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1 **A.** Noted, Sir Brian, I will try my best.

2 **MS FRASER BUTLIN:** I want to start off with you discussing
3 some of the issues around the trusts and schemes
4 providing financial assistance.

5 In 2002, the Spending Review outcome for the
6 Macfarlane Trust was a commitment to a three-year
7 package of capital funding and you have set out in your
8 statement that they received £3 million in 2003/2004,
9 3 million in 2004/2005 and 3.5 million in 2005/2006.
10 A business case was then submitted for capital funding
11 from 2006/07 and it's that that I wanted to talk with
12 you a little bit about. Can we turn to the business
13 case please, MACF0000177_017.

14 It is dated November 2005. Then, if we go over
15 the page, we have the introduction and we have the third
16 paragraph:

17 "This business case highlights the evidence for
18 re-evaluating earlier assumptions about the funding
19 needs of long-term survivors now coping with prolonged
20 ill health, unremitting personal and social stress,
21 strained family relationships, erosion of capital and
22 savings, falling standard of living, susceptibility to
23 the poverty/benefit/credit traps, burgeoning debt and
24 other financial disadvantage."

25 The business case goes on to set out the projected

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1 My understanding when I came in was that a -- it
2 had been agreed before I became Minister, I think in
3 January, earlier that year, definitely in 2005 -- that
4 they were going to do so a revised business case and
5 that was work in progress.

6 **Q.** When this business case arrived with a revised figure of
7 7.25 million, was that something that your officials
8 spoke to you about straightaway?

9 **A.** I didn't actually get to see that until I think it was
10 January. It hadn't come in to my office. I think it
11 might have gone into other parts of DH.

12 **Q.** We will look at that correspondence in a moment but, in
13 November/December 2005, did your officials raise the
14 point that a business case had come in for a very
15 substantial sum?

16 **A.** Not as far as I can remember. Up until that point,
17 I had been told that, actually, there was discussion
18 between officials and those for Macfarlane Trust that,
19 actually, money was going to be difficult and there was
20 likely to not necessarily be an increase.

21 **Q.** If we turn then to DHSC6278301, please. It is an email
22 string so we need to start on page 2.

23 **A.** Can you make it a little bit bigger, please, sorry.

24 **Q.** The bottom email, 16 January 2006:

25 "Please find attached a scanned copy of the letter

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1 addressed to Caroline Flint from Peter Stevens ... dated
2 24/11/2005", which was the covering letter with the
3 report.

4 Then if we go up to the top, Jennifer Mason has
5 messaged Jacky:

6 "Brian Bradley from the Health Protection team
7 rang today to ask Michelle about the attached
8 correspondence. It was copied to officials but I can't
9 find any records of our having received it."

10 Then there is a note:

11 "(The Macfarlane Trust supports those made ill by
12 the use of contaminated blood products in medical
13 treatment).

14 "Have you seen this letter before?"

15 If we go back to page 1, please, we see the
16 response from your Private Office:

17 "Thank you for bringing this to our attention --
18 this is the first I have seen of it and I have not been
19 able to find any record on this on our meeting request
20 database."

21 There is a request for advice and a draft reply.

22 Do you have any understanding of why the letter
23 and the business case did not reach your office until
24 January?

25 A. No.

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1 ensure they give value for money. We will be in touch
2 with you again when this process is completed.

3 "I understand that you are approaching the end of
4 your team as chair of the Macfarlane Trust and I would
5 like to thank you for your work on behalf of the Trust.
6 The Department is indebted to individuals such as
7 yourself who contribute to our work. I would, of course
8 be pleased to meet with you, but I suggest that it would
9 be the best approach if I met you together with the
10 incoming chair, when your replacement has been
11 identified, to welcome him, or her, to the position and
12 to discuss the forward work of the Trust over the next
13 year. It seems that the optimum timing for this meeting
14 could be in April or May, which would also fit with the
15 annual reporting and accounts cycle."

16 There is a note that those arrangements would be
17 made by your office. Can you help us with why April or
18 May would be optimal, in terms of the financial
19 reporting and accounts cycle?

20 A. I believe it was because there was obviously active
21 discussion about what was going in terms of the central
22 budget for the Department. There clearly had been
23 discussions that I can remember before this date, that
24 things were going to be tight. I think they thought
25 that actually some of the clarity of what would be

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1 Q. Does it surprise you that a business case, that, as you
2 say, had been in preparation since January 2005, didn't
3 reach you more promptly?

4 A. Well, yes, I mean, I think I would have hoped it would
5 have come through the system quicker but I can't
6 speculate on why that didn't happen and where it was in
7 other parts of DH when it came in, but I wasn't aware of
8 it.

9 Q. Was this something that was unusual for something that
10 didn't reach you quickly or was this something that
11 unfortunately happened regularly?

12 A. I wouldn't say it was regular but I have had experience,
13 as a minister, of information coming in and not coming
14 directly or in what would be, I would suggest, good time
15 to my office, as a minister, not necessarily in the
16 Department of Health but in other departments as well.
17 Hence, I apologised to Mr Stevens.

18 Q. We see that in your letter of reply. DHSC0041198_159,
19 please. It is dated 26 January 2006. We will pick up
20 the third and fourth paragraphs, please:

21 "We have not yet set budget figures for any
22 Departmental budgets for next year, as priorities for
23 all Departmental programmes are currently being
24 reassessed. The Secretary of State has said that all of
25 the Department's central budgets should be looked at to

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1 possible would be clearer by then but, in terms of the
2 sort of discussions between -- on different sections of
3 the Department of Health and their budgets, that wasn't
4 something I was party to. That was led at official
5 level.

6 Q. Just to help us understand how the financial reporting
7 cycles happened. In April and May, had decision --
8 would decisions have been made about what was available
9 or when, between say April and August, were decisions
10 becoming more entrenched?

11 A. Sorry, can you repeat that again, sorry?

12 Q. Of course. Between the April and say August, at what
13 point over those months did decisions start to become
14 rather more entrenched on financial matters?

15 A. I think they probably were, you know -- I think,
16 essentially, the framework in terms of how much the
17 Department had to deal with was known. How that was
18 going to be divided up from the different demands from
19 different parts of the Department of Health was
20 an ongoing discussion, I think, between officials
21 representing those different areas.

22 My sense is -- and this is just my sense -- that
23 there would be quite a lot of discussions about where
24 certain monies could come from and often, until things
25 had cleared, it often wasn't necessarily as clear as it

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1 might be about what opportunities there were to get
2 extra money and where from. It was a complicated
3 process, from what I understand, which as a minister you
4 have not much to do with, it was really dealt with by
5 senior people in the Department and that's all I can
6 really recall.

7 **Q.** Would it be fair that the further on from April and May
8 in a year that you got, the harder it would be for
9 monies to be found for different things and for it to be
10 shifted around?

11 **A.** I really don't know the answer to that. I think there
12 was a lot of uncertainty about just how budgets were
13 going to look, what demands were and, if you like, what
14 priorities there were within that for the Department of
15 Health, and there seemed to be a lot of back and forth
16 going on during this period. What I was aware of
17 before, obviously, Christmas was the budgets that my
18 portfolio oversaw were going to be tight and that
19 included in this area as well and, hence, as I said
20 earlier, I was already getting indications before
21 Christmas that officials had had discussions with people
22 from the Trust about that situation.

23 **Q.** But as a minister, if you said in April/May, "I want to
24 prioritise this and have a significant injection of cash
25 here", was that more doable than if you had said that in

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1 That would amount to less than half what they are asking
2 for, and would leave approximately £6 [million] in the
3 budget after the recurrent funding for this year."

4 Then this:

5 "It would be helpful to have this ready to go up
6 very soon after the budgets are agreed, so response in
7 the next day or two would be appreciated."

8 We can see from the heading of the email that this
9 was about a draft submission that was to go up. This
10 wasn't something you were aware of at the time; is that
11 right?

12 **A.** I don't think I was aware of it at the time, no.

13 **Q.** We then have an email from 8 June, DHSC6340820:

14 "Gerard

15 "You may be interested to note the present state
16 of play, with our thinking on this submission. Jonathan
17 and I have been redrafting this over the last couple of
18 days and feel that the [£400,000] is reasonable -- but
19 would be grateful for your confirmation (or otherwise?)
20 that it is affordable in the current budget planning.
21 It is, of course, much less than they are asking for and
22 it may be helpful for MS(PH) to have some negotiating
23 room on this figure if this is possible. You may be
24 interested to note that we now have 2 registrants
25 enquiring about their legal status with regards to

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1 July/August?

2 **A.** The previous year?

3 **Q.** No, no, following, the same year.

4 **A.** Look, I think the budgets were tight and there was
5 discussions going on about what we could get from that.

6 **Q.** Stepping away from the budgets of that particular year,
7 more generally. If in April/May of a particular year
8 you said, as the Minister, "I want an injection of cash
9 there", was that more doable than saying it three or
10 four months later?

11 **A.** I think by April/May it was clear to me that there was
12 not going to be much money available and, therefore, in
13 July/August, yes, it was pretty clear that there wasn't
14 much more that we could do.

15 **Q.** Could we turn then to DHSC5011528, please. This is
16 an email between officials in May 2006, which
17 I understand that you -- sorry, it was discussing --

18 Let me start that again, apologies.

19 The email is dated 17 May 2006:

20 "We discussed briefly yesterday the options for
21 utilising the funding for the MFT that we hope is about
22 to be agreed. The full amount is considerably more than
23 we could justify (and indeed than they expect) but we
24 could put some £10 [million] of this to good effect as
25 a single payment -- if Gerard is content to go that far.

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1 a waiver they should have signed before registering with
2 the MFT, agreeing not to sue the [Government]. Both we
3 and the MFT are having problems finding copies of these
4 waivers."

5 Do you have any knowledge of what had changed
6 between 17 May and 8 June, such that the figure had
7 dropped from 10 million to £400,000?

8 **A.** No, I can't recall that.

9 **Q.** Were you aware at the time of any of these discussions
10 about the figures that would be proposed?

11 **A.** I can't recall. All I'm aware of is that there were
12 obviously officials working to see what they could get
13 in terms of the discussions across the Department, in
14 terms of sums of money for the Trust.

15 **Q.** There is a reference here to there being some
16 negotiating room, if this is possible. What was meant
17 by that?

18 **A.** I don't know. It was never presented to me as
19 a negotiating room.

20 **Q.** Did you have any idea that you would be negotiating on
21 a figure with the MFT?

22 **A.** No. The -- I am sure you are going to come to it in
23 your questions but the submissions that then came to me
24 were pretty clear in terms of the options.

25 **Q.** If we turn to that submission, it is dated 14 June 2006,

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1 at DHSC5026530. We see that it is dated 14 June 2006
2 and under "Timing" we see:

3 "Urgent: This financial year is well under way and
4 central finance are on the point of confirming the
5 available budget levels for this year."

6 Can you help us with why this was provided in
7 June 2006 at a point when it had become urgent?

8 A. I think part of it was us trying to -- having got the
9 business case in from the Macfarlane Trust and,
10 obviously, it was substantially higher than what we were
11 able to offer them or what I was able to offer them
12 later on in the year, to try and do some more work about
13 what we could have access to in terms of monies. And it
14 was a delay and I don't think it necessarily helped the
15 conversations that we were going to have.

16 I can't really say any more than that. I think
17 there was quite a lot of work just going on to try and
18 find some money for the Macfarlane Trust.

19 Q. You had obviously responded to Peter Stevens offering
20 a meeting in April or May?

21 A. Yes.

22 Q. When you received this briefing in June, did you raise
23 any concerns about the fact that here we were in June
24 and you hadn't met with him and you were having the
25 submission only presented to you at that point in time?

21

1 A. Not directly, no, but obviously I was aware that there
2 were discussions going on about what could be found and
3 I was waiting on a submission and clarity from
4 officials.

5 Q. If we then look at the submission, pick it up at
6 paragraph 6 at the bottom of this page:

7 "The Chair of the Macfarlane Trust, Peter Stevens,
8 wrote to MS(PH) in November 2005 making a case for
9 increasing the funding of the MFT to £7 [million]
10 per year for the next 5 years and for doubling the
11 funding of the ET [Eileen Trust]. This case is based on
12 the position that the surviving registrants are living
13 longer than was expected in the original settlement and
14 they have a significant life expectation. Their living
15 costs and needs are therefore substantially different
16 (and greater). Many of them, however, have very little
17 prospect of earning a realistic income and they (and
18 their families) are dependent on a combination of
19 welfare benefits and this income."

20 Further down, we have the heading "Argument", and
21 options, effectively, are put to you. First of all:

22 "The option of **outright refusal** of this case, and
23 flat cash funding, may be justified on the ground that
24 payments to the relatively small number of surviving
25 registrants have increased substantially in the last

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1 A. I think I had concerns from when I was aware of the
2 business case and what was being asked for and knowing
3 that that wasn't something that was going to be met --
4 be able to be met within the Department. And,
5 therefore, I was concerned about what options were open
6 to us. I can't remember exactly why we didn't meet in
7 April/May. I did actually, when this meeting was set
8 for July, try to get that earlier, not by a significant
9 amount, I know, but to try and get that earlier and that
10 was offered to the Macfarlane Trust but, for different
11 reasons, it was kept to the later meeting in July.

12 Q. So you have said you had concerns from the January, now
13 we are in June. What involvement did you have in the
14 process then between January and June?

15 A. My involvement in the process was, you know, officials
16 were tasked with coming back to me with options in terms
17 of monies we could provide for the Macfarlane Trust and,
18 basically, discussions ongoing around that, and that
19 they would come back to me, having obviously -- this was
20 a cross-departmental conversation, as to what was
21 available and what was recommended by those working in
22 the blood policy division.

23 Q. Please correct me if I've misunderstood your evidence,
24 I think your evidence earlier was that you weren't
25 involved in any of those discussions yourself?

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1 5 years, as the level of funding has not declined in
2 parallel with the decline in the registrant numbers."

3 Paragraph 10:

4 "It could also be argued that the Department of
5 Health should not be bearing the full financial
6 responsibility for these registrants and their families,
7 as there are several other public services whose
8 functions include supporting these unfortunate people."

9 Then the next page. On paragraph 12 there is
10 an option of:

11 "**Full Acceptance** of this claim seems neither
12 affordable nor justifiable. It would more than double
13 the average level of benefit per registrant (all else
14 being equal), which could be considered excessive. It
15 would be difficult to defend complete acceptance of
16 a case for increased expenditure in some of the
17 questionable areas noted above without rigorous
18 questioning and assessment against other spending
19 priorities."

20 Then in paragraph 13:

21 "A partial acceptance of this claim might,
22 however, be justifiable as it would indicate that the
23 Department is indeed able and willing to renew its
24 commitment to supporting those infected by contaminated
25 blood products, while living within our reasonable

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1 resource limits."
 2 And the "Conclusion":
 3 "On balance, we feel that the justification for
 4 an increase is not strong. There is, however, a lot of
 5 pressure from the Trust and registrants, and MS(PH)
 6 could consider increasing the funding for the Macfarlane
 7 and Eileen Trusts by £400k (£350k for the MFT and £50k
 8 for the ET). The split could be adjusted on the advice
 9 of the Chairman."
 10 Obviously, in your briefing there is no reference
 11 to the larger sum that was initially discussed. Do you
 12 remember in any oral discussions whether there was a --
 13 that larger sum was ever raised with you?
 14 **A.** I think from what I recall the larger sum was just seen
 15 as not affordable at all in terms of what could be
 16 provided further by the Department.
 17 **Q.** Was it ever indicated to you as something that had been
 18 discussed?
 19 **A.** By who?
 20 **Q.** Did the officials ever say to you, "We have previously
 21 discussed this sum but it is not affordable"?
 22 **A.** I think that it was indicated to me in different ways
 23 that actually that was not an amount that was going to
 24 be able to be found within the budget.
 25 **Q.** So at some point you think you were told that they had

25

1 officials -- which most of the discussions were between
 2 officials -- and the Trust, not to expect an increase.
 3 **Q.** If we just go back to paragraph 6 of this briefing, at
 4 the top of page 2 please. We see set out there that the
 5 business case was:
 6 "... based on the position that the surviving
 7 registrants are living longer ... Their living costs and
 8 needs are therefore substantially different (and
 9 greater)."
 10 What part of that did you not think justified
 11 an increase in funding?
 12 **A.** I don't think it was about not recognising the need and
 13 the changing circumstances that the Trust was reflecting
 14 and had reflected in an earlier report. I think back in
 15 2002/2003 they had done another report about the
 16 changing needs of those infected but also their families
 17 over time. I think the reality was that there was
 18 limited budget within the Department and that could not
 19 be met. Again, as I said earlier, the initial work on
 20 this began before I started. I'm not completely --
 21 I can't recall what exactly was discussed when the
 22 Department agreed with Macfarlane that they would do
 23 this business case. And certainly in looking through
 24 the documents, the fact that it came in at the end of
 25 the year didn't leave a lot of time to discuss in detail

27

1 been discussing a bigger sum than the £400,000?
 2 **A.** Oh, no, no, no, no, sorry, I misunderstood your question
 3 there. The amount in terms of the bid from the Trust
 4 was never sort of in terms of having a discussion about,
 5 could we find that. I think it was just seen as that
 6 there was not money available for that sort of increase
 7 and therefore the focus was on what could be provided.
 8 **Q.** So on the one hand you had the business case requesting
 9 £7 million and here you have a partial acceptance with
 10 £400,000. Was there any -- ever, any discussion about
 11 providing a sum in between those two figures?
 12 **A.** No.
 13 **Q.** Can you help us with what you understood by the phrase,
 14 "On balance, we feel that the justification for
 15 an increase is not strong"?
 16 **A.** I think the recommendation from the Blood Policy
 17 officials was that actually there shouldn't be
 18 an increase.
 19 **Q.** Why not?
 20 **A.** Because for different reasons they felt that the monies
 21 available supplied for the -- what they thought were the
 22 needs, and I think you probably have to ask officials
 23 more about that. That wasn't my view but that's one
 24 that they felt -- and that was indicated by the
 25 information to me about earlier discussions between

26

1 about what those needs were and how they might be
 2 managed. And that's something I have reflected on --
 3 I reflected on at the time. There are areas of the
 4 documents that indicate that I have raised that as
 5 an issue and I have reflected on it since in preparing
 6 for today.
 7 **Q.** Just before we leave this briefing, the conclusion
 8 said -- the officials felt that the justification for
 9 an increase is not strong. Was that a view you shared?
 10 **A.** In terms of the business case that came in and the
 11 amount of areas it was covering, I wouldn't say it
 12 wasn't justified but I would say that probably
 13 an earlier discussion about what was coming through
 14 would have been helpful, much earlier, and that didn't
 15 happen, even though officials were obviously in touch
 16 with the Trust and the Trust with officials. When it
 17 came in, it wasn't that I was surprised about some of
 18 the issues as I read through the business case, but it
 19 was a real step change in terms of what was expected,
 20 that more time, earlier than when we got it either in
 21 November or the new year, might have been helpful.
 22 **SIR BRIAN LANGSTAFF:** The question, I think, was did you
 23 share the view that there was -- the justification was
 24 not strong? I'm not sure you have answered that.
 25 **A.** I'm not sure "justification" is the right sort of word,

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1 Sir Brian, to be honest. Because there were huge --
2 obviously the business case was very detailed, gave very
3 practical examples of the sort of issues that people
4 were dealing with and living with, the difficulties that
5 there were not only in terms of the Department of Health
6 but also other departments of the government who also
7 had some responsibilities in terms of support as well.

8 I think in terms of when it came in, and where we
9 were in terms of the pressure on departmental budgets,
10 this sort of detail, this complexity, and the sums
11 involved were difficult to resolve. I didn't think it
12 was justified to say there should be no increase, which
13 is the recommendation that was the number one
14 recommendation from officials.

15 **MS FRASER BUTLIN:** Can we turn then to DHSC0041159_237,
16 please.

17 It is a handwritten note from Jacky Buchan. It is
18 a little bit tricky to read but I think the part that's
19 in your handwriting says this -- it is asking for
20 a decision in relation to the funding:

21 "Well it doesn't look like we can pay more and why
22 can't the costs for running the trust be reduced too to
23 provide more money ... run this past Norman [and] Liz
24 for urgent [observations]."

25 I think that's what your writing says to start

29

1 **Q.** There was then a further briefing on 7 July which we
2 won't go to, but for the transcript the reference is
3 DHSC5156234, and in your statement you also refer to
4 an oral briefing meeting on 11 July 2006.

5 Do you recall why you had both a further written
6 brief and an oral briefing meeting before you then met
7 with Mr Stevens and registrants of the Trust on 12 July?

8 **A.** I mean, usually if I wanted an oral briefing as well is
9 because I just wanted to test some of the things I was
10 told in the briefing and to explore more and to
11 understand more about the context of, you know, how we
12 had got to this point and the situation. I can't recall
13 in detail but that would have been -- and any new
14 information that had come to light. But it was a chance
15 to ask further questions and clarify points that were in
16 the briefing or points that weren't in the briefing that
17 I was unsure about.

18 **Q.** You had the meeting on 12 July 2006, and you have
19 addressed in your statement some of the notes of the
20 meeting that criticise you and say you were taken by
21 surprise or seemed to be taken by surprise by some of
22 the things at the meeting. Were you taken by surprise?

23 **A.** No, no. Not in the sense that I obviously realised that
24 what the Trust was asking for was not going to be
25 possible, that not only the Trust but others had put in

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1 with?

2 **A.** Yes, it does.

3 **Q.** It might suggest from this that essentially the
4 officials had already made the decision and you were
5 really in a position where all you could do is rubber
6 stamp it?

7 **A.** I think it indicates that I was trying to see if there
8 was any more money. I mean, the advice I got back
9 showed that actually the Trust did not have money that
10 could be put into the pot for supporting individuals but
11 I think it shows that I was actually trying to say, "Is
12 there any more money from anywhere else we can get to
13 increase the offer?"

14 **Q.** Did you feel that this was a decision you were taking or
15 that it was a decision that had already effectively been
16 taken by officials?

17 **A.** No, I think it was a decision I was making because
18 the recommended decision by officials was not to have
19 an increase at all, and I wanted options that provided
20 some extra money, even though it was nowhere at the end
21 of the day near what people were asking for. So,
22 ultimately, I did make that decision.

23 But I was -- but the options open to me and the
24 availability of resources was limited and that I didn't
25 have much control over.

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1 a lot of work and insight into producing the business
2 case and it was going to be a meeting in which that
3 would be expressed and shared. So I wasn't surprised at
4 that. I went into that meeting knowing that I wasn't
5 going to be able to say yes to what was being asked and
6 therefore that was in the back of my mind, but I still
7 wanted to be able to listen to what people had to say,
8 everybody in the room, ask some questions, try to find
9 out more. I think it was the first meeting with
10 a minister since 2003. If not to affect any change in
11 terms of what I was going to be able to offer, at least
12 to be able to think about, you know, what might happen
13 next and going forward.

14 **Q.** Was that the first time you had met and engaged with
15 people who had been infected or affected?

16 **A.** I think directly, yes. There may have been people at
17 some other parliamentary events that I attended with all
18 party groups. Obviously, Parliamentarians would write
19 in about their constituents as well, and obviously, you
20 know, I read the briefings, but, yeah -- but had
21 an informed voice from those people as well. But yes.
22 And I did want to make sure that they were present at
23 the meeting.

24 **Q.** You then briefed the Secretary of State, and there were
25 email discussions between officials which you weren't

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copied into. But we then come to the letter that you wrote to Mr Stevens on 28 July 2006, HSOC0005411.

We see the third paragraph:

"I have considered carefully all the points that were made at our meeting. I have also looked at the wider picture, including trends in numbers of registrants, and the level of benefits available from the Trust's funds. I am satisfied that an increase of £400,000, approximately 11%, to the Trusts' funding will maintain an appropriate level of support to their remaining registrants and is within the current level of Government funding that is available. This will bring the funding each year to £3.754 million for the Macfarlane Trust and £177,000 for the Eileen Trust (assuming a 90:10 split on the current ratio of their size). Both these figures include provision for administration costs."

In Mr Stevens' evidence he has indicated that in fact this was not an 11 per cent rise because previously there was a Section 64 grant which was now wrapped up, and there was no account taken for the increase in running costs that the Trust anticipated. What would your response to that be?

A. I don't think the letter is probably as clear as it might have been, looking at it and being reminded of it,

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remaining registrants". Did you consider that was accurate at the time?

A. I think probably the word "appropriate" isn't the right word to use in the context of this.

Q. What word should have been used?

A. I think it probably would have been "provides an increase of funding to support".

Q. I want to move then to the Skipton Fund.

At the start of your time in your role, obviously, the Skipton Fund excluded widows and dependants.

If we pick up the document DHSC0004213_083, we see in the paragraphs 2 and 3 it is a letter dealing with correspondence with Nick Harvey MP in relation to a constituent:

"[Mrs X] expresses disappointment that the ex-gratia financial assistance scheme has not been extended to dependants of those who have died following inadvertent infection with hepatitis C. This was not an easy decision to make, but I think it is important to stress that the underlying principle of the payments is that they should be targeted to help alleviate the suffering of people living with the virus.

"The payments are not designed to compensate for bereavement, although I fully appreciate the hardship and pain experienced by families who cared for loved

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and certainly afterwards there was clarification required. The running costs for the Macfarlane Trust had used to be a Section 64 grant. It was taken out of that. But it was, I think, a guarantee to make sure it was still provided for from other sources. So that wasn't, in itself, included in the 400,000, and I think that is clear from what the budget finally ended up to be.

The 11 per cent, again, I mean, part of that was linked to earlier submissions, I think, that informed me this was written by an official. They would have done the figures and presented it to me. Normally as a minister you would not necessarily feel you had to second guess that. You would hope the officials would be informed by that. Earlier documents indicated the increase of 400,000 would be about 10 per cent. But clearly it wasn't as clear a letter as it should be and there was a follow-up meeting with officials to clarify further. It was also wrong about the Eileen Trust, because the Eileen Trust was still going to get the Section 64 grant for their running costs, so that was wrong in the letter and had to be rectified.

Q. In the middle of the paragraph we see you saying that you were "satisfied that [the] increase ... will maintain an appropriate level of support to their

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ones who have died. I realise that this is little consolation. I do hope that [Mrs X] can understand the reasons for introducing the ex-gratia scheme within a healthcare budget which is limited."

This letter is from June 2005. At this point in time, what were your views about the line being given?

A. This was a relatively new policy. The Skipton Fund had been -- policy decision had been decided before I was a minister in the Department. It was obviously a UK-wide policy involving the devolved administrations, who had all signed up to or were signing up to an agreement on it, and also, from what I understand, was based on budget issues as well.

So, in that sense I was a new minister in the Department, this was a relatively new policy and therefore was, you know, not likely to change because of the circumstances I have just described.

Q. Did you at this point question this policy at all, particularly in relation to the difference between the Skipton Fund and the Macfarlane Trust?

A. I think there probably would have been questions from me about why there were differences and -- because obviously these schemes did all have differences within them, and I would have had explanations from officials about why that was the case and that the Skipton Fund

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1 was set up to directly support those who were living
 2 with the infection rather than support for anyone else
 3 who was affected by it, and the rationale for why that
 4 was done probably was explained to me, including in
 5 terms of, probably, cost.

6 **Q.** Other than cost, do you recall what else you were told
 7 about the rationale?

8 **A.** Only that it was set up, and parameters, and that was
 9 agreed on a UK-wide basis and there was agreement on it
 10 that it should only be for those who were living with
 11 the infection.

12 **SIR BRIAN LANGSTAFF:** That's not really a rationale for
 13 setting it up in that way, is it?

14 **A.** I mean, I wasn't party to the establishment of it,
 15 Sir Brian, and the context at the time, but I was a new
 16 minister in the Department and it was an established
 17 policy and some of the things that I was dealing with,
 18 for example, were related to, you know, the appeals
 19 panel and so on. So, again, it was a policy that I had
 20 inherited in which, you know, my scope for changing
 21 something that had gone through not just England,
 22 Scotland, Wales and Northern Ireland, wasn't really
 23 there. It was as I say, I wasn't party to the original
 24 discussions.

25 **Q.** In June 2005 changes to the scheme were being considered

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1 behalf of those who died after 5 July 2004, whether or
 2 not they had applied to Skipton before they died.

3 "My judgement is that the Parliament may agree not
 4 to extend eligibility to those who died before
 5 29 August 2003. I believe, however, we need to show
 6 flexibility in relation to applications from relatives
 7 and dependants of those who die after 5 July 2004, and I
 8 propose that we agree to amend the Skipton Fund scheme
 9 to remove the requirement that claims need to be made
 10 before the date of death."

11 Then in handwriting we see "resist any change".
 12 Can you help us, first of all, with whose handwriting
 13 that is and whether it is yours?

14 **A.** It is not mine. I think it is Patricia Hewitt's.

15 **Q.** You were made aware of the issues, if not the
 16 correspondence. For the transcript, that can be found
 17 in DHSC6263763. But if we just look, first of all, at
 18 that middle paragraph -- "I am keen to ensure that there
 19 would be a clear and agreed UK approach" -- and there
 20 were concerns about a precedent; did you share
 21 Andy Kerr's concerns that are expressed here?

22 **A.** Definitely about having a UK wide approach, yes.

23 **Q.** Why was that so important?

24 **A.** Well, I think in terms of having -- for all those
 25 affected by the decisions around the scheme, parity

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1 by the Scottish Executive. If we can pick up a letter
 2 from Andy Kerr to Patricia Hewitt, DHSC0006888_044,
 3 please. It reads as follows:

4 "As you are aware the Health Committee of the
 5 Scottish Parliament amended section 24 of the Smoking,
 6 Health and Social Care (Scotland) Bill -- which relates
 7 to the Skipton Fund -- to extend eligibility to claim
 8 payments to the relatives and dependants of patients who
 9 contracted Hepatitis C through NHS treatment, but have
 10 now died.

11 "I am keen to ensure that we continue as far as
 12 possible with a clear and agreed UK approach to making
 13 ex gratia payments, as reflected in the existing UK
 14 Skipton scheme. We are concerned about the precedent
 15 with regard to calls for compensation; aware that we
 16 have an agreement with other UK administrations and with
 17 DWP (although we are all subject to the democratic
 18 process); and aware too of creating further calls on
 19 health budgets.

20 "I have, however, to consider the parliamentary
 21 position at Stage 3 and the prospects of persuading the
 22 Parliament to reverse the amendments which have been
 23 made to the Bill. These provide for those who died
 24 prior to 29 August 2003 to be eligible for payments, and
 25 to allow relatives and dependants to make claims on

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1 across the UK made sense.

2 **Q.** If parity across the UK was important, was there any
 3 reason why that parity couldn't be of greater provision?

4 **A.** No, in the sense of, no, if there was a decision made
 5 that it should all be the same, then obviously that
 6 could include discussion about changes to the scheme.

7 **Q.** So parity per se wasn't a reason not to extend the
 8 scheme. It was simply a reason for Scotland not to go
 9 it alone; would that be fair?

10 **A.** I think at the point that I was informed about what was
 11 happening in Scotland, the Scottish ministers were also
 12 in the same position as the policy of our Department,
 13 which was to stick to what we had already agreed and not
 14 make any further changes. Obviously, as things
 15 progressed, that view changed.

16 **Q.** You were then briefed on the issues on 18 August 2005
 17 and we will pick up your response to that,
 18 DHSC0004193_011. It is an email from Anna Norris, who
 19 you think is from your Private Office?

20 **A.** That is correct.

21 **Q.** "PS(PH) was not content for the advice and draft reply
 22 to be forwarded on to [the Secretary of State]. The key
 23 concern is that the only grounds given for changing
 24 policy on the Skipton Fund is that Scotland have changed
 25 their policy. PS(PH) is absolutely clear that if we

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1 change the eligibility for this scheme it should be on
 2 the basis of policy considerations rather than being
 3 pushed by Scotland."

4 Why were you so adamant about that point?

5 A. Because I think, you know, coming to the Department, you
 6 know, I had been briefed on various schemes, including
 7 the Skipton Fund. Obviously, as you can see from this
 8 note, I had done an adjournment debate on this issue
 9 where I had been advised and given the policy position
 10 on who was eligible and who was not. And I did feel
 11 that if there was a discussion to be had about
 12 eligibility, then we should try and discuss that in the
 13 round, rather than what then was happening was it was
 14 basically lobbying and changes in Scotland where
 15 suddenly the position moved.

16 Now, obviously, that was helpful for families but
 17 I just thought why aren't we having that conversation
 18 and working alongside this together, rather than just
 19 waiting for a committee in Scotland to do this? Not
 20 that Scotland shouldn't be able to do things but it
 21 seemed to me that was not necessarily, I thought,
 22 helpful to discussing the wider policy of eligibility.

23 Q. We see in the second paragraph:
 24 "When PS(PH) was preparing for the adjournment
 25 debate on hepatitis C on 11 July the issue of the

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1 Q. Was it unusual for you to have requested something on
 2 7 July and for you to be now at the 19 August and those
 3 points not to have been addressed?

4 A. Yes. Yes, I think that's covered in some of the notes
 5 that I hadn't had a response to that.

6 Q. It might be suggested that the sense one gets from this
 7 email and, in fact, your evidence a moment ago, that you
 8 felt wrong footed by the Scottish amendments and the way
 9 it was handled; would that be fair?

10 A. I don't think I was kept as aware as I should have been,
 11 I think, about the changing situation.

12 Q. Could we then pick up a document from September.
 13 DHSC0041162_092 and 093, and if we can have them side by
 14 side that would be very helpful.

15 We have a note to you from Daniel, dated
 16 27 September, "responses from officials on the Skipton
 17 Fund":

18 "From the responses the argument verges on the
 19 circular -- a scheme operating differently in England to
 20 Scotland is legally sound if there is a clear policy
 21 reason for operating two separate schemes, yet there is
 22 no clear policy reason for the Scottish system."

23 Then I think it is your handwriting?

24 A. Yes.

25 Q. Yes.

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1 Scottish amendments was raised. She specifically asked
 2 at that stage what the policy issues are around the
 3 eligibility criteria ... She is not clear, therefore,
 4 why this hasn't been addressed."

5 Two things arise from that. Was it an unusual
 6 event for this not to have been addressed?

7 A. Can I just read it again?

8 Q. Of course.

9 A. Which paragraph?

10 Q. "When PS(PH) was preparing".

11 A. All right, yes. *(Pause)*

12 I think when I had the adjournment -- from memory,
 13 I'm just trying to recall this -- I think probably when
 14 I had the adjournment debate and MPs had raised issues,
 15 that it opened up more questions that, at that point,
 16 I didn't feel I had the answers to and, therefore, it
 17 wouldn't be unusual for me, to be honest, as a minister
 18 to then come away from that and say "Can I have more
 19 information about the eligibility issue, why are we
 20 doing this, why are we doing that?"

21 Again, this was, I think, a few months from me
 22 coming into the Department so, obviously, I was trying
 23 to learn more about some of these policies that had
 24 already been agreed and what the parameters are and, you
 25 know, how they work.

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1 "I understand this. What concerns me is the fact
 2 that since being in post the Scottish [system] has been
 3 well known" --

4 A. That's "situation".

5 Q. Sorry:

6 "... the Scottish situation has been well known
 7 but no advice to follow Scots eg was forthcoming until
 8 August. What info was new that led to ..."

9 A. "[Recommended] policy change", sorry.

10 Q. No, no, it is fine:

11 "The process is what concerns me. If info
 12 gathering letter is to be sent to Andy Kerr only with
 13 changes ... but wait [until] meeting with officials."

14 First of all, is that an accurate rendering of
 15 what's written, roughly?

16 A. Yes.

17 Q. Can you explain what your concerns about process were?

18 A. I think not being kept up to speed. Essentially, a lot
 19 of the work around the Skipton Fund was being handled,
 20 obviously, at an official level, not just in DH but
 21 obviously with officials in other administrations,
 22 Devolved Administrations, which is completely
 23 understandable, that happens all the time across
 24 government.

25 But I think, in terms of -- I think one was just

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1 being felt that I wasn't kept up to speed about changes
 2 but also that we would move our position, or the
 3 recommendation to move our position, and I think, in
 4 that context, having been as a minister, obviously, in
 5 adjournment debates and other activities, stating the
 6 policy as it stood about eligibility, I think I felt
 7 there could have been a discussion for us to have to
 8 say, "Well, look, if this isn't happening, what should
 9 we be doing on this", and possibly that we could have
 10 moved forward together earlier, rather than necessarily
 11 waiting -- just be seen as responding to what had
 12 happened in a committee in Scotland. That was the
 13 situation, I think, for me.

14 **Q.** Do you have any sense of why officials didn't move this
 15 earlier? Why this wasn't done sooner?

16 **A.** I presume because they thought maybe that the situation
 17 in Scotland wouldn't materialise to create any push for
 18 change.

19 **Q.** Could we turn to DHSC5152685, please. A minute from
 20 William Connon to you and the Secretary of State. We
 21 see the issue is recorded:

22 "[Secretary of State] is being asked by
 23 Andy Kerr ... if she will make changes, in England, to
 24 the provisions of the Skipton Fund (the making of
 25 ex gratia payments to patients infected with hepatitis C

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1 Now, this is the first break in your evidence.
 2 What you say to all witnesses is that they are giving
 3 evidence under oath and they must not -- you must not --
 4 discuss the evidence you have given or for that matter
 5 anything you think you may yet be asked about in
 6 evidence with anyone, whoever that anyone is. But you
 7 are free to talk about anything else you like.

8 11.45 pm.

9 (11.15 am)

(A short break)

11 (11.45 am)

12 **MS FRASER BUTLIN:** Before I move on from the Alliance House
 13 Organisations, I have just been asked to go back to one
 14 particular briefing.

15 DHSC2036530, please.

16 It is the June 2006 briefing. We looked at the
 17 various options that were presented. If we could turn
 18 to page 2. When we looked at the options you discussed
 19 the financial situation, and I'm asked to just look at
 20 paragraph 8 with you:

21 "As you know, DH has faced acute pressure on NHS
 22 funds and (as a consequence) on the raft of central
 23 budgets from which MFT and ET are funded. Major [arms
 24 length bodies] are being required to make challenging
 25 cuts in expenditure, to the point of 'thinking the

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1 as a result of the transfusion of blood or blood
 2 products) in line with a recent amendment in the
 3 Smoking, Health and Social Care (Scotland) Act 2005."

4 If we turn the page, we have the heading
 5 "Discussion", and it is the third bullet point that
 6 I want to pick up:

7 "... in England the cost of any such payments
 8 would have been included in the original estimates for
 9 the overall cost of the scheme ..."

10 When you were dealing with this matter, were you
 11 aware that that was the position?

12 **A.** I don't believe I was.

13 **Q.** It might be suggested that, given the payments had been
 14 included in the original estimates, it should have been
 15 provided to widows and dependants from the beginning;
 16 what would you say to that?

17 **A.** Clearly, from seeing this -- and at that time that is
 18 obviously an option that was open, because the money was
 19 there, or it would appear from this submission.

20 **MS FRASER BUTLIN:** Sir, I'm about to move away from the
 21 Alliance House Organisations and I notice the time.
 22 I wonder whether it is worth today taking a break just
 23 five minutes earlier, before I move on.

24 **SIR BRIAN LANGSTAFF:** Yes, we will do that and we shall come
 25 back at 11.45 pm. So 11.45, we return.

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1 unthinkable' about service reductions. The upshot of
 2 the prolonged review is, quite simply, that an extra £4m
 3 for MFT and £137k for the ET is not available. The most
 4 that could be found, within the budgets now available to
 5 us, might allow for growth of around 10% or £400k across
 6 both Trusts. Officials have so far informally advised
 7 the Trust to plan on the basis of 'flat cash' funding
 8 for 2006/7."

9 When you spoke about the difficult financial
 10 position, is this what you were referring to?

11 **A.** I believe so.

12 **Q.** I want to move then to the self-sufficiency review. It
 13 had been commissioned in 2002 by Yvette Cooper, so
 14 before your time in office. When you came into office,
 15 what were you told about the review?

16 **A.** That it had been sparked from -- by the sense that --
 17 whether or not the UK, England, could have been
 18 self-sufficient in products to support people. That
 19 there -- I think Lord Owen had been involved I think, as
 20 a minister himself, in trying to increase capacity and,
 21 therefore, there were lots of questions I think at the
 22 time that Yvette Cooper authorises about that question,
 23 about whether there could have been greater
 24 self-sufficiency rather than importing from elsewhere in
 25 the UK. And it was a consequence, I think, of that that

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1 she decided to have a review of all the papers that were
 2 pertaining to that.
 3 **Q.** Did you have any concerns when you came into office that
 4 it hadn't been completed by then?
 5 **A.** Often with documents and reviews, they do take a long
 6 time. As you said, it had been going on for some years
 7 now and I think when I came in it was towards the end of
 8 the process. So obviously I was mindful of just how
 9 quickly this would be done so that the report could be
 10 published and people would be able to review it and
 11 see it.
 12 **Q.** Could we turn then to DHSC0020720_016, please.
 13 We have a letter here from Mr Connon to
 14 Dr Patricia Hewitt of the National Blood Authority,
 15 saying this:
 16 "As you may know, in 2002 Ministers commissioned
 17 a review of papers on the issue of self sufficiency in
 18 blood products during the 1970s and 1980s."
 19 Then gives some background, and it says this:
 20 "Due to other work pressures we have been unable
 21 to complete work on the report before now. However,
 22 a draft report is now complete, which I attach in
 23 confidence. I should be grateful if you could let me
 24 have any comments on the factual accuracy of the
 25 report."

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1 surviving documents on self-sufficiency in blood
 2 products. The report is currently with the printers and
 3 we hope to publish early in the New Year. There will
 4 inevitably be criticism when the report is published
 5 because members of the haemophilia community are aware
 6 that many DH papers have been destroyed."
 7 Did you have any concerns that as at December 2005
 8 it was only just being printed?
 9 **A.** Not particularly in terms of sort of how long these
 10 things take. And I know that in terms of -- you know,
 11 the resources within the Department were stretched, in
 12 terms of what they were dealing with and what they were
 13 doing; it's not unusual for documents to take a lot of
 14 time, particularly at the final stage when -- before it
 15 goes to the printers.
 16 **Q.** The review had been ongoing for over three years by this
 17 stage.
 18 **A.** I understand that but I wasn't party to that in those
 19 three years so I can't explain what was happening in
 20 those three years before. All I can say is that I came
 21 into the Department in May and there was work going to
 22 try to get this report out and published. So for my
 23 situation I was looking at the time that I was there and
 24 at the point in which I came into the Department where
 25 it was at.

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1 Then there is a date given for those comments.
 2 Were you aware that similar letters were also sent
 3 to Professor Zuckerman and Dr Snape. Were you aware
 4 that the report was being sent to people to comment on
 5 in advance of publication?
 6 **A.** I think I would have been aware that, for accuracy
 7 levels, some of that would have been done.
 8 **Q.** Did that raise any concerns for you that it might be
 9 seen as people marking their own homework, as it were?
 10 **A.** No. No.
 11 **Q.** Did that factor cross your mind at all?
 12 **A.** I don't think that I had -- there was a discussion on
 13 this. I probably would have just been told that, you
 14 know, there were delays because they were fact checking
 15 some of the information in the report, and it would just
 16 have been at that level and nothing more.
 17 **Q.** In July 2005 you were sent a submission asking that it
 18 could now be made public, and then on 8 December 2005
 19 you received another submission.
 20 DHSC0200103, please.
 21 We are going to come back to large parts of this
 22 minute later but I just want to turn, at this stage, to
 23 paragraph 7 on page 2, please. Which says this:
 24 "On a separate but related matter, PS(PH) will be
 25 aware that we have finalised a report of a review of

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1 **Q.** So from May to December what were you doing to encourage
 2 its speedy publication?
 3 **A.** It was being dealt with by officials. They were mainly
 4 involved in this throughout the period and -- before
 5 I came the Department and after I came the Department,
 6 so they were finalising the report and obviously, you
 7 identified just before, sending it out to certain people
 8 for accuracy to take place.
 9 **Q.** The rest of this minute deals with materials that were
 10 being released by the Scottish Executive. Did that
 11 raise any concerns for you, that a report was about to
 12 be published but there were documents from Scotland that
 13 had not yet been considered?
 14 **A.** I think you can see from this note that "yes" is the
 15 answer to that. I obviously put that remark in about
 16 papers that were destroyed. I'm asking about why we
 17 didn't know about the Scottish -- the Scottish Executive
 18 would have copies of documents and, you know,
 19 I obviously was concerned about that.
 20 Anything which is pulling together documents for
 21 one publication when there's information that there are
 22 other documents out there, obviously, it is --
 23 understandably it can cause concern in people's minds
 24 about whether documents that are being produced are
 25 going to have the full extent of documents that they

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1 need for it.

2 **Q.** So you have questioned here what will the papers
3 confirm. Did you at any point say to officials, "Hang
4 on a minute, we can't publish a report if these
5 documents haven't been addressed"?

6 **A.** I don't know if it was -- I don't know if it was as
7 specific as that. I think I would have been asking
8 questions in the way I have there, which is about: what
9 do we know about these documents? Will they confirm
10 anything that is an issue regarding the report coming
11 forward? But I can't be specific about that. I can't
12 remember.

13 **Q.** If we turn then to WITN5427008, please. It is a note
14 from Ms Seedat from 6 February 2006:

15 "PS(PH) will wish to note that the internal review
16 of papers on self sufficiency in blood products is
17 scheduled to be published on 27 February. We have not
18 indicated the precise date to the letter to
19 Margaret Unwin [from The Haemophilia Society] in case
20 No. 10 move the date for publication."

21 Then we have your handwriting:
22 "What will the review say?"

23 It might be suggested that had you were not,
24 therefore, familiar with the report that was about to be
25 published; would that be fair?

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1 Again, it might appear from your writing here that
2 you hadn't at that point read the draft report?

3 **A.** I can't explain that. I would -- I am sure I would
4 have -- I can't explain that.

5 **Q.** Then if we turn --

6 **A.** I know I would have been -- some of these issues that
7 were coming up I was seeing in the press and I wanted --
8 often as a minister things would crop up and you would
9 go back and say, you know, "What is the situation on
10 that? Remind me what happened at that time". Partly
11 because you are dealing with lots of different policy
12 areas and these things trigger again to be informed
13 about certain issues as and when they arise again. And
14 to be reminded about what the position was.

15 **Q.** We then have WITN5427010, please.

16 We have a note from Jacky again:
17 "This is the response to the question of where
18 blood products were sourced. Basically if it came via
19 BPL it would not have been donated by US prisoners but
20 if it came via anywhere else we do not know."

21 There is then, on from there, a background note
22 dealing with plasma sourced from prisons in Arkansas.
23 Do you think you asked any other questions about
24 the content of the report?

25 **A.** I mean, in terms of the report itself, it was put

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1 **A.** I can't recall exactly what I -- I can't recall exactly
2 when I would have seen a draft and when I would have
3 seen the final thing. But obviously in a department
4 when you are dealing with lots of different issues,
5 obviously, you know, when it becomes current, in terms
6 of its publication, you would normally see something
7 prior to publication. But basically it was an official
8 exercise to gather documents together to deal with the
9 remit that was set by Yvette Cooper, which was how did
10 it answer the question about self-sufficiency.

11 So it wouldn't have been something necessarily
12 that I would have been looking at much earlier than near
13 the publication date.

14 **Q.** Could we turn then to --

15 **A.** Can I just read the rest of this memo, sorry?

16 **Q.** Yes, of course.

17 **A.** Yes, thank you.

18 **Q.** Could we turn then to WITN5427009. We have a note from
19 I think it is Jacky:

20 "Further information is attached as requested on
21 the self sufficiency in blood products review. Gay men
22 donated blood and screening of donated breast milk."

23 Then in your handwriting:
24 "Where is the draft report. Did we import blood
25 products based on donations in American prisons?"

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1 together in terms of the remit that was set, and I don't
2 think there was in terms of that -- I obviously read it
3 through and looked at it and -- and its conclusions,
4 which explained why efforts were made for
5 self-sufficiency, and in terms of the documentation that
6 was provided with the report that wasn't achieved to the
7 degree people had wanted at the time.

8 **Q.** So would it be fair that this was a report that had been
9 set up in 2002, you'd inherited it, you had a look at it
10 but it wasn't something you particularly probed?

11 **A.** I think I was just inheriting something that was near
12 the end of its time. And therefore the important thing
13 was to try to get the report published as quickly as
14 possible, even though there was obviously a gap
15 between -- it wasn't the week after I started or the
16 month after I started, the work had been going on for
17 some years and it was, you know -- and the parameters
18 for it being put together had been considered and agreed
19 before I arrived and therefore to change it didn't seem
20 the right thing to do. It was about getting the report
21 out and people reading it would make their own view.

22 **Q.** We have the briefing pack for the publication of the
23 report. Could we turn to that. WITN5427007.

24 If we can turn to page 5, please. We see the
25 heading "References".

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1 "The report contains a substantial number of
2 references to published scientific papers but also to
3 internal documents. We see no reason why the latter
4 cannot be released on request but for reasons of sheer
5 volume, we have resisted supplying a complete set of
6 documents with publication of the report."

7 Do you remember any discussion about why the
8 documents couldn't simply be released at the time of the
9 report?

10 A. No, not particularly. I think this was just a practical
11 issue that they be released on request as and when. It
12 wasn't stopping people having access, it was just rather
13 than put them all with the report. I don't think there
14 was much discussion about that.

15 Q. Did you question that element of the briefing at all?

16 A. No.

17 Q. We then have the media handling plan for the
18 publication.

19 DHSC0200112. If we can turn to page 4, please.

20 This is the annex to the briefing which appears to
21 be the press announcement that would go with the
22 publication, and towards the bottom of the page we have
23 something that has been prepared as your statement:

24 "We have great sympathy for those people, and
25 their families, who were infected with hepatitis C and

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1 A. If I was aware that testing could have happened earlier,
2 then that wouldn't have been a correct statement in
3 terms of what could have been provided.

4 SIR BRIAN LANGSTAFF: I think it is accurate, is it not,
5 Ms Fraser Butlin, to say that Mr Justice Burton's
6 judgment in *A v the National Blood Authority* comes to
7 the conclusion that before, or at least by, the
8 beginning of the Consumer Protection Act in March 1988
9 there should have been surrogate testing.

10 MS FRASER BUTLIN: Indeed.

11 SIR BRIAN LANGSTAFF: So surrogate testing is a form of
12 testing for hepatitis C, as we now know it to be.

13 MS FRASER BUTLIN: Sir, indeed. I was trying to take it as
14 simply as I could for the purposes of this press release
15 but I'm very aware that it was simplistic.

16 SIR BRIAN LANGSTAFF: Well, that's what the whole case was
17 about --

18 MS FRASER BUTLIN: Indeed.

19 SIR BRIAN LANGSTAFF: -- and you didn't know about that
20 presumably because your officials hadn't told you?

21 A. I didn't know about the judgment, as far as I'm aware
22 Sir Brian. The briefings that I've obviously looked
23 over in preparation for both my written statement and
24 today and the answers I gave in Parliament and elsewhere
25 were very much sort of a 100 per cent suggesting that

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1 HIV from contaminated blood products in the 1970s and
2 early 80s."

3 "The review based on the available evidence,
4 concludes that clinicians acted in the best interest of
5 their patients in the light of the evidence available at
6 the time. Donor screening for hepatitis C was
7 introduced in the UK in 1991 and the development of this
8 test marked a major advance in technology, which could
9 not have been implemented before this time'."

10 Was that a statement that you cleared as something
11 you were prepared to go out in your name?

12 A. Yes.

13 Q. When you came into office, had you been made aware of
14 the judgment of Mr Justice Burton in the hepatitis C
15 litigation?

16 A. Not as far as I can recall.

17 Q. So, were you aware of his judgment that hepatitis C
18 screening could have been introduced in July 1990,
19 rather than September 1991?

20 A. No.

21 Q. In light of that, with the benefit of hindsight, should
22 the press release have been drafted in these words?

23 A. No.

24 Q. Would you have agreed to this if you had been aware of
25 that judgment?

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1 there was no testing that could have been done before
2 1991.

3 SIR BRIAN LANGSTAFF: If you had known of the judgment and
4 if you had understood, as I just recounted, what it was
5 saying, you wouldn't have written this at all, would
6 you?

7 A. No, I think it would have had to be qualified in the
8 context of what other tests were there but it was not --
9 and, obviously, during my time in the Department, I did
10 ask questions about different things and you are
11 learning as you go but this was, obviously a position
12 that, both before my time in the Department and since,
13 was used.

14 SIR BRIAN LANGSTAFF: So, in effect, were you, do you think,
15 put in this position because of the advice you were
16 receiving?

17 A. It was the advice I was receiving. It was based on the
18 advice -- as far as I -- you know -- knew this was the
19 advice I was receiving about what was possible and what
20 was not possible.

21 SIR BRIAN LANGSTAFF: Thank you.

22 MS FRASER BUTLIN: After the publication of the report, The
23 Haemophilia Society wrote a detailed letter to Mr Connon
24 explaining why they considered the report to be flawed
25 and they offered that they and those who had been

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1 infected or affected by hepatitis C and HIV were happy
 2 to meet with ministers and with Mr Connon. Do you
 3 recall that ever being put to you by officials? That
 4 you should meet with people to discuss the
 5 self-sufficiency review?
 6 **A.** I don't recall that.
 7 **Q.** Could we then put up a paragraph of your witness
 8 statement. It is paragraph 3.96 and the document
 9 reference is WITN5427001 please. It is page 126.
 10 It says this:
 11 "I am asked whether I agreed with the conclusions
 12 of the Self-Sufficiency Report. I inherited an internal
 13 review which was established in 2002 to investigate the
 14 issue of self-sufficiency in blood products. The
 15 Self-Sufficiency Report read to me as a factual and
 16 straight analysis and not a political document. It
 17 provided a chronology of events describing, via
 18 an examination of the available documents, the clinical
 19 and policy decisions made, and seemed to do so in
 20 a methodical way. The Report acknowledged the
 21 information gathered during the review had been 'at
 22 times contradictory and incomplete'. I was aware it was
 23 based on an incomplete set of documents. I would have
 24 read this Report and thought perhaps some things could
 25 have been handled differently but difficult and complex

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1 the whole process of this over the years and how it was
 2 handled, would I have done it differently? Would there
 3 have been different ways to deal with some of the
 4 issues?"
 5 I don't think it was anything specific. I think
 6 it was just in the context of looking at something that
 7 had happened over decades earlier.
 8 **Q.** You say in your statement, paragraph 3.108 -- we don't
 9 need to go to it -- that the conclusions in the report
 10 did not occasion a change in government policy and
 11 whether to hold a public inquiry. Can you explain why
 12 that was?
 13 **A.** Because, based on what I was informed about the
 14 situation that led to people being infected and the
 15 circumstances, the information I received led me to
 16 believe that, actually, there was no particular
 17 wrongdoing in that situation, awful though it obviously
 18 was for everybody involved and affected.
 19 **Q.** Then in relation to the documents that had been prepared
 20 alongside the Report, the decision came back to you in
 21 April 2006 about whether the documents should be
 22 released and you said there was no reason for them not
 23 to be. Why was that decision not taken earlier?
 24 **A.** I don't know, to be honest, is the answer for that. But
 25 I think in my statement, in terms of documentation,

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1 decisions were being made at the time. I knew the
 2 Report was not going to answer all the questions
 3 campaigners had and there would be challenge to the
 4 analysis. However, I did feel the Self-Sufficiency
 5 Report provided an adequate explanation as to the
 6 decisions taken on self-sufficiency based on scientific
 7 and medical evidence and views at the time. It did not
 8 raise with me 'red flags' about government wrongdoing.
 9 I was also not informed of concerns from within DH
 10 (eg from the Chief Medical Officer or the Deputy Chief
 11 Medical Officer). It was important that after
 12 considerable time the report was finally published."
 13 When you say in the middle of that paragraph
 14 "I would have read this report and thought perhaps some
 15 things could have been handled differently", what did
 16 you mean by that?
 17 **A.** I think when I was writing my statement, I think partly
 18 it was sort of looking back on the process of politics
 19 and government at the time but also in terms of the
 20 Health Service and how it worked during that period and
 21 might have thought, actually, you know, some more
 22 information might have been available to people in
 23 different ways during that period. But in some ways,
 24 I think that was just sort of just thinking, I suppose
 25 in some ways, sort of with hindsight, thinking "Well,

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1 I think it sort of shows that I became much more sort of
 2 focused on trying to get as much documentation out as
 3 possible. You mentioned earlier the Scottish papers
 4 that were discovered. There were other situations of
 5 discovery as well, which we may talk about later and, to
 6 be honest, I just thought as much as possible should be
 7 provided and I think that was part of the experience as
 8 a minister, as the months went on.
 9 **Q.** So, in terms of practicalities, had anything changed?
 10 **A.** Just that I thought documentation and getting it out
 11 there was really important because I know, and I knew,
 12 that that was one of the big issues in terms of people's
 13 lack of confidence in what they were being told. And
 14 the documentation was important to allay that concern,
 15 if that was the case that the documentation matched
 16 others that were already in the public domain.
 17 **Q.** In terms of documentation, what awareness did you have
 18 when you came into office that there was an issue around
 19 missing documents relating to infected blood?
 20 **A.** I think I was briefed and knew something about what had
 21 happened in terms of some of the destruction of
 22 documents, to do with, I think, earlier litigation but
 23 also the Committee -- excuse me, I have forgotten what
 24 the --
 25 **Q.** ACVSB.

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1 A. Thank you -- and that there had been an internal review,
 2 an internal audit of that in 2000. So I was conscious
 3 that in all the discussions about the rationale, for
 4 example, for not having a public inquiry, alongside that
 5 was the feeling that not enough of the documentation was
 6 available, concerns about what had happened to missing
 7 and destroyed documents, and that it was an ongoing
 8 issue and, obviously, was one of the issues that had
 9 a considerable amount of my attention in the months and
 10 years ahead that I was in the Department.

11 Q. If we can turn to the July 2005 briefing in relation to
 12 the Self-Sufficiency Report, just to pick up in relation
 13 to documents. DHSC0200084, please. It is paragraphs 4
 14 and 5 on page 1. This is a briefing from Mr Connon to
 15 you, 20 July 2005. It says:

16 "In 2002, Yvette Cooper the then Health Minister
 17 asked officials to undertake an internal review of the
 18 surviving documents, roughly between 1973-1991 ..."

19 Then paragraph 5:
 20 "The review does not address comments by Lord Owen
 21 about the destruction of papers from his Private
 22 Office."

23 In July 2005, when you received this minute, this
 24 briefing, did that ring any alarm bells for you in terms
 25 of documents not being available?

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1 products in the 1970s and 1980s."

2 There is then the background in paragraph 3:
 3 "Since the Freedom of Information Act came into
 4 force we have had numerous requests for the release of
 5 papers dating back to the 1970s/early 80s relating to
 6 the issue of haemophilia patients infected with
 7 [hepatitis C]. Unfortunately, many of our papers dating
 8 back to this period have been destroyed. Our
 9 understanding is that during the HIV Litigation in the
 10 1990s many papers were recalled. We understand that
 11 papers were not adequately archived and were destroyed
 12 in the early 1990s. In addition, we have established
 13 that many papers on [hepatitis C] infection were
 14 destroyed in error in the mid-1990s. In response to
 15 various [Freedom of Information] requests we have had to
 16 own up to this fact."

17 There is a handwritten note "before [1997]?"
 18 I think that's your handwriting?

19 A. Correct.

20 Q. If we go over the page, paragraph 5:
 21 "All the relevant action took place prior to
 22 devolution. It is highly likely that, amongst the
 23 volume of documents being released by the
 24 Scottish Executive, there will be copies of papers that
 25 were destroyed in DH. As this information is held by

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1 A. I think I probably would have -- if I hadn't known
 2 already -- asked about the situation with Lord Owen and
 3 what that was all about in relation to his papers and,
 4 of course, you know, part of the job of the whole --
 5 doing the Self-Sufficiency Report was to bring together
 6 as many papers and documents as possible, so that was
 7 a work in progress.

8 That had been set, as I said, before, when I came
 9 into the Department it was about completing that process
 10 and producing the report. So, at that point, I was
 11 aware. I was aware of the concern, understandable
 12 concern. But I couldn't really comment on that until
 13 the report was done.

14 Q. If we turn then to DHSC0200103, please. This is the
 15 8 December submission that we looked at earlier in
 16 relation to the delay with the self-sufficiency review.
 17 But I want to look at it in a bit more detail in
 18 relation to the destruction of documents and the
 19 materials being released by the Scottish Executive. It
 20 is dated 8 December 2005, at paragraph 1:
 21 "Ministers will wish to be aware that The
 22 Scottish Executive have undertaken to release
 23 substantial material under the Freedom of Information
 24 Act concerning haemophilia patients infected with
 25 Hepatitis C through contaminated blood and blood

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1 the Scottish Office and not DH it is for them to release
 2 it under [Freedom of Information] if appropriate. They
 3 have taken the decision to do so.

4 "Inevitably, this may well give renewed ammunition
 5 to the conspiracy theorists, and continue allegations of
 6 a 'cover up', all of which have been strenuously
 7 [I think it should say 'denied']. If there is media
 8 interest we can hold the line that blood safety is of
 9 paramount importance to DH and the blood service, and
 10 all the relevant issues have previously been fully
 11 explored and lessons have been learned. We are not
 12 aware of any new evidence in the papers which the Scots
 13 are about to release."

14 At the bottom of the page, we have looked at this
 15 but, just for completeness, we have your handwriting
 16 saying:
 17 "When were papers destroyed?"
 18 "If Scotland had copies why didn't we acknowledge
 19 this when [Freedom of Information] requests came in?"
 20 Then the question:
 21 "What will the papers [contain]?"

22 SIR BRIAN LANGSTAFF: "Confirm" I think.
 23 MS FRASER BUTLIN: Sorry, "confirm".
 24 SIR BRIAN LANGSTAFF: By "confirm", do I take it that it
 25 isn't a question of confirming what is already known, it

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1 is really saying: what will they say?

2 **A.** The Scottish papers, yes.

3 **SIR BRIAN LANGSTAFF:** Thank you.

4 **MS FRASER BUTLIN:** After this memo, there's then a series of

5 correspondence about getting to the bottom of what's

6 happened with the documents, that you put in place some

7 measures which we are going to discuss. But would it be

8 fair to suggest that it wasn't until this submission in

9 December that you really engaged with the issue of the

10 destruction of documents? This was sort of the trigger

11 for your engagement?

12 **A.** I think I would have been more generally aware of some

13 of the back story to some of this. But I think at this

14 point, that's probably right. And I think, as

15 a minister, often you will be receiving, which is a sort

16 of "what's happening", and it is when something triggers

17 something else, in this relation -- the Scottish

18 documents, that obviously you take more of a look at

19 these things.

20 Often you are actually asking for reminders of

21 what you have been told before, to explain before,

22 because you are carrying a lot of different details from

23 different areas in your head, as a minister on widely

24 different issues, so there was always a case of going

25 back and saying -- asking more questions but also

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1 **Q.** Of course. The line that is to be held is that "all

2 relevant issues have previously been fully explored".

3 If documents are noted as having been destroyed and now

4 discovered, might it be fair that that is contradictory?

5 **A.** If there are documents out there that we haven't seen

6 then there might be information in them which

7 contradicts what is in reviews of document, so I think

8 that is a fair point.

9 **Q.** Did you consider that when you received the submission?

10 **A.** I don't really think paragraph 6 was particularly for my

11 attention, it was a statement from an official. What

12 I was more concerned about was the Scottish papers: why

13 hadn't we identified that with colleagues before?

14 I think in my statement, and I think in terms of

15 a document, I didn't understand, you know, this issue

16 around it's held by the Scottish Office, it is not for

17 the DH to respond to a FOI. I couldn't quite understand

18 why there wasn't more discussion between officials

19 across administrations about what they held, and that

20 was something I raised.

21 **SIR BRIAN LANGSTAFF:** You would have expected, I suppose, if

22 you knew or if your officials knew that there were

23 documents in Scotland which might contain some of the

24 missing documents, that they would have asked to see

25 what they said?

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1 verifying what you have been told before as well.

2 But, yes, I mean, obviously this was an issue and

3 it was an issue for me why DH hadn't necessarily

4 contacted Devolved Administrations about what they might

5 hold or not hold in the past.

6 **Q.** What was the significance of it being before 1997?

7 **A.** Oh, I think I was just -- it was just interesting --

8 I just wanted clarification on the period to see if it

9 had happened during the Labour administration, since we

10 had come in in '97. I just wanted to verify which

11 administration we were talking about.

12 **Q.** If we look again at paragraphs 5 and 6, where it talks

13 about:

14 "It is highly likely that ... there will be copies

15 of papers that were destroyed in DH."

16 Then it refers in paragraph 6 to holding the line

17 that:

18 "... all the relevant issues have previously been

19 fully explored and lessons have been learned."

20 It might be suggested that paragraph 6 is

21 contradictory to the rest of the note when papers have

22 been destroyed and how then all the relevant issues

23 could have been fully explored; do you have any

24 reflections on that?

25 **A.** Can you say that last part again, please?

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1 **A.** I think whether they knew they had documents or not they

2 might have asked them.

3 **SIR BRIAN LANGSTAFF:** It appears -- I want to ask you about

4 this, whether you asked any questions about it of

5 William Connon, who I think wrote this.

6 Paragraph 5 suggests in the second sentence, by

7 saying "it is highly likely that there will be copies of

8 the papers that were destroyed in DH", that he hadn't

9 actually looked at the papers. That is an implication

10 from that sentence, isn't it? He is assuming --

11 **A.** I think, if I heard you correctly there, Sir Brian, it

12 doesn't look like he knows what's in the Scottish papers

13 at that point.

14 **SIR BRIAN LANGSTAFF:** Then he says this to you, in

15 a briefing note, the very last sentence in paragraph 6:

16 "We are not aware of any new evidence in the

17 papers which the Scots are about to release."

18 If he hadn't read the papers how could he possibly

19 say that?

20 **A.** Fair question.

21 **SIR BRIAN LANGSTAFF:** Did you ask him?

22 **A.** I think I just wanted the papers out there and to be

23 identified and deal with them. It seemed to me that, in

24 some ways, paragraph 6 wasn't necessarily something

25 I was focusing -- what I was focusing in on was: why

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1 didn't we know about these papers? Why hadn't anybody
2 asked the Scottish administration whether they held any
3 papers? And, really, how do we make sure we can review
4 them and go through them and match them against the
5 papers we currently have, and therefore then find out if
6 there were papers there that we didn't have that
7 answered some questions about those that were missing
8 and destroyed.

9 **SIR BRIAN LANGSTAFF:** Yes, thank you.

10 **MS FRASER BUTLIN:** In terms of holding the line, after this
11 submission, did you ask officials about changing the
12 lines to take going forwards?

13 **A.** I think, obviously, the position was that, based on the
14 papers that we had seen, they suggested that our
15 position, in terms of what was possible and what could
16 have happened, were the same but, clearly, until we were
17 able to review these documents and other documents that
18 came to -- were discovered, we would not know the whole
19 picture and, actually, the documentation was either
20 going to -- identifying the documents, going through the
21 documents was either going to identify they were either
22 the same as the documents we already held or they
23 brought new information. And, until we did that
24 process, obviously the status quo stood for the time
25 being.

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1 "We do not expect the documents to report/confirm
2 any particular facts which have previously been unknown.
3 We have not been able to examine the Scottish documents
4 due to the huge volume and the fact that we do not know
5 exactly which documents were destroyed in the 1990s.
6 There may well be documents released which express views
7 which could be potentially difficult or inconsistent;
8 I simply do not know."

9 When you received --

10 **SIR BRIAN LANGSTAFF:** What is the date of this?

11 **MS FRASER BUTLIN:** We can see that it is dated 13 December.

12 **SIR BRIAN LANGSTAFF:** Thank you. 2005?

13 **MS FRASER BUTLIN:** 2005, yes, sir.

14 When you received this note, were you content with
15 this level of information?

16 **A.** I had asked some questions, they had answered the
17 questions and, therefore -- I have obviously ticked it
18 and put the date on it. That's my writing at the
19 bottom. But I continued to be concerned about the
20 issues around documents being discovered, reviewing
21 them, to make sure we could reassure people about
22 whether they matched the documents we had and therefore
23 matched what we were saying in terms of policy.

24 For the time being this was just answers to some
25 specific questions and I think, in some ways, the

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1 **Q.** I'm going to come back to lines to take in a moment.
2 You have said in your statement that you and/or
3 Lord Warner asked for a briefing on how documents came
4 to be destroyed, which in your statement you say was
5 provided to you in May 2006. Before we go to that
6 I want to just fill in some of the chronology with you.
7 Could we turn to WITN5427030 and turn to page 4 of
8 it. We see a note to you:
9 "Officials have provided the following answers to
10 your questions:
11 "When were the papers destroyed?
12 "The documents were destroyed during the early
13 1990s but exact dates are not known. There were several
14 files destroyed.
15 "If Scotland had copies why didn't we acknowledge
16 this when our FOI requests came in?
17 "Under FOI we respond in terms of England not the
18 UK therefore I doubt that we consider Scottish documents
19 and are not obliged to do so. In the case of the
20 forthcoming Report into Self-sufficiency the report only
21 looked into England and North Wales (the NBA catchment
22 areas). The report it seems did not consider whether
23 copies of documents were held by [Devolved
24 Administration] departments which is unfortunate.
25 "What will the papers confirm?

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1 answers to them are clear, particularly the last one.
2 They didn't know, although they didn't think it would
3 make any change.
4 **Q.** In November/December 2005, the Inquiry has heard that
5 Lord Jenkin requested a second meeting with
6 Sir Nigel Crisp about missing documents. Were you aware
7 of his request and/or the decision to turn the request
8 down for that second meeting?
9 **A.** I'm not sure if -- I would have been aware of the
10 request, I might have been informed about it not
11 happening but I was not party to that discussion with
12 Sir Nigel Crisp.
13 **Q.** By December you had concerns about missing documents
14 from these papers. In light of your concerns, did that
15 in turn raise concerns about Sir Nigel Crisp not meeting
16 with Lord Jenkin?
17 **A.** Not direct with me, myself, I can't -- I don't think it
18 did.
19 **Q.** In February 2006, you were provided with a briefing pack
20 on the Self-Sufficiency Report and that included the
21 standard briefing on the document destruction. That
22 line was also used by Lord Warner in answering
23 a question and we will go to that.
24 DHSC0041304_138, please.
25 Lord Warner was providing a written answer to

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1 a question from Lord Morris. The answer is this:

2 "My noble friend is aware" --

3 The question, I should say, was, further to the
4 answer in January dealing with contaminated blood
5 products and documents that were destroyed, the question
6 is:

7 "... on what date or dates they were destroyed; by
8 whose decision they were destroyed; and whether it is
9 only documents on these products that have been
10 destroyed in error by the department?"

11 The answer is this:

12 "My noble friend is aware that during the HIV
13 litigation many papers were recalled. We understand
14 that papers were not adequately archived and were
15 unfortunately destroyed in the early 1990s.

16 "My noble friend is also aware that further
17 documents were destroyed in the 1990s. Officials at the
18 Department of Health have established that these
19 documents related to the minutes and papers of the
20 Advisory Committee on the Virological Safety of Blood
21 between 1989 and 1992. These papers were destroyed
22 between July 1994 and March 1998. A decision, most
23 probably made by an inexperienced member of staff, was
24 responsible for the destruction of these files."

25 You and Lord Warner had raised questions about

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1 clear that it wasn't a complete set of documents, and
2 that was made clear in the report itself. It wasn't
3 that it wasn't being acknowledged that there were
4 documents that were missing and there were documents
5 that had been destroyed. I think the question was the
6 discovery of documents from different quarters that
7 started to focus mine and Lord Warner's attention about
8 what happened with these, why we hadn't known about them
9 earlier and what did they say and what could we
10 influence as ministers to ensure that they were brought
11 into the picture.

12 Q. There was then a further briefing pack for Lord Warner
13 in response to Lord Jenkin's question about the
14 Self-Sufficiency Report being a complete account of the
15 circumstances of infected blood.

16 If we turn to DHSC0041198_088, please, and turn to
17 page 19.

18 We have the briefing on destruction of documents.
19 It is essentially the line to take.

20 But if we turn the page, we pick up the question:

21 "Why doesn't the report address the issue of
22 Lord Owen's papers that were shredded?"

23 The line is:

24 "The review was never intended to consider why
25 papers from Lord Owen's private office were destroyed.

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1 what had happened about the papers but the standard line
2 to take remains the same at this point. Why was that?

3 A. I think the information that we were provided with was
4 that a combination of factors, reorganisation, clearly
5 some of these documents were not tagged as securely as
6 they should have been, and -- and therefore what ended
7 up happening, documents that shouldn't have been
8 destroyed were then not secure and were then destroyed.
9 And the chain -- the line of -- I suppose the line of
10 command on that was probably not just one individual
11 person, it just was not satisfactory in terms of the
12 management of that documents. But it wasn't -- it was
13 an error and it was poor systems that operated, rather
14 than something more malign.

15 Q. Given that you and Lord Warner were raising concerns
16 about this, why wasn't it added to the line to take: in
17 fact we have concerns and we are exploring them further?

18 A. I don't know the answer to that. I mean, I think
19 Lord Warner and I were just trying to understand better
20 what was going on in terms of these documents in the
21 Department and wanted to assure ourselves about that and
22 what could be done. And therefore that was more of
23 an internal discussion at that point.

24 I should say that obviously the Self-Sufficiency
25 Report, I think -- you cited it I think earlier, it was

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1 Papers kept by Ministerial Private Offices are not kept
2 after a change of Government.

3 "If pressed: They are either shredded or handed
4 back to the relevant policy section."

5 Then a note is added, again, I think, by your
6 Private Office:

7 "I have asked for this to be checked. This may
8 have been the practice 25 years ago but it is not what
9 we do now so we need to be absolutely sure of this."

10 A. Could I just see the whole document, if that's all
11 right, because I'm not sure whether that is the private
12 office. I can't see -- obviously it has been
13 redacted -- who the initials are.

14 Q. The signature looks to be from Jacky, if that's of
15 assistance.

16 A. Yes, thank you.

17 Q. I am sure those behind me will correct me if I'm made
18 a mistake.

19 A. It just looks like somebody else's handwriting so
20 I wasn't sure. Thank you.

21 Q. If we can turn on, and then I will ask you a question
22 about it, to DHSC5408829.

23 It is an email chain, so we need to start at
24 page 3 and work our way forwards.

25 It is an email from Rebecca Spavin to Mr Connon:

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1 "I would be grateful if you could be aware of the
2 following questions [from] MS(R) for our meeting later
3 this morning ..."
4 So these are questions from Lord Warner's office.
5 At the bottom of the page, discussing pages 19 and 20:
6 "Page 19; Who established the papers had been
7 destroyed?
8 "Page 20; When were Lord Owen private office
9 papers destroyed?"
10 Then if we go to page 2. We have an email from
11 your private office:
12 "Why didn't we check what papers the Devolved
13 Administrations held when we found out we had destroyed
14 some files?"
15 Further down:
16 "Finally, PS(PH) is not convinced by the argument
17 about destruction of documents from Lord Owen's private
18 office. She said there surely must have been guidance
19 from Cabinet Office - isn't there guidance now?"
20 At this point then you and Lord Warner were both
21 raising further questions about the destruction of
22 documents, is that right?
23 A. Correct.
24 Q. This is now April 2006, you and/or Lord Warner had been
25 asking questions about destruction of documents since

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1 A. I don't think I had anything to suggest that the papers
2 that had been identified, that had been destroyed, had
3 been done in a way that was malign or malicious.
4 I think there was an error in the Department, in the way
5 they work, for that. My question about Lord Owen's
6 situation was just to -- you know, as a relatively new
7 minister, just trying to understand better about what
8 happens to papers of ministers in their private offices.
9 Nobody had actually sort of sat down and told me,
10 I think, directly at that time, and that's why I wanted
11 verification. In fact I think it came later that
12 actually it was down to individual departments as to
13 what they did, and they tended to hand -- either the
14 private office themselves would destroy them or they
15 would be handed on to somewhere else to destroy them.
16 I actually never saw any papers, in all my time as
17 a minister, that were the papers signed by previous
18 ministers.
19 Q. Another question that Lord Warner in that email chain
20 had asked was: who destroyed the documents? If you
21 didn't know who had destroyed the papers, could you be
22 confident that there had been no deliberate attempt to
23 destroy them?
24 A. Could you just take me back to those questions so I can
25 be clear about whether that's referring to Lord Owen's

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1 December 2005. Did you have any concerns that
2 four months later those questions had not been fully
3 answered?
4 A. I'm sure we did. I'm sure we did. And we kept on
5 asking those questions and -- as best we could, and in
6 different ways, and verification or confirmation of
7 the -- of what happened.
8 Q. If we then turn to CBCA0000039, please. We will turn to
9 page 2, please.
10 On the right-hand column towards the end there is
11 an answer from Lord Warner, recognising that this is
12 an answer given by Lord Warner. He responds to
13 a request from Lord Jenkin:
14 "My Lords, I do not accept any of those remarks.
15 We regret that the papers were destroyed in error, which
16 was, I think, explained to the noble Lord in a meeting
17 with the former Permanent Secretary to the Department of
18 Health. I think that it has been explained to him on
19 a number of occasions that there was no deliberate
20 attempt to destroy past papers. We understand that many
21 of the papers were, unfortunately, destroyed, but I have
22 to say that that did not take place under this
23 Government."
24 At this point in time, were you confident that the
25 papers had been destroyed in error?

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1 papers or --
2 Q. I'm sorry, we're talking about other papers as well.
3 This is a generic -- this piece of -- this answer from
4 Lord Warner deals with what was called the GEB files.
5 A. Sorry, yes. Yes.
6 I don't know why it was worded particularly like
7 that. Maybe we just wanted more detail. I mean, the
8 line we got was it was an administrative error, a very
9 bad administrative error, in terms of how documents were
10 logged and secured. Perhaps we just wanted more detail
11 about how that came about in the process. I can't
12 speculate on that now.
13 Q. Could you be confident that you were using lines to take
14 in responses to questions that were accurate?
15 A. I think we, you know, hadn't got evidence that the
16 position had changed. What we were seeking was more
17 information. That didn't necessarily mean that the
18 position was not accurate but that didn't stop us,
19 behind the scenes in the Department, trying to
20 understand more about what had gone on and the
21 explanation. I think some of the questions in the lines
22 reflect some of the questions we were asking to
23 officials to reassure us.
24 Q. Do you think with the benefit of hindsight, perhaps,
25 that there should have been greater transparency at this

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1 point, that there were questions that remained to be
 2 answered?

3 **A.** I think it was always acknowledged, as far as I could
 4 recall, that for different reviews there wasn't
 5 a complete documentation and there were these issues
 6 around these missing and destroyed documents. But based
 7 on the documents that were had, that was what defined
 8 the policy. For myself, and I can't -- it is not right
 9 for me to speak for Lord Warner -- but working together,
 10 we wanted to try to ensure that as some of these
 11 documents arose, that they were looked at and reviewed
 12 as quickly as possible to reassure people whether they
 13 were new information or just copies of existing
 14 information that already supported the current policy.

15 **Q.** I think my question was slightly different. Perhaps
 16 I didn't phrase it quite clearly enough.

17 In relation to lines to take, that the public were
 18 being told through Parliament and through answers in
 19 the Lords, do you think on reflection the questions that
 20 you were asking behind closed doors should have been
 21 made clearer publicly?

22 **A.** I think at the time we were trying to internally
 23 discover more information for ourselves so that we could
 24 then be able to be more open in terms of what we could
 25 say and try to ask those questions in Department.

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1 **SIR BRIAN LANGSTAFF:** It doesn't, I think.

2 **A.** They are Lord Warner's words. I think --

3 **SIR BRIAN LANGSTAFF:** No, I mean, there may be an
 4 explanation for them, there may be further information,
 5 so one can't say it is necessarily wrong but it is
 6 curious.

7 **MS FRASER BUTLIN:** Just for the transcript, sir, your
 8 question has been picked as referring to destruction
 9 between 1994 and March 1988. I think you said
 10 "1998" (*sic*).

11 **SIR BRIAN LANGSTAFF:** 1998, of course.

12 **MS FRASER BUTLIN:** There are two parts of the transcript
 13 where that has been picked up incorrectly.

14 **SIR BRIAN LANGSTAFF:** "1998" is what I meant. I may have
 15 said '88, but that was wrong.

16 **MS FRASER BUTLIN:** Could we then turn to DHSC5076111.
 17 It is a submission from Steve Wells, of the
 18 information services, on 11 May 2006, and the first
 19 paragraph says this:
 20 "You asked for a briefing, ahead of your meeting
 21 with MS(PH) on 24 May, on a recent story in the
 22 Observer ..."
 23 Then it explains what The Observer story was.
 24 In your statement you said this was the briefing you
 25 requested in December 2005.

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1 I'm not sure at that point, before we had done our
 2 own sort of exploration of the issues, that it would
 3 have necessarily been helpful to say that, but we were
 4 actively involved in that in the Department.

5 **Q.** I want to then turn to --

6 **SIR BRIAN LANGSTAFF:** Just before you do that, I just
 7 wonder, in the light of openness, et cetera, about
 8 the very last sentence of the first paragraph of what
 9 Lord Warner had to say. He added at the end:
 10 "... but I have to say that that did not take
 11 place under this Government."
 12 A little bit of a side swipe possibly.
 13 But I think we have already seen, have we not, in
 14 a previous parliamentary answer that, when asked about
 15 the dates of destruction, he gave the latest date as
 16 March 1988 (*sic*). When did this Government -- what
 17 would be the time for it beginning? Would it be 1997?

18 **Q.** For the Labour Government coming in? May 1997 the
 19 Labour Government came in.

20 **SIR BRIAN LANGSTAFF:** So he said with confidence that the
 21 destruction "did not take place under this Government".
 22 Do you know how that fitted with his earlier answer that
 23 the destruction took place between 1994 and
 24 March 1988 (*sic*)?

25 **A.** I can't.

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1 On reflection, do you think that's correct?

2 **A.** Could you repeat that question again, sorry.

3 **Q.** In your statement you said that this briefing was the
 4 one that you received from your request in
 5 December 2005. Given the terms of that first paragraph,
 6 referring to a recent story in The Observer, do you
 7 think that is, on reflection, correct?

8 **A.** I'm not sure. Because obviously this is to -- it isn't
 9 to me, it is to another minister, so I'm not sure.

10 **Q.** That may be something that needs to be picked up after
 11 the hearing today, whether there is another document
 12 that should have been referred to in this statement.

13 If we can look at some other parts of it. Under
 14 the heading "Key Messages", it is dealing with questions
 15 of the level of seniority making decisions on retention
 16 and destruction of records:
 17 "Key Messages."
 18 "5. Decisions on retention and destruction of
 19 records may be made by relatively junior staff (IP2
 20 or above).
 21 "6. Line managers at all levels are responsible
 22 for ensuring that record keeping their areas is
 23 consistent and meets Departmental standards. This
 24 includes making sure that staff making decisions on
 25 records retention and destruction are 'sufficiently

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1 aware of the administrative needs of the section to be
2 able to make the decisions'."

3 "7. There was no deliberate attempt to destroy
4 past papers."

5 Then over the page:

6 "8. When the discovery was made that files had
7 been destroyed, an internal audit report led to
8 improvements in guidance and procedures on record
9 keeping ..."

10 Then:

11 "Lines to take

12 "11. The guidance has been consistent. Although
13 relatively junior officials are permitted to make
14 decisions on retention or destruction of records, their
15 line managers are responsible for ensuring that they are
16 equipped to exercise that responsibility:

17 "12. Clearly, the files and papers should not
18 have been destroyed. Given the sensitivity of this
19 issue, we have fully investigated this matter. We have
20 concluded that this was a very unfortunate
21 administrative error.

22 "13. We greatly regret that these papers were
23 destroyed in error and are doing everything we possibly
24 can to ensure that any documents, which were not
25 destroyed, are made available."

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1 was about resources, and that was a feature that came up
2 a lot, in terms of resources to review documents. And
3 that was something, again, that Lord Warner and I worked
4 on together to try and get some effective resolution to.

5 Q. Can we then turn to WITN1210012, please, page 2. We
6 have a written question from Jennifer Willott, which
7 reads:

8 "To ask the Secretary of State for Health whether
9 her department has carried out an internal review into
10 the destruction of the 1990s of documents held by her
11 Department relating to National Health Service blood and
12 plasma products infected with HIV and hepatitis C; and
13 if she will make a statement."

14 Then the reply from you:

15 "During the HIV Litigation many papers were
16 recalled and following that we understand that papers
17 were not adequately archived and were unfortunately
18 destroyed in error.

19 "Officials subsequently established during the
20 hepatitis C litigation that documents relating to the
21 Advisory Committee on the Virological Safety of Blood
22 between 1989 and 1992 had been destroyed in error.
23 Following this discovery, an internal investigation was
24 undertaken in April 2000 by the Department's internal
25 audit."

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1 This was, as you say a submission to Lord Warner,
2 but it was in preparation for a meeting with MS(PH).
3 Around this time, did you probe any further the question
4 of this being a very unfortunate administrative error?

5 A. No, because I think I felt that there had been
6 operational mismanagement and -- and that had been
7 acknowledged and made clear. I had no reason to suggest
8 that there was something else more malign.

9 Q. Then, at paragraph 15, we see --

10 A. That wasn't acceptable, by the way, in terms of what
11 happened, clearly, and shouldn't have happened. But it
12 did and that had to be acknowledged.

13 Q. We then pick up "Elephant traps", and that deals with
14 the Scottish Executive documents. In paragraph 15:

15 "We do not know the precise contents of all these
16 documents simply due to the huge volume involved. Some
17 of these documents will inevitably be copies of the ones
18 destroyed by DH. The policy division concerned is not
19 resourced to examine the documents concerned."

20 Did that issue raise concerns for you?

21 A. I think it did in the sense that, in order to allay
22 concerns, we would have to review the Scottish documents
23 to identify them against documents we currently held,
24 but also to see if there were any additional documents,
25 over and above what we held. The other issue in here

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1 This, as I say, was answered on 23 May 2006. In
2 May 2006 external solicitors had returned documents to
3 the Department from the HIV Litigation. Why was that
4 information not included in this written answer?

5 A. Can you just show me the question again, please?

6 Q. Of course.

7 A. Can I have it a little bigger? Okay. So I think the
8 answer was based on what had been done. The other
9 documents that were emerging from solicitors, along with
10 the Scottish documents, I think we were still working
11 out what should be done in terms of them being reviewed,
12 so that was, I think, a sort of -- I think that was
13 under discussion about how that would happen, I believe,
14 and therefore this was just a factual statement of what
15 had been done so far, I believe, if I have got the
16 chronology right.

17 Q. With the benefit of hindsight and thinking about the
18 importance of transparency and openness in government,
19 do you think that the answer could have been different?

20 A. I think until we had worked out exactly what we were
21 going to do in terms of reviewing these different
22 documents, you need to put a statement of, I suppose,
23 fact into answering these questions. This was
24 a specific question and that was a specific answer to
25 that question at that point in time. Later on, we were

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able to make clear what was happening in terms of these documents and, for example, the solicitors -- the ones that came from the external solicitors, they were looked at by independent, I think, legal counsel before they came into Department.

I can't recall, looking at this, whether that decision had been made by this point but it certainly was under discussion as these documents from different quarters emerged.

Q. On 24 May 2006 you had a meeting with Lord Warner and officials about the returned documents, the documents coming in from the solicitors. Do you recall how that meeting came to be?

A. I think -- I can't be specific but I think, obviously, you know I found out, Lord Warner had found out, that these documents had come in and we probably just said we want to have a meeting. And I think, again, part of this was Lord Warner and I together trying to get a grip on these different documents emerging and how we were going to review -- not how we were going to review them, how the Department would seek to review them and how it, therefore, would play into existing policy and existing review reports and everything else.

So we were very keen to exert some ministerial pressure to make sure this was understood how important

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inquiry."

If we just go to the third paragraph we looked at, the "Whilst sympathetic" point:

"... [insistent] that more proactive measures are taken to appease the Lords that are campaigning ..."

What did you mean by appeasing the Lords?

A. Obviously, there were a number of Lords -- Peers, who were very involved in issues around the call for a public inquiry but also had been actively involved in a whole number of other issues related to those who were infected and affected by contamination of blood products for many years. Obviously, Lord Warner in his capacity as a peer. That would be something very much he would be dealing with.

I don't know. "Appease", I think, basically, to assure them that we were very much onto the case about some of these issues within the Department and, again, I think allay people's concerns that there was some active work going to be undertaken and that is reflected in the note. And it is also reflected in the note that we wanted this escalated, if that's the right term, to the Perm Sec and the Chief Medical Officer.

Q. There's then the suggestion at point 5 that someone independent would conduct a stocktake of the documents. Why was it felt that someone independent should do the

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this was.

Q. We have an email following the meeting. If we could turn to that up, DHSC5286062, please. If we turn to page 2 we can see that Ms Spavin is setting out the link to the transcript of Lord Jenkin's question and Lord Warner's reply, where he had avoided any significant commitments. Then this:

"While sympathetic to the fact that you were not the officials that caused this problem and that resources are an issue both MS(PH) and MS(R) were instant [I think it is 'insistent'] that more proactive measures are taken to appease the Lords that are campaigning on this issue."

Then under the bold -- point 5:

"It was agreed that an independent person, possibly someone from the Information Commission would conduct a 'stocktake' of the documents -- to ensure their safe handling [now] that they have been returned.

"6. A joint paper to MS(PH) and MS(R) that can be sent to [the Secretary of State] that

"sets the scene

"reviews the content of the returned files

"provides information on the returned files

(ie what [percentage] are they of the destroyed volumes)

"discusses the possibility of conducting a public

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work?

A. Again, I think we felt that someone who was not just within the Department to verify some of this work would be helpful and we were exploring a number of different options and, again, I think behind this was our concern that there is a process that -- there is a process that encourages confidence in the system and, obviously, particularly because of what had happened before in terms of missing documents and destroyed documents, that some of these documents were looked through, a checklist was done, so when they were handed over to the Department, it was very clear what was being handed over to the Department. I think we felt that was a helpful safeguard.

Q. Was the suggestion that the independent person would look at the returned papers or that they would look at everything at this stage?

A. I can't recall off the top of my head, based on looking at this.

Q. Then, in the very final point, number 6, in the final bullet point from that, it discusses the possibility of conducting a public inquiry. What was the discussion about that at the meeting?

A. I think the thing is that, as these papers came in there may be something within these papers that didn't align

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1 with the existing documents on which the policy was
 2 based and, therefore, we needed to be ready if that was
 3 the case to think about the issue around public inquiry.
 4 **MS FRASER BUTLIN:** Can we turn then to DHSC0015812, please,
 5 and page 3. At the bottom of the page we have an email
 6 from Mr Connon to Gerard Hetherington:
 7 "Following yesterday's meeting with Caroline Flint
 8 and Lord Warner the following action is urgently
 9 required ..."
 10 At the bottom of the page:
 11 "Destroyed documents: although not explicitly
 12 requested, I think it would be helpful to compile
 13 a definitive list of all the sets of documents which
 14 have been destroyed (there are two sets and we know more
 15 about one than the other), when they were destroyed (if
 16 we know), circumstances of destruction and likelihood of
 17 the documents which have been just been found by the
 18 solicitors being copies of some of the destroyed
 19 documents. We have this info but just need to pull it
 20 together in a crib sheet. We should also perhaps attach
 21 the list of documents (of which there are thousands)
 22 recently released by Scotland.
 23 "Public Inquiry: Ministers asked that we look
 24 carefully at the issues surrounding the continued and
 25 increasing requests for this, including the Scottish

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1 **A.** I think we were just -- we kept on asking the questions
 2 to try and get more information and I wouldn't have seen
 3 this email. There were lots of emails going back and
 4 forth between officials that I would never have seen.
 5 So we were asking these questions and trying to get
 6 information as answers and we kept that pressure up.
 7 **MS FRASER BUTLIN:** Sir, I could pause there and pick up
 8 after lunch or I could continue for five minutes and --
 9 probably closer to ten -- and pause at a slightly more
 10 convenient moment? But I'm in your hands. It doesn't
 11 matter too much.
 12 **SIR BRIAN LANGSTAFF:** Well, you have a number of other
 13 questions to ask, do you not?
 14 **MS FRASER BUTLIN:** I do, indeed.
 15 **SIR BRIAN LANGSTAFF:** So let's take a break now in that case
 16 and come back at 2 o'clock. So 2 o'clock.
 17 (1.05 pm)
 18 (The short adjournment)
 19 (2.00 pm)
 20 **SIR BRIAN LANGSTAFF:** Yes.
 21 **MS FRASER BUTLIN:** Thank you.
 22 Can we have DHSC0041159_205, please. I want to
 23 look at two documents, Ms Flint, before asking you
 24 a question to make sure that we have the chronology in
 25 place. This is a document from Gerard Hetherington to

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1 position. You mentioned the name of a departmental
 2 contact re: Inquiries (Richard Humphries?) And I think
 3 we need to speak to him urgently, in order to establish
 4 exactly what we can/should do regarding this and
 5 establish just how decisions on inquiries are taken,
 6 costs involved, timescales etc, as the pressure to hold
 7 one looks set to continue.
 8 "Documents returned to Sol: Ministers suggested
 9 that we could ask an independent legal expert to examine
 10 the returned documents and provide an initial analysis
 11 of what they contain. I think it was on this point that
 12 it was suggested that we could invite the
 13 Information Commissioner to look into this and need to
 14 discuss this. We also need to stress to Sol the
 15 importance of ensuring these documents are held
 16 securely."
 17 Is it right that at the meeting you hadn't
 18 explicitly asked for a list of documents that had been
 19 destroyed?
 20 **A.** I can't remember.
 21 **Q.** It might be suggested that this is what you had been
 22 asking for in December 2005. Had any of that work ever
 23 been done before this meeting in May 2006?
 24 **A.** I don't believe it was, no.
 25 **Q.** Did that raise concerns for you at the time?

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1 Becky Spavin, dated 26 May 2006, responding to the email
 2 setting out the action points from the meeting. We see
 3 under the heading "Documents":
 4 "Both Ministers requested that we should give high
 5 priority to examining the files which had been returned
 6 to the Department by Blackett Hart & Pratt (Solicitors).
 7 While I have reprioritised the work of existing staff in
 8 the Division, the work required to examine the returned
 9 documents, together with several other related tasks,
 10 represents a major undertaking. I have urgently
 11 requested additional staff from the Business Partnership
 12 Team. We have also arranged with SOL to commission
 13 an initial analysis of what the returned papers contain
 14 to be carried out by an independent legal expert (panel
 15 counsel). We will also pursue MS(PH)'s suggestion of
 16 seeking assistance from the Information Commission."
 17 There is then a question about having assurances
 18 that the documents are being held securely. Then,
 19 a note in relation to the "Documents which have been
 20 destroyed". Then under the heading "Demand for a Public
 21 Inquiry", we see this:
 22 "6. Ministers pointed out that demands for
 23 a public inquiry were intensifying. MS(PH) was
 24 particularly concerned that this issue should not be
 25 forced in England because of decisions in Scotland:

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"7. We have consulted Dr Aileen Keel DCMO in Scotland. Advice from SE officials to Scottish Ministers continues to be very strongly against holding a public inquiry. The Executive is examining the validity of a vote in the Scottish Parliament Health Committee in support of a public inquiry. It is understood that the casting vote of the Chairman may be disallowed:

"8. We are consulting the Patient Safety and Investigations branch about the steps that might have to be gone through in considering whether to hold a public inquiry. As Ministers will be aware, public inquiries, (now governed by the Inquiries Act 2005) are huge undertakings which can be massively expensive and are held only in exceptional circumstances."

There is then a discussion of other inquiries falling short of public inquiries which had been undertaken. It says:

"This was done as a concession to those who had been pressing for full public inquiries and had sought a judicial review of the Department's decision not to hold Public Inquiries. The then Secretary of State changed the rules to create what became known as a Modified form of Private Inquiry."

Then if we can look to DHSC0041159_204, please.

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that was something that you and Lord Warner had raised in your meeting, and this was the response. It might be suggested that it is a relatively limited treatment of options that were open to you. Was that your sense at the time or was your view this was as much as there could be said?

A. I think we were opening up a discussion based on a number of different factors that were raising the possibility that we might have to look at this issue again. Part of that was factored by the documents that were arriving and what they might say or what they might not say that could be important either to keep the status quo policy or to change the policy.

So I think some of this was exploratory, I think. I think I say in my statement that this sort of setting out the pros and cons like this wasn't necessarily what we were thinking in terms of that conversation. We possibly might have wanted something that was just a bit more about, you know, what would happen if there was information that came to light that contradicted existing information. Should we be having some discussions about that ahead of the cataloguing of the documents and the identification with other documents, or not, as the case may be?

So this was exploring. And likewise we were

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We see a paper that also came to your private office in very similar terms, but if we turn the page, we see the pros and cons of a public inquiry are set out throughout pages 2 and 3.

Then, on the final page, which is where I want to pick it up with you, we see this at the top:

"- DH did have the power to conduct an Inquiry such as in Ayling, Neale and Kerr/Haslam -- which became known as a 'modified form of private Inquiry'. Such an Inquiry can still be established under section 2 of the 1977 NHS Act, but the Secretary of State can no longer delegate powers of compulsion to the Chair, as the Inquiries Act 2005 repealed section 84 of the 1977 Act that created those powers. This could be seen by interested parties as undermining the value."

Then there is an indication of an early release of papers and then this:

"On balance therefore, we consider an inquiry to be disproportionate and not justified in the circumstances. This is in line with the views of the Scottish Minister, and we will continue to keep in close touch with officials in the Devolved Administrations, including Scotland."

Just in relation to the idea that there could be some form of inquiry which wasn't a full public inquiry,

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exploring other potential options that were independent of the Department that were not the same as a public inquiry but could provide some other form of validity to a review.

Q. It might be suggested that officials were not providing you with very many options and that they were perhaps being reluctant to explore those options. Was that your sense?

A. Yes.

Q. Why do you think that was?

A. I think -- I mean, I think the whole issue of the public inquiry was through the prism that there was no wrongdoing, and that had been an established position for decades. And that -- every discussion of public inquiry was hinged on that premise. And so I think it was, you know, quite difficult to open up that discussion and talk about: even if there has been no wrongdoing, are there any other issues that need to be looked at that alter some of our assumptions and policies? And obviously financial support would have been one of those issues.

Q. And when you are talking about other options, were you thinking of something more than the review of documents that was being undertaken by Linda Page, the internal official?

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1 A. Yes, I think on this -- I think it is on this document
 2 or the one before, you will notice that it is my writing
 3 at the top. If you would like to go back to that
 4 page --
 5 Q. I think you mean it is page 1 of this document?
 6 A. Yes, I think so. So at the top, there, that's my
 7 writing, where I say -- okay. Can you make that a bit
 8 smaller so I can read it?
 9 Q. It is the blue handwriting we are looking at.
 10 A. Yes.
 11 "The note to SOS [that is Secretary of State]
 12 includes NW's [Norman Warner] idea?"
 13 That was an idea that Lord Warner had about having
 14 a retired judge or lawyer heading up a sort of --
 15 I suppose an independent commentary or review as another
 16 option to look at and consider.
 17 Q. What was your view of the value of doing that?
 18 A. I thought it was a good idea. I think on another
 19 document I said "Not a bad idea", where it was -- it
 20 might have been in a note from Lord Warner's private
 21 office, but yeah, I think I wrote "Not a bad idea".
 22 Q. We can see that, it's the next document I was going to
 23 take you to, at DHSC0041159_251.
 24 These are Lord Warner's comments on the submission
 25 and we see:

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1 Scottish Minister.
 2 "As an alternative we have explored the
 3 possibility of commissioning an independent review and
 4 commentary on all the papers. With regard to the
 5 relevant statistical powers ..."
 6 It sets out how that would happen. Then it says:
 7 "It would provide additional reassurance and
 8 information to the public, and would build on the steps
 9 officials are already taking to review all the existing
 10 papers. It would however not provide powers to compel
 11 witnesses to give evidence or produce documents, and we
 12 would need to draw the terms of reference accordingly.
 13 "Conclusion
 14 "You are invited to note the current position, and
 15 the line we propose to take against the need for
 16 an Inquiry, and further, to consider the option of
 17 producing an independent commentary on the papers under
 18 the Act."
 19 In your conclusion, this submission simply
 20 suggests that the Secretary of State consider the
 21 option. It doesn't recommend the option. Is that
 22 a significant difference? And if so, why was there not
 23 a recommendation towards it?
 24 A. Maybe it is just a poor choice of words. I think we
 25 were flagging that this could be a good way forward as

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1 "MS(R) suggests that the weakness of DH's position
 2 is the slowness in collecting, reviewing and publishing
 3 documents.
 4 "MS(R) also suggests that he would not go as far
 5 as to commission a public enquiry, but use the powers
 6 under the 1977 Act for SoS to commission a review of
 7 ALL the documents (new ones, old ones and if possible
 8 Scottish Ones) with a view to producing an independent
 9 legal/judicial commentary on them and putting all these
 10 into the public arena.
 11 "MS(R) thought that a retired Judge/QC could do
 12 this with an administrative support team, with the aim
 13 to complete within 6 months."
 14 Then we see the handwriting "Not a bad idea".
 15 That is your handwriting?
 16 A. Correct.
 17 Q. You then put a note up to the Secretary of State setting
 18 out the background and having a discussion about
 19 a public inquiry. If we turn to that, DHSC0103399_003
 20 please.
 21 We see the issue set out. If we turn the page,
 22 there is the heading "Demand for a Public Inquiry":
 23 "Officials have therefore on balance advised that
 24 an inquiry would be disproportionate and not justified
 25 in the circumstances, in line with the views of the

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1 a proposal. And I think we thought it was one of the --
 2 you know, a very positive thing to offer and that's why
 3 we put it there. Maybe we should have used
 4 "recommendation" rather than "consider". Maybe it is
 5 just the wording and drafting of civil servants.
 6 Q. Can we then turn to DHSC0041306_038, please.
 7 We have a handwritten note, I think from
 8 Patricia Hewitt, responding to the two questions:
 9 "If both [Norman Warner] and [Caroline Flint]
 10 really believe an independent inquiry is worth it and
 11 affordable (I assume will need to pay him/her) - fine.
 12 But I fear it will fuel, not deflect, calls for a public
 13 inquiry - which we are absolutely right not to do."
 14 What did you understand to be the basis for the
 15 Secretary of State's view that the independent review
 16 might fuel calls for a public inquiry?
 17 A. I think, in the view of officials, that it wouldn't be
 18 enough and obviously it had limitations in terms of what
 19 it could do in terms of a suggestion and, therefore, it
 20 could be an exercise that just doesn't allay any
 21 concerns and would cost a lot of money and time and, at
 22 the end of the day, it wouldn't resolve anything.
 23 I suppose that's a fair point of view, on one
 24 perspective. On the other side of things, our view was
 25 that actually maybe it would be helpful and it allow

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1 something to be independent of the Department and
2 particularly because the issue of documentation was so
3 much part of the conversation about confidence and
4 whether the basis of which the decisions made around
5 this issue over these decades were the right ones based
6 on the right information and, therefore, I think that's
7 why we were positive about it. She had her own view.

8 **Q.** If we then turn to WITN5427031, please, and turn to
9 page 3. We see this message is from the private office
10 telling you about what the Secretary of State's view
11 was. In the second paragraph:

12 "Lord Warner's view is this really is your call as
13 it is your policy area. He does not think the calls for
14 a public inquiry will go away whatever we do but thinks
15 an independent commentary on all the papers available
16 will help to resist a public inquiry -- he still thinks
17 the commentary is worth doing if the money is
18 available."

19 Then I think it is your handwriting asking:

20 "How much would it cost & what length of time
21 would it take?"

22 **A.** Yes.

23 **Q.** Then if we turn back a page, we have a note, again from
24 your private office indicating that:

25 "Official estimate the review would cost up to

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1 **A.** I think I was pretty annoyed about more documents coming
2 forward but also, in the context of the Self-Sufficiency
3 Report, obviously the report did acknowledge it wasn't
4 complete but, again, my concerns were that here are some
5 more files that we need to go through and if they were
6 pertinent to the Self-Sufficiency Report and were not
7 included, that would create again more concerns,
8 reasonable concerns from different parties as to the
9 legitimacy, I suppose, of that report and what was being
10 said.

11 And I didn't know what was in these files,
12 I didn't know what was going to be coming forward but it
13 just seemed that there was one set of papers after
14 another in a relatively short period of time coming
15 forward. I suppose I was just expressing my frustration
16 at all of this and constantly having to find ways to get
17 these documents identified, matched against what
18 documents were referenced in other reports.

19 But it was a challenge, I think, because you were
20 always running to catch up and you were trying to assure
21 people and then more files become available.

22 **Q.** So that was October 2006. Would it be fair that, at
23 that point in time, you had concerns about whether the
24 Self-Sufficiency Report really covered everything
25 adequately?

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1 £100,000 and is likely to take several months to
2 complete. They [something] pointed out that there is no
3 money identified for this."

4 There's a note from you to make sure that
5 Norman Warner is aware of this and you will have
6 a further discussion after the recess. This is
7 30 August.

8 I just wanted to take you to that because I want
9 to come back to that in a moment but we are there in
10 30 August. In terms of the chronology, in
11 September 2006, 47 files were then found in
12 Wellington House and we have a letter from you -- sorry,
13 let me rephrase that -- a note referring to your views
14 on that. If we could have DHSC5121353, please.

15 We can see here an email from Elizabeth Woodeson
16 to William Connon and, in the first paragraph, it says:

17 "One of the things Jacky mentioned was a letter to
18 Lord Jenkin about contaminated blood product files.
19 Apparently Caroline is very worried about this and has
20 agreed with Lord Warner that he should write urgently to
21 Lord Jenkin to clarify whether the 47 files mentioned in
22 the letter were included in the self-sufficiency report.
23 If not, she thinks we were in big trouble!"

24 Can you help us with why you were concerned about
25 this issue?

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1 **A.** Obviously, as I said, the report did say that it wasn't
2 complete, that it couldn't definitively say that all
3 documents were covered by it and the reasons for that
4 but, again, this was just another point in the process
5 where, potentially, there were more files that would
6 have added to the report or there would be files that
7 would be already in the report. We just didn't know and
8 it was that just not knowing and, as I say, more and
9 more discoveries that was disconcerting.

10 It wasn't that I necessarily thought at that point
11 the report was wrong but, obviously, there was a risk
12 that it could be, depending on what was in these files
13 brought into question about what it said and the
14 narrative it gave.

15 **Q.** Could we then turn to CBCA0000045 and page 7, please.
16 This is an answer to a parliamentary question dated
17 7 December 2006. The question is:

18 "What assessment [you had] made of the merits of
19 undertaking a public inquiry into the supply of
20 contaminated NHS blood products to people with
21 haemophilia in relation to HIV and hepatitis B."

22 An answer is given, described as a holding answer:

23 "We regret that patients were infected with HIV
24 and hepatitis B through treatment with plasma products,
25 prior to the introduction of heat treatment in the

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mid-1980s."

There is a description of the heat treatments.

There is then the line:

"Donor screening for HIV was introduced in 1985 and donor screening for hepatitis B was introduced by 1972. Both these microbiological tests were introduced as soon as practicable. In view of these actions, we do not consider a public inquiry is justified.

"In February this year, the Department published the report on 'Self-Sufficiency in Blood Products in England and Wales which is available at [then the web page].

"This provides a summary on the issue of infected blood products."

I have been asked to ask you about this answer. It could be read as suggesting that a public inquiry wasn't justified and part of the reason it wasn't justified was because the Self-Sufficiency Report addressed the issues; is that how the answer was intended to read?

A. I think within the answer there are a number of reasons given, not just in terms of Self-Sufficiency Report but, before that, in terms of what was able to be developed during those times. But, clearly, the self-sufficiency and whether that was possible or not was a factor in all

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dealing with the review of papers dealing with non-A, non-B hepatitis by Linda Page.

We see in the first paragraph that the report concludes that the documents provide no new information that challenges the Department's position and that the CMO has commended the report's rigorous analysis and agreed its conclusions.

The background is given and then, over the page, "The way forward":

"We recommend that the attached report should now be released to Lords Archer, Morris, Turnberg and Jenkin, the Haemophilia Society and all other interested parties.

"In addition we recommend that we should release the documents reviewed in line with FOI principles. Overall, there are around 4,500 of these documents so this will be a major task. It is estimated that the preparation and processing of the documents will take approximately four to five months."

There is a question of cost:

"Nevertheless, we recommend this approach, as release of the documents may go a considerable way to support our line that a public inquiry is not required as all the information is in the public domain. This includes fifty-eight previously unpublished documents

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of this as well.

Q. If there was a lack of certainty in the contents of the Self-Sufficiency Report, because there were outstanding documents to review, with the benefit of hindsight, do you think that the line to take, that's given in this answer, should have been different?

A. My sort of understanding of parliamentary questions is that actually in answering the question you answer with what you believe to be known, rather than something that would be, for example, necessarily speculating on what might or might not be. From what I recall, the issue of the 47 files -- and we may come back to this later -- were then picked up and pulled into the review that was being done internally as well in relation to non-A, non-B hepatitis, which also was looking at the Scottish documents, also looking at the return documents from solicitors as well, and it was put into that to clarify whether any of those documents were copies of what was already referenced in the Self-Sufficiency Report or were additional documents that it didn't contain.

But that was a process that hadn't finished, I think by this time. The report was next year.

Q. Indeed. I want to turn to a submission that deals with that at DHSC0041193_026. It is a submission from Liz Woodeson to yourself and MS(Q) dated 24 April 2007,

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specifically referenced in the current report which we would treat as a priority."

Then paragraph 11:

"Given that this inquiry is going ahead [and that's a reference to the Lord Archer Inquiry], we assume that you will not want to pursue the option of commissioning an independent review by a QC for the time being. (We did not recommend this in our earlier submissions because we estimate that such a review would cost in the region of £200,000. We do not have funds available for this. And we did doubt that it would satisfy external parties anyway as an independent review by a QC would not be able to compel witnesses to give evidence)."

First of all, that figure of £200,000 is obviously double the figure that was given to you originally. Did you explore why that was?

A. I don't recall exploring that particular issue. As you said, the Lord Archer review had been initiated and, I think in some respects, that sort of overtook events. However, in this submission, it says for the time being it was not completely ruled out as a potential for the future.

Q. To what extent were budgetary issues the reason why an independent review wasn't undertaken at this stage?

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1 A. There were always budgetary issues raised on anything.
2 You know the internal reviews that Linda Page undertook,
3 there were always issues raised about monies and the
4 fact that, within the staff that were particularly
5 involved in this area of work, the impression I got as
6 a minister was there weren't enough people to cope with
7 the amount of different asks on their time.

8 So it was always a question if there was anything
9 additional, over and above what they were doing, that
10 would incur more money so that was always an issue in
11 this.

12 Q. We have seen in a number of documents that there were
13 issues with this particular team not having the resource
14 to do the things that you were flagging. Did you raise
15 that question of resource with those who could deal with
16 that?

17 A. So, before we got into the summer of 2006, I think we
18 have covered some of those documents earlier today,
19 Lord Warner and I were pressing for more resources and
20 more authority, at a senior operational level within the
21 Department, to tackle these documents. Some of them
22 had, I think, been with us for some while but there had
23 been not enough staffing and resources to go through
24 them.

25 I think that was the case in terms of the

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1 hepatitis] had been considered a mild disease by the
2 medical and scientific community for many years; and
3 that BPL had developed a heat-treated product in 1985
4 that had proved safe. I was not being presented with
5 a significant amount of evidence that the medical and
6 scientific community or the governments of the day had
7 disregarded the risks of infection. I am neither
8 a scientist nor a clinician but I do not recall being
9 told by officials that there was a wide spread of
10 medical and scientific views on these kind of issues.
11 I do not recall the CMO or Deputy CMO expressing
12 concerns to me about the government's position of a view
13 that the government should change the established policy
14 (although I am happy to review this if documents show
15 they did)."

16 During other hearings, the Inquiry has discussed
17 the question of groupthink, in the sense that when you
18 work closely and collectively together there is a risk
19 of a group mindset developing. Particularly in relation
20 to the final part of that paragraph, that you weren't
21 being presented with a significant amount of evidence
22 from the medical or scientific community or governments
23 of the day, that they disregarded the risks of infection
24 and officials weren't saying there was a wide spread of
25 reviews.

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1 documents found in Scotland and, as a result, we
2 basically raised the pressure and wanted the CMO and the
3 Permanent Sec involved to give their authority to allow
4 some resources to be provided over and above that the
5 Blood Policy Unit could provide. That was a consequence
6 of that was Linda Page being brought in.

7 Q. Could we then put up on the screen a paragraph from your
8 witness statement, WITN5427001, and it is page 143,
9 please. It is a fairly lengthy paragraph but I will
10 read it out for those who are watching as well:

11 "It had been government policy not to hold
12 a public inquiry. Lord Warner and I considered whether
13 that policy should be maintained and both reached the
14 view that it should. The documents indicate this was
15 supported by the Secretary of State. My recollection is
16 that I did not seek to overturn established government
17 policy and support a public inquiry at this time because
18 of the medical and scientific information I was
19 receiving, which I was informed was compelling. I was
20 informed that the advantage of using factor blood
21 products to treat haemophiliacs outweighed the risks;
22 that accurate screening for hepatitis C was only
23 available in 1991; that even if self-sufficiency had
24 been achieved, hepatitis C infections would still have
25 arisen from blood supplies here, that [non-A, non-B

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1 Did you ever consider there might be an element of
2 groupthink that there wasn't a historic problem here?

3 A. I mean, I was aware that there was, like, one view in
4 the Department; there didn't appear to be any other view
5 than the one that was outlined in my statement here.
6 And, I think, also that, because of what I have outlined
7 here and therefore coming from that sense that there was
8 no wrongdoing, that was the prism through which
9 everything else was viewed and so it didn't apply
10 itself, as I think I have said in my statement, to
11 thinking "Well, okay, even if you are saying there is no
12 wrongdoing, is there anything more creative we should be
13 doing in terms of our support or in other ways for
14 individuals and communities affected by this".

15 It became, sort of, "We can't open that up", which
16 again I do not think necessarily was helpful and in
17 spending time reflecting on this, looking at many, many
18 documents, and with hindsight, to a certain extent,
19 I think that is the case, actually.

20 Q. Sorry, just to be clear, what was the case?

21 A. I think it was the case that actually this one view --
22 and actually on one level I left the Department, in all
23 honesty, still thinking that that was the case. But
24 even if that was the view and you could back that up, it
25 shut down opportunities to maybe discuss other ways to

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1 deal with the many serious issues that individuals and
2 families were facing, in some ways outlined in the
3 Macfarlane report in terms of life expectancy but also
4 what came with that were additional challenges and
5 hardships.

6 Q. We see the sentence:

7 "I do not recall being told by officials that
8 there was a wide spread of medical and scientific views
9 on these kinds of issues."

10 Did you ever consider the clinicians and
11 scientists who were providing that information to the
12 officials might have been the ones making the decisions
13 in the 1980s and early 1990s, so might have been
14 reluctant to address whether there had been errors?

15 A. No, I don't think I did, in that way. As a minister in
16 a department, you look to the Civil Service which is
17 independent of politics for advice and information and,
18 obviously, they are the ones who are there. They have
19 the collective memory, as ministers come and go. Part
20 of the whole point about the documentation was to make
21 sure that, actually, the basis on which they were
22 advising on policy was as true and accurate as it could
23 be.

24 But I don't think I did actually, necessarily
25 think about that. There were -- if I remember rightly,

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1 "The advice is that we should not become involved
2 in Lord Archer's Inquiry at all. The attached draft,
3 which has been cleared by Perm Sec and Sol, takes
4 a fairly robust line."

5 If we turn to DHSC0006752, we have the draft
6 letter. Just two paragraphs I want to highlight, the
7 first one:

8 "The Government has great sympathy for those
9 infected with hepatitis C and, as I am sure you are
10 aware, have considered the need for a public inquiry
11 very carefully indeed. However, the Government of the
12 day acted in good faith at the time and therefore we
13 really do not feel that a public inquiry would provide
14 any further benefit to those affected. In fact,
15 actually believe that prolonging this issue may serve to
16 prolong the suffering of those who have been affected."

17 Then the last paragraph:

18 "In conclusion I can only repeat that the
19 Government does not support your call for an independent
20 inquiry and therefore it would not be proper for
21 Department officials to appear before your inquiry."

22 You then sought a meeting with the Secretary of
23 State to discuss the Department of Health approach to
24 the Archer Inquiry, and that meeting took place on
25 13 March 2007.

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1 and if I'm wrong I'm happy to be corrected -- one of the
2 issues around the Self-Sufficiency Report was, I think,
3 present clinical opinion also sought in views of that as
4 well, who I don't think necessarily were the ones who
5 were involved at the time of the infections taking
6 place. In fact, it was a clinician who was asked to
7 provide an expert view in terms of enquiries from the
8 media because of that very reason.

9 Q. We saw in an earlier document that the page report
10 dealing with non-A, non-B was sent to Lord Archer in
11 May 2007. The Archer Inquiry was obviously announced in
12 February 2007.

13 I just want to explore a couple of matters in
14 relation to the Archer Inquiry. Lord Archer wrote to
15 the Secretary of State on 16 February 2007 asking for
16 someone to be available to say what the Department's
17 position has been and is and to lay before them any
18 further facts which the Department felt the Inquiry
19 should be aware of. Just for the transcript, that is
20 DHSC0041193_056.

21 Mr Connon prepared a draft response and sent it by
22 email, DHSC5458684, please. At the bottom of the page:

23 "As requested, I attach a draft letter for MS(PH)
24 to send to Lord Archer following his letter to [the
25 Secretary of State] regarding his Inquiry ...

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1 If we can just look at the notes to that meeting,
2 then I want to ask you a question about it.

3 A. Just to say that letter wasn't sent, even though it has
4 my name on the bottom.

5 Q. This was a draft you were sent and I think it was
6 because of this draft that you sought a meeting with the
7 Secretary of State to address whether this was going to
8 be the approach that was going to be taken it; is that
9 right?

10 A. Correct.

11 Q. WITN5427017. It is a note of the meeting, I think,
12 between yourself and the Secretary of State:

13 "Meeting started with a brief discussion on
14 Lord Archer's inquiry. [Secretary of State] thought
15 that we need to find out more information about the
16 inquiry and asked either MS(PH) or MS(Q) to follow
17 up ... on terms of reference [et cetera]."

18 "On the draft response to Lord Archer's letter --
19 MS(PH) was concerned about the content and language of
20 the letter ...

21 "3. [Secretary of State] gave a steer on how we
22 approach the Inquiry. She is happy for officials to
23 give evidence to the Inquiry but only after they have
24 completed and compiled their report on the analysis of
25 the documentation. She is also content to make all the

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1 documentation available to the Inquiry."

2 In relation to the second point, you were

3 concerned with the content and language of the letter;

4 can you explain to us why?

5 A. I didn't like the tone of it and I didn't think it was

6 co-operative enough to Lord Archer's request and

7 I thought we needed further discussion on what form

8 co-operation took, should be.

9 Q. You see the steer given by the Secretary of State. Did

10 you agree with that steer?

11 A. Yes. This was a meeting we had -- I can't remember it

12 exactly but we had a good discussion and one of the

13 issues obviously was about what form co-operation should

14 take and I came away from that meeting pleased with the

15 outcome.

16 Q. There were then submissions on 23 March 2007 to

17 Hugh Taylor. There are two sets of submissions and it

18 is a little bit unclear which is a draft and which is

19 final. So I'm afraid we will just look at both of them

20 with that caveat. DHSC5046267, please. I want to pick

21 it up on page 2, please.

22 There had been a discussion of the background and

23 there was an indication that that the plans in relation

24 to document review have:

25 "... obviously now been overtaken by the

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1 embarrassment of former ministers and senior officials.

2 It may be much harder to maintain the line that we are

3 only prepared to release documents under FOI principles

4 if officials are asked to defend it publicly in front of

5 the Inquiry."

6 In terms of the references here to embarrassment

7 for the Department, were you aware of that as a concern

8 of the officials?

9 A. They make the point here but I think it was already

10 pretty embarrassing how many more documents were being

11 discovered.

12 Q. What weight did you give to that as a concern?

13 A. Not too much. I think there are some points within this

14 note that are problematic, I think, in terms of what

15 would be expected, given this wasn't an official public

16 inquiry, about the remit of it, what boundaries -- if

17 that's the right word -- or framework should exist. But

18 that was something maybe to explore with Lord Archer and

19 his team. But, obviously, it was pretty strong, the

20 pushback.

21 Q. Then we have the second version of the submission

22 draft/final DHSC5857854, and page 2. We see a similar

23 list, albeit re-worded. We see, towards the bottom,

24 an addition:

25 "Given the time which has elapsed, it not clear

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1 announcement of [the Archer Inquiry] and ministers'

2 natural wish to be helpful. However there remain

3 a number of questions and concerns amongst the team here

4 regarding departmental involvement in this inquiry,

5 which I would just like to flag up to you. They mainly

6 arise from the suggestion that officials should agree to

7 appear as witnesses ..."

8 Then there are four points:

9 "There is no evidence of any negligence or

10 wrongdoing on the part of the department during the

11 period in question (1970-1985). Nevertheless, given the

12 subsequent destruction and loss of a number of files

13 there is considerable scope for embarrassment for the

14 department if officials are asked to appear before the

15 inquiry."

16 Secondly, there is a concern about the amount of

17 preparation that would be required.

18 Thirdly, a concern about ministers being asked to

19 give evidence.

20 Then this:

21 "We will inevitably be pressed to release

22 documents without any redaction -- and to release

23 submissions. While none of these policy documents give

24 rise to any real concerns over liability, some are

25 sensitive in respect of potential for criticism or

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1 exactly what 'evidence' officials would be able to

2 provide in person, beyond rehearsing the documents which

3 are already in the public domain."

4 There are other differences between the draft but

5 that is the main addition. What significance did that

6 hold for you?

7 A. Again, I think at this point there hadn't been any real

8 discussion with any other party except internally, so

9 I don't think even at this point -- and again I'm happy

10 to be corrected -- I'm not sure at this point we really

11 knew the terms of the Archer Inquiry would be looking at

12 in any real detail. So, yeah, it is a fair point but it

13 is in isolation from having that conversation.

14 Q. You said a moment ago there was pushback from the

15 officials to the original decision that people would

16 give evidence. Were you surprised by that pushback?

17 A. Not really.

18 Q. Were you surprised by the degree of pushback that there

19 was?

20 A. No.

21 Q. We then have a final submission to the Secretary of

22 State and to you.

23 At DHSC0041307_142, please.

24 We see on page 2 a series of bullet points setting

25 out the concerns of officials about giving evidence, and

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1 on page 3 we have the heading "Recommendation":
 2 "For all these reasons, we think it is not
 3 advisable to offer in the reply that officials would be
 4 willing to give evidence to the Inquiry. The offer of
 5 a meeting between Lord Archer's team and departmental
 6 officials is qualified to explaining about our review
 7 and the level of assistance we can provide his team."

8 In terms of the meeting with Lord Archer, this
 9 submission suggests that it was going to be a relatively
 10 limited meeting, just explaining the review and the
 11 level of assistance that could be provided. Again, did
 12 that surprise you that that was all that was going to be
 13 offered?

14 A. No, it didn't surprise me. I mean, we had gone from the
 15 start of this and not having any contact whatsoever, so
 16 on one level it was more than was initially suggested
 17 but, yeah, it didn't surprise me, given the context of
 18 not giving evidence, that whatever meeting we had would
 19 be limited in different respects.

20 Q. It is quite a shift or it might be suggested that it is
 21 quite a shift from people giving evidence to a meeting
 22 only to explain the review and the level of assistance.
 23 Did you agree with that shift?

24 A. I think I came out of the meeting that we had with
 25 a direction of travel that I was happy with. You have

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1 "1. MS(PH) will be aware that officials met with
 2 members of the Inquiry team on 25 April 2007.

3 "2. The meeting went well and officials agreed to
 4 follow up some queries that the Inquiry team had. It
 5 was agreed to provide a chronology of events which we
 6 are currently working on, and a copy of the report
 7 "Review of Documentation Relating to the Safety of Blood
 8 Products 1970-1985", and the supporting references.

9 "3. MS(PH) has agreed that we should proceed with
 10 making copies of all the documents we hold on blood
 11 safety for the period covered by the internal review,
 12 available in line with the Freedom of Information Act.
 13 It will take several months to complete this work."

14 When you received this briefing and were due to
 15 answer the parliamentary question, did you ask officials
 16 whether these documents were all that the Archer Inquiry
 17 were seeking from the Department?

18 A. I can't remember.

19 Q. Was any thought given to whether other documentation or
 20 other assistance should be provided?

21 A. I can't recall. I think if there had been requests
 22 coming from Lord Archer's team then I would presumably
 23 have been made aware of it in one form or another if it
 24 needed ministerial sanction. But I can't recall that
 25 happening. And not long after -- a couple of months

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1 shown different documents that shows the arguments
 2 against that. Some of them I understood, and understood
 3 that some elements of this would be problematic for
 4 officials. But it became very clear -- and if you go --
 5 I think if you go back to the previous page -- that by
 6 this point there were senior officials, the
 7 Permanent Sec and the Secretary of State were of the
 8 view that we shouldn't be enabling officials to give
 9 evidence. So I didn't really think there was much more
 10 I could do. We had got a meeting with the team and
 11 I think that was the best I thought we could get.

12 Q. The letter went out to Lord Archer indicating that, that
 13 the Inquiry I think has looked at previously. The
 14 reference is DHSC0041193_048, just for the transcript.

15 On 25 April 2007, Departmental officials met with
 16 Lord Archer. That wasn't a meeting that you attended?

17 A. No.

18 Q. But you were provided with a briefing note on it in
 19 order to answer a Parliamentary question.

20 WITN5427033, please. If we can turn to page 2.

21 We have a question that has been asked about the
 22 assistance that it was anticipated that the Department
 23 would give to the Archer Inquiry and a suggested reply.
 24 Then if we go over the page we have the briefing note
 25 that went with it:

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1 after, I moved to another department and there were two
 2 further meetings, I think, under another minister.

3 Q. Do you recall at the time having any concerns about the
 4 degree of co-operation that officials were having with
 5 the Inquiry?

6 A. Well, obviously I was concerned from the initial
 7 suggestion that there was a reluctance to co-operate
 8 and -- but at this point there were no -- if you like,
 9 complaints coming back to me via Lord Archer or anyone
 10 about this meeting, and therefore it didn't raise any
 11 flags with me at that point.

12 Q. Can I just put up on screen a final paragraph of your
 13 witness statement, at WITN5427001, please.

14 Paragraph 3.312, which is on page 193. You say this:

15 "I think government probably should have
 16 established a UK-wide public inquiry before it did but
 17 that decisions, including during my time, were coloured
 18 by DH's position that had been no wrongdoing. In
 19 preparing this statement I have reflected that things
 20 would have been different if DH could have worked better
 21 with campaigners, the financial support schemes and
 22 others to find better solutions for those infected and
 23 their families, and look into 'lessons learned', without
 24 the DH focus on wrongdoing or liability."

25 Can you tell us a little bit more about what you

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1 think should have been done differently?

2 **A.** I think it could have been explored whether there were

3 other ways -- I'm not a lawyer so forgive me if I don't

4 use the correct language here -- but something where

5 there was a suggestion of no fault within it. I know

6 some campaigners and others wouldn't have wanted that

7 but you could have created the environment where we

8 could have dealt with some of the very real and

9 practical issues people were facing and some issues

10 around the Health Service dealt with people.

11 I mean, in this case, not only people in terms of

12 a condition they had in terms of haemophilia but also

13 what was then caused by HIV and hepatitis C, and of

14 course to the families. And maybe there would have been

15 a better way to do that. And you know, there were

16 potentially examples of ways in which that could be done

17 that I don't think necessarily were explored. But it

18 was -- everything was seen, and I think I said this,

19 through this prism of wrongdoing, which I think didn't

20 help with the creativity on that.

21 I think there is another thing as well about

22 government and departments, whether or not -- I don't

23 think this is in my statement -- but whether or not on

24 something like this there's almost, for want of a better

25 phrase, some sort of peer review by another part of

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1 it coincides with the opportunity to have a cup of tea

2 and a break. So we won't meet again until at least

3 3.30 pm. I will say not before 3.30 pm just to give

4 extra time should it be needed by counsel. If that's

5 going to be the case you will be told but I look forward

6 to seeing you not before 3.30 pm for that final round of

7 questions.

8 **A.** Thank you.

9 **(3.01 pm)**

10 **(A short break)**

11 **(3.45 pm)**

12 **MS FRASER BUTLIN:** Ms Flint, this part of the questions will

13 inevitably range over a number of different matters and

14 be somewhat varied.

15 **A.** Okay.

16 **Q.** First of all, were you informed or aware of the

17 prosecutions in France of officials and politicians in

18 relation to infected blood?

19 **A.** No.

20 **Q.** And any connection of that in terms of timing with

21 document destruction in the UK?

22 **A.** I don't think I was.

23 **Q.** Could I turn to WITN5427010, please.

24 We looked at this document before. We see there

25 the comment, basically it relates to the question of

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1 Whitehall, whether that's the Cabinet Office or

2 elsewhere or a particular unit set up to look at these

3 things, where obviously this has been a continuing

4 concern, for justifiable reasons, that hasn't

5 necessarily been resolved in the time it probably should

6 have done.

7 **MS FRASER BUTLIN:** Sir, those are the questions I have for

8 Ms Flint. We obviously need some time for

9 Core Participants to provide any further questions.

10 I wonder if we might take our afternoon break somewhat

11 early to enable that process.

12 **SIR BRIAN LANGSTAFF:** Well, of course.

13 We have to take a break in any event, have we not,

14 so we may as well take it now.

15 Let me explain, those Core Participants in this

16 Inquiry who are represented by legal representatives

17 have a right through those representatives to put

18 questions for you to answer. Those questions will have

19 arisen not only by reading your statement but by

20 listening to what you have said today and, since you

21 have only just finished saying it, they have to be given

22 time to formulate any questions they may have.

23 I don't know how many questions there will be.

24 There may be very few, there may be quite a lot. But we

25 have to give time for them to be fielded by counsel, and

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1 where blood products were sourced:

2 "Basically if it came via BPL it would not have

3 been donated by US prisoners but if it came via anywhere

4 else we do not know."

5 I'm asked to ask you whether you were aware that

6 Carol Grayson had written to the government on several

7 occasions setting out tracing that had been done

8 connecting UK blood products to US prisons, are you

9 aware of that?

10 **A.** I was aware that Carol Grayson had been -- written in to

11 the Department on some of those issues.

12 **Q.** But were you aware specifically about the point that the

13 connection -- she had set out in her letter her

14 understanding of the connection and that the tracing had

15 been done?

16 **A.** Yes, I think so, in relation to prison -- donations that

17 had come from prisons in America, yes, if that's what

18 you are asking about.

19 **Q.** Could we have your witness statement, WITN5427001,

20 please, and page 99. Paragraph 3.9.

21 Before lunch I took you to a submission from

22 Steve Wells and asked whether that was the submission

23 you had requested in December 2005, and that it appeared

24 to be from your statement that that's what you had

25 requested.

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1 If we can just look at the paragraph from the
2 statement. I'm asked to go through this:
3 "When I was informed in late 2005 (... [the]
4 8 December [submission] ...) that documents being
5 released a few days later by the Scottish Executive
6 might contain papers destroyed by DH, and then was
7 informed in 2006 that documents had been returned to DH
8 from a firm of solicitors, I was concerned about the
9 adequacy of steps DH had taken to try to locate missing
10 documents."

11 Then you say it appears a briefing was requested
12 and that was provided in May by Steve Wells.

13 Is it right that in fact the request for the
14 submission from Steve Wells arose from an accumulation
15 of concerns about documents, both the December 2005
16 submission, and subsequent issues in 2006?

17 A. I think that's correct.

18 Q. Could we then turn to DHSC5857854, please. This is one
19 of the two draft memos that we looked at where it is
20 a little bit unclear why there's two. Just, first of
21 all, looking at the copy list. It is right isn't it
22 that there's nobody on there or on the other draft from
23 your private office?

24 A. That is correct.

25 Q. So do you think, if there's no one on the list from your

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1 down -- we spoke previously about The Haemophilia
2 Society's response to the Self-Sufficiency Report. The
3 letter from Margaret Unwin to Mr Connon, which I think
4 you said you saw and received in a briefing in
5 April 2006.

6 A. Yes, I think that is correct.

7 Q. I'm asked to put it on the screen. HSOC0003560.

8 It raises certain factual disputes in relation to
9 the Self-Sufficiency Report. Do you agree that where
10 the facts are in dispute, it is important to listen to
11 both sides of the story?

12 A. Can I just read it?

13 Q. Of course.

14 A. I mean, obviously this exchange of letters was
15 an exchange of letters between Margaret Unwin and
16 William Connon. In terms of his response, I saw it
17 attached to something else I think later on. Could you
18 just remind me which document it was attached to,
19 please?

20 Q. Yes. It was attached to a briefing that you received in
21 April 2006. So it was a little way after.

22 A. Yes, okay.

23 Q. We looked at it earlier in the context of an offer, on
24 the second page, of those who were infected and those
25 who would be willing to meet with you.

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1 private office, would it have been sent to you or your
2 private office if it is not on the copy list?

3 A. Not usually. It would only go to those on the copy
4 list. It might have been informal information that this
5 was happening but normally it would be the case that you
6 would be copied in.

7 Q. We can see the same thing on the other draft,
8 DHSC5046267. We don't need to go to that.

9 So these were memos that went to Hugh Taylor?

10 A. Correct.

11 Q. Nevertheless, could we look at paragraph 6, please.

12 I think it is over the page. And the fourth bullet
13 point down. And it says this:

14 "Internal minute between officials on cost
15 implications of AIDS 'Of course the maintenance of the
16 life of a haemophiliac is itself expensive, and I am
17 very much afraid that those who are already doomed will
18 generate savings which more than cover the cost of
19 testing blood donations'."

20 Could we come back out to the main page.

21 It's an example of previous documents which might
22 give rise to a potential for a criticism or
23 embarrassment. Were you aware of these documents?

24 A. No.

25 Q. On an entirely different topic -- we can take that

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1 I'm asked to ask you whether you think you should
2 have accepted an invitation to listen to those infected,
3 what they had to say and hear their side of the story to
4 set alongside the paper review that had been undertaken?

5 A. As far as I'm aware, and obviously if there are
6 documents to correct this then obviously, you know, let
7 me know, but when there is the exchange of letters in
8 real time between Margaret Unwin and William Connon,
9 I don't recall that request being pursued in terms of my
10 office. So when this was attached later, obviously
11 that's quite after the date for information.

12 One of the main issues for myself in terms of this
13 which I was aware of was the point about why there
14 wasn't a ministerial foreword on the Self-Sufficiency
15 Report, of which there was never any plans to do that,
16 either before I arrived in the Department or after
17 I arrived.

18 Q. And in your evidence earlier you made clear that you
19 weren't provided with that letter at the time or
20 involved in any of the correspondence at the time?

21 A. No. Not as far as I'm aware.

22 Q. In relation to the meetings between Department of Health
23 representatives and the Archer panel, those meetings
24 were not minuted and were said to be private. Are you
25 able to comment on why that was? Did you have any

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1 involvement in that?

2 **A.** Not really. I think you would have to speak to

3 officials.

4 **Q.** You have talked about being presented with briefings

5 through a prism and in other evidence there has been

6 a discussion about ministers being provided only with

7 consensus views. Do you think that briefings or

8 recommendations should include outlier views as well?

9 **A.** Possibly, yes. Possibly there does need to be a vehicle

10 to say what other views are being expressed. I think

11 one of the issues in some of the briefings and the

12 questions, if you like, that are put in briefings are up

13 to almost test the theory, if you like. A number of

14 briefings would actually ask some of those questions

15 that were being raised outside, about where products

16 were sourced from, where donors came from, and that was

17 reflected in some of the briefings and of course the

18 Department would be expected to provide an answer to

19 that.

20 Clearly, I would see, as every other minister

21 does -- we would usually get a collection of the clips

22 from the media in the areas that we covered as

23 ministers. So every day you would get those and you

24 would be aware of what was being discussed and that

25 would then be reflected back in what you wanted back

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1 that many other times by all the other things on your

2 time. Maybe it would be great if we had more ministers,

3 so you could spend more time on different areas but I do

4 not think -- that's never going to happen.

5 But that's why the Civil Service is so important

6 in this, in terms of what they contribute and how they

7 inform you. I have thought, and it is a personal view

8 and probably not popular, that it is only the Secretary

9 of State usually who has special advisers. So often,

10 despite your private office, you don't have anybody

11 else, if you are a junior minister, who can maybe follow

12 up on issues and particularly areas where you may have

13 concerns and be in the Department but for a different

14 role to the Civil Service. I don't think that's going

15 to change, to be honest, but you are very much reliant

16 on your own time and your own, I suppose, opportunity to

17 question and seek other views, and that's not always

18 easy.

19 **Q.** Do you consider that someone independent of those who

20 made the decisions should consider objectively if a

21 public inquiry is required, that that whole question

22 should be addressed by somebody external to the place

23 that the decisions have been made?

24 **A.** I don't think necessarily you should take away

25 responsibility from a government department to do its

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1 from officials in terms of answers. I mean, that's one

2 of the reasons Parliament is important, as well, is that

3 questions can be asked through that route too, as well

4 as through all party groups and others.

5 So I think it is hard to say exactly what that

6 balance should be and what should be the onus on

7 departments to do that but, as best as you can, I think

8 that there has to be room for those different voices to

9 be heard.

10 **Q.** Do you have any thoughts on how ministers, particularly

11 new ministers, can ensure that lines to take are

12 challenged regularly?

13 **A.** I think it is quite hard for new ministers, to be

14 honest, because you inherit policies from previous

15 ministers. Often you are asked to action projects and

16 activities that are often well underway. I think there

17 could be more done in terms of both for, to be honest,

18 MPs and ministers in giving them some better support in

19 terms of what they do and how they carry out their work.

20 That's not easy because, as I said before, there

21 is very little room or time allowed when you move from

22 one department to another to have a sort of induction

23 that anybody else would want, because you literally have

24 to hit the ground running. And as well as one area of

25 your portfolio that you might be dealing with, multiply

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1 job. I think there has to be a process in that, that

2 that's where it should start, where obviously things

3 happen that require investigation. It may be, where

4 there are unresolved issues over a longer period of time

5 or where original thoughts, in terms of what could be

6 done have changed, because of, in this case, obviously

7 people surviving longer and their needs, whether that is

8 something that -- whether it is the Cabinet Office or

9 elsewhere should consider.

10 I don't think that's necessarily something that

11 wouldn't necessarily be helpful. But you can't

12 necessarily funnel all those issues into a separate

13 body. I think, first and foremost, the Department and

14 it the Civil Service and, of course, the Secretary of

15 State should have a key role in all of that because they

16 are responsible.

17 **Q.** Finally, when we were discussing answers to

18 parliamentary questions you said that an answer needed

19 to be an answer with what you know, not speculating. Do

20 you think that caveats could be applied to parliamentary

21 answers to ensure that the answer is as full as it could

22 be at the time but without speculating?

23 **A.** I think there are lots of opportunities in Parliament

24 for Parliamentarians to follow up from questions. They

25 are not limited to one question, and often a question

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and then the answer sort of creates more questions. And I have been in a position myself as a backbencher to do that myself. There are adjournment debates. There are oral questions where you get a supplement. There are lots of opportunities in Parliament to do that. So written PQs are only one avenue. I think there's lots of opportunities to ask those more exploratory questions about what's happening which are probably better placed in order to do that rather than through a written PQ.

MS FRASER BUTLIN: Sir, there are no further questions from those behind me. Do you have anything you would like to raise?

SIR BRIAN LANGSTAFF: Yes, just a couple really to get your reflections on a couple of things. The first is this, could we have a look, please, again, at WITN5427009.

Thank you.

This is -- it is self explanatory, we looked at it earlier on today. It is the point number 1 which I just want to focus on for the moment. You had been in post since May 2005, so this is very nearly seven months -- nine months later on. When you came into post you have told us you knew very little really about Health. It wasn't your main interest, I think, and later on your career didn't involve very much to do with the Health directory; I think it was more to do with Employment and

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something prompts you. It could have been there had been something in the media that drew my attention back again to this and I wanted to ask the question again. I think sometimes that does happen. I don't know, to be honest. Probably something like that triggered this question, to just reassure myself about what was the story behind that and what did it mean.

And of course there were various explanations given about what products we were able to source in the UK. There were various things that I saw about: even if it had come from America what else was happening? How products were taken from donors across the board and one infected person could infect it. There were a whole load of things, including, I recall, Sir Brian, about hepatitis in terms of the UK population entering the system as well, where there was pooled blood and plasma for this purpose. So I think just sometimes it -- these triggered it.

Sometimes, also, something might crop up and, you know, I would be asking, "Can someone show me -- can I have another look at that report? I haven't looked at it for a while, can I have another look at that report", or something like this. I'm not saying that's the case in this one but part of it is a -- constantly when you have triggers, either things have been said in

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aspects such as equalities, if I'm right. Is that fair?

A. Well, that was the job I had before I went to Parliament. I also worked for a trade union before I went to Parliament, so ...

SIR BRIAN LANGSTAFF: So that was what you were mainly interested in. Absolutely nothing wrong with that. And equally no one would expect you to know anything about a small part of your portfolio, blood and blood products, when you first came in.

What I have heard in the Inquiry has been that there was for quite some time a concern being expressed publicly -- it had originally been written about I think in 1970, and was raised various times thereafter, about the source of plasma used to make blood products in America.

And in one sense, your first question here is looking at where does this stuff come from. It is a crude expression but that's really what it is asking, isn't it? "Do we know?"

What was it do you think that alerted you to ask that question at this time?

A. I don't know and I can't recall whether it was a question I had asked before. Often as a minister you might ask the same question a number of times because you are working on a whole load of other areas and then

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Parliament or you read something in the media or you have seen something and you are not quite sure.

And that's a good thing that it does that, but -- and, you know, just describing -- you know, in any given day you might have a bit of time at your desk, you may be called over to Parliament or you might have other things you are doing as well, and they can be quite different types of issues, so I think you just -- and sometimes you just -- when something comes up, you just try to get some information as and when you can.

I'm not saying that's necessarily a great system of working but it is often the working system that ministers have to undertake.

SIR BRIAN LANGSTAFF: Well, I don't think anyone can know everything about everything all at once but, in this particular case, you asked a question for a purpose. What do you think you would have done if you got the answer back "Well, yes, in the early 1980s the understanding is that some of the American pharmaceutical companies may have sourced their plasma from prisoners and there was a fuss about Little Rock in Arkansas, and so on, and Alabama State Penitentiary and the like".

Suppose you had had that information, what do you think it would have led you to do?

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1 A. I think I was aware of information that told me that one
2 of the issues was that -- I think it was BPL did source
3 in terms of the UK but often some medical practitioners
4 sourced product from elsewhere and maybe that wasn't as
5 controlled as it is today. I'm not an expert on that.

6 And, therefore, I think the context of that and
7 asking these discussions was about how much people knew
8 at the time, how much were they aware of the dangers of
9 hepatitis, for example, and whether actually, whilst
10 they weren't as concerned about the risk, as maybe later
11 they were able to understand and therefore be in that.
12 So I think there was a context about some of this as
13 well when these questions were asked but, you know,
14 obviously, you are hearing reports about this and you
15 want to know more.

16 And, as I said before, I think one of the bits of
17 advice that came back was about who actually used
18 products from overseas in terms of our own system here
19 but also about whether that would have fundamentally
20 affected stopping the infections getting into our blood
21 supplies and, at the time, I seem to recall there was
22 quite a lot of argument that it wouldn't necessarily
23 have done so.

24 **SIR BRIAN LANGSTAFF:** At the time you recall there being at
25 least an argument that the importation of American blood

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1 of day. So three months to write. Three years to do
2 the fiddly bits, if I can put it so crudely, which are
3 then described in the next paragraph.

4 It is not that there's nothing to be done but do
5 you have any observations about those comparative
6 periods of time?

7 A. Well, it does seem a long time, given that the briefing
8 suggested a draft report was submitted in January 2003.
9 That does seem a long time. I can't really comment on
10 that period because --

11 **SIR BRIAN LANGSTAFF:** Before your time.

12 A. -- it was before my time. When I came into the
13 Department in May 2005, basically, I was obviously given
14 a bit of background to when it was commissioned, about
15 what its remit was and that, actually, they were in
16 what's suggested the final stages to get the report
17 published. I couldn't really affect what had happened
18 before or change that, so it was a matter of just, okay,
19 right, when is it going to get published? What else
20 needs to be done?

21 But, yeah, it is a long time and the turnaround,
22 I think, for that is things is, I am sure, not something
23 that just happens in the Department of Health. I think,
24 again, you would have to speak to other ministers during
25 that time or officials, part of it probably was

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1 products might have made a difficult situation worse?

2 A. I don't know if I could say that but certainly there
3 were arguments about where it came from and it coming to
4 our system. But also there were other ways that the
5 infection was coming into our system, as well, within
6 our own UK pool products as well.

7 **SIR BRIAN LANGSTAFF:** Thank you for that. The other thing
8 which I want to ask you about is a document which we
9 looked at just very shortly after looking at that one.
10 It is WITN5427007, it is page 5. This is your briefing
11 pack about the review which was eventually published and
12 I just want to focus on the first paragraph there:

13 "Due to a number of pressures, there has been
14 a long delay in finalising the review report
15 commissioned in 2002."

16 So the chronology, commissioned 2002:

17 "A draft report submitted to the Blood Policy Team
18 in January 2003 ..."

19 Then this:

20 "... following a three-month assignment by
21 a [Department of Health] Official."

22 So a Department of Health official is working on
23 this for three months and produces a report, a draft.
24 It took him three months or her three months. It is not
25 until, what, 2006 that the report finally sees the light

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1 workload, not just in DH but with other parties that
2 they were working with to provide the content for this
3 report and sometimes there's just not enough resources
4 to do that.

5 **SIR BRIAN LANGSTAFF:** Yes.

6 Do you recollect thinking to yourself: well, here
7 I am, appointed in 2005, this has been ongoing now --
8 the report has been out in draft for over two years, and
9 I have got to go and defend the delay here?

10 Because it is on your watch that it is going to be
11 published.

12 A. I don't recall particularly the delay being an issue
13 that was raised with me. I think the issue was really
14 about whether the documents in the reports were a full
15 account and the narrative of what the report said.
16 There may have been people, so I don't want to say there
17 weren't people, who said about the delay in this, but
18 I can't remember that that was a particular issue. It
19 was more about what the report would contain and how
20 authoritative it was in terms of the documents it
21 referred to.

22 **SIR BRIAN LANGSTAFF:** Yes. Well, thank you very much.
23 That's all I ask.

24 **MS FRASER BUTLIN:** Is there anything else, Ms Flint, you
25 would like to add?

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1 **A.** I would like to thank you, Sir Brian, and counsel to the
 2 Inquiry, for your courtesy and your questions today.
 3 I hope my answers and I hope my written statement is
 4 helpful and I hope -- I have tried to be -- give as full
 5 account as I am able.
 6 I think, Sir Brian, rightly, you have ensured that
 7 the voices of those who have been infected and affected
 8 are at the centre of this Inquiry and I wish you well in
 9 your deliberations.
 10 **SIR BRIAN LANGSTAFF:** Thank you for that and thank you for
 11 helping to give us, really, a rounded picture of what
 12 happened in the early 2000s. We have had a number of
 13 different perspectives and we now have yours to, as it
 14 were, round it off, and that's particularly useful to us
 15 in establishing, as best we can, a full picture of -- as
 16 full a picture as we can of what was happening. So
 17 thank you.
 18 **MS FRASER BUTLIN:** Sir, we won't now be sitting until
 19 Wednesday when there will be a presentation by counsel
 20 to the Inquiry on Government decision making and the
 21 response of the Government in Scotland.
 22 **SIR BRIAN LANGSTAFF:** Yes, so 10 o'clock next Wednesday.
 23 (4.15 pm)
 24 (The Inquiry adjourned until 10.00 am on Wednesday,
 25 21 September 2022)

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