Wednesday, 14 September 2022

(10.00 am)

SIR BRIAN LANGSTAFF: Good morning, Ms Seedat.

THE WITNESS: Morning.

SIR BRIAN LANGSTAFF: Let me explain the arrangements to you. You're talking to a small group of people here in Aldwych House. Those in front of you are participants, Core Participants, and others, and to your left there are lawyers representing various interests, and at the back of the room there may be from time to time representatives of the press. Ms Fraser Butlin will be asking you the questions, she's on her feet at the moment, and in a minute Eamon will invite you to swear your affirmation.

Eamon.

ZUBEDA SEEDAT (affirmed)

Questioned by MS FRASER BUTLIN

SIR BRIAN LANGSTAFF: I omitted to mention that beyond this room you'll be talking to around about 100 people who will be watching on live stream or YouTube.

Ms Fraser Butlin.

MS FRASER BUTLIN: Thank you, sir.

Ms Seedat, I wanted to start with a brief overview of your career. You joined the Civil Service as an administrative assistant in 1988.

A. I did, yes.

Q. And then over the years you've been promoted --

A. I have, yes.

Q. -- and you're currently a Senior Executive Officer.

A. I am.

Q. In terms of what we're going to be discussing today, the role that you were in was as a Higher Executive Officer --

A. I was.

Q. -- at the Blood Policy Unit between 2002 and 2008.

A. That's correct.

Q. Just in terms of some general questions about the team, when you joined, you had two administrative support team members below you?

A. I did, yes.

Q. Then what was the structure above you?

A. So above me I had an SEO, and a Grade 6. And then above that, we would have a Grade 5 and then a director.

Q. Okay. So Jill Taylor was the Senior Executive Officer.

A. She was, yes.

Q. And then there was the Grade 6, initially Charles Lister?

A. **(Witness nodded)**

Q. Then Richard Gutowski?

A. That's right.

Q. And then William Connon?

A. That's correct.

Q. At some point Jill Taylor left the team, didn't she?

A. She did, yes.

Q. Was she replaced?

A. She wasn't, no.

Q. So that would leave you and, just in terms of hierarchy, there was then the gap above you?

A. That's correct.

Q. And the gap above that, the Grade 7?

A. That's correct.

Q. And then the Grade 6 --

A. That's right.

Q. -- who was in post?

A. Sure, yeah.

Q. Was that structure unusual or was it fairly frequent in teams to have such a huge gap between you, as an HEO, and the Grade 6?

A. It is slightly unusual. In most of the teams I've worked in, you would have an HEO, SEO, and you would almost definitely have a Grade 7 between them and then a Grade 6. So very unusual in terms of the teams I've worked in.

Q. As an HEO, can you tell us a little bit about what your role primarily involved?

A. Sure. So within the Blood Team it was quite a varied role, in the sense that I did a lot of reactive works, so that would be all the briefing work. So that would be Parliamentary works, the written questions, Private Office cases, treat official cases which came in to ministers. I worked on various committees. So we had a committee called MSBTO, we had -- I worked on supporting the recombinant roll-out, we had a group, the National Commissioning Group on blood prices. So there's various committee work involved.

But in terms of the reactive work, it wasn't only around the contaminated blood issue, there were also very current live issues within the Blood Service, around blood supply and kind of criteria around blood donations and that kind of thing. So it was working on past events as well as kind of live events within the Blood Service as well.

Q. And in terms of what you were doing with all of those things, was your role a policy role or was it essentially administrative?

A. I would say it was policy.

Q. Were you making policy decisions?

A. I wasn't, no. I was definitely supporting policy decision but I was not a decision-maker myself.

Q. During your time with the Blood Policy Team you had

three different leads that we've discussed. Can you tell us anything about their styles of management and whether there was a different management style between Charles Lister, Richard Gutowski, William Connon?

A. There are -- I mean everyone brings a different character and personality to a role. So Charles obviously was -- my first role -- Charles was my first Grade 6 while in the role, so I learnt an awful lot from Charles. He was really hard working. He was very approachable; he'd come out kind of towards the end of the day and have a chat with me. So I guess that was kind of -- he was quite relaxed, Charles.

Richard I think was a bit more formal, a bit more old school but, again, very approachable and got on with the job in hand.

William was probably by far the most relaxed of all my team leaders that I worked with. I think when William was there we probably had a few more staff, so there was more scope for delegation as well when William was in the team.

Q. The Inquiry has heard evidence from Charles Lister and Richard Gutowski and they both said the team was incredibly busy throughout their time.

A. Yes.

Q. Was that also your experience?

A. Absolutely, yeah. I think in all my time in the Civil Service it was probably -- by far the most -- busiest team I've been in. We were incredibly stretched in terms of resourcing.

You mentioned at the beginning that when I joined the team there were two administrative staff below my grade, but while in the team those posts had disappeared, so essentially, for the most part, I was kind of like the junior member of the team. So I just -- I did have an enormous workload. It was a very, very busy team and -- without anyone, so to speak, below me or above me until we get to the Grade 6 grade. It was just -- I think a lot fell on me during that time.

I should say I did have a bit of admin support at some point, but it wasn't on a permanent basis.

Q. And what was your understanding of why the workload was so high in this team?

A. I mean, it was just a heavy postbag we got. There were huge amounts of Parliamentary interest in the whole area around contaminated blood so I was constantly having to deal with the reactive work, so we'd get lots of Parliamentary Questions, written and oral questions. I already mentioned the huge postbag of correspondence that we received. There was just so much going on in

the team.

While I was in the team we had -- the Freedom of Information Act was introduced, and so, again, that resulted in ever-increasing workloads without the additional resource to support any of that. So there was just lots and lots of reactive work. Constantly.

Q. I want to come back to some of the Parliamentary Questions and correspondence a later bit this morning, but before we do that I want to just look with you at some of the policies in place dealing with documents and records retention.

Could we turn to WITN3996002, please.

What I'm going to do, Ms Seedat, is take you through quite a lot of it and then ask you about it at the end.

So we can see a sticky note on the front to say that it's been updated up to 1996, but if we turn the page we can see at the bottom that it was originally produced in July 1994, and it's "A guide for Records Managers and Reviewing Officers".

If we then turn on to page 11, it sets out at the top the types of file, the three main types of registered or official files:

"i. Policy files. These usually have pink covers and are the most frequently used type of file. They

contain either records on a particular subject or administrative or financial records. Policy files are opened as necessary by local registries.

"ii. Particular Instance Papers ... [a] series of files dealing with the same subject but cases ..."

And then "Private Office files", which would be yellow or orange, dealing with the MP enquiries, or, green, with Parliamentary Questions. And they're opened and dealt with in Private Office or specialist sections.

Which types of files would you be dealing with?

A. Policy files.

Q. So the pink files.

Then if we turn to page 30, we see the heading "Closing files", and we've got a note:

"Procedures for the closure and storage of files are very precise and it is important that they are adhered to.

"1. Closing files

"Local registry should close files when:

"- they reach 3cm thick. At this point a new volume should be opened.

"- they are five years old - this is, if five years have elapsed since the 'begins' date on the cover of the file ... or

"- nothing new has been added for two years."

If we turn the page, we have "Storing files":

"If files are in constant use they should either be stored in the branch or stored in the relevant registry. Even once a file has been reviewed, if it is still in use, it should be retained in the branch until there is no longer a need to hold it locally. However, a reviewed file may only be kept locally up to the date of its Second Review. When this date has passed the file must be sent to the DRO for review. The file can then be returned back to the branch if it is still needed.

"If space is short in a branch, files can be stored at the DRO. Files to be stored at DRO must be reviewed first but this can be done within six months of the file ENDS date. The DRO will store a file until:

"- the date for Destruction at First Review is reached; or

"- the date of the Second Review is reached;

"whichever is appropriate."

Then if we turn to page 33 we have set out here the process for reviewing files, and we see that:

"Officially, files are recommended for review two years after the date of the last action. In practice some branches do not have sufficient storage space to hold files or this long."

Then if we go down to the next section:

"Reviewing policy files in the branch

"All policy files are reviewed in the branch. The Branch Reviewing Officer must be grade EO [Executive Officer] or above. The officer is appointed by branch line management and must have a thorough knowledge of the administrative needs of the branch."

Then there is a note that the Registry Officer will refer the files due for review to decide whether it should be destroyed at first review. Over the page, we see it in red, "Retained by the DRO for a Second Review".

Then if we just carry on with the document Ms Seedat, page 37. We see a heading, "Private Office Files":

"Private Office files are not reviewed at all. Once the final reply has been sent to the MP, the files may be sent to the DRO for storage. They are kept there for three years before being destroyed.

"Some branches file Private Office files in local registries treating them as policy files or copy the contents to other files."

And there's a request that they should be sent to the DRO.

This document is obviously from 1994. Was this

the system of dealing with documents and the retention of records that you were familiar with using?

A. It was, yes.

Q. And was it broadly the same from 1988, when you joined, until this document?

A. I think so, yes. I can't really remember any deviation in terms of the policy.

Q. And in the Blood Policy Team when you were there, obviously much later on than 1988, who was the branch reviewing officer?

A. I think it would be me. There wasn't anyone else to do it.

Q. If we can turn, then, to WITN6955036, please.

We have a memo from the Permanent Secretary to all DH staff in 1994. I'm not sure whether this would have come across your desk at all, Ms Seedat.

A. I mean, it's addressed to all DH staff so I expect it would have done.

Q. Okay. It indicates:

"There have been considerable changes in Departmental organisation and staffing over the past few years which have led to weaknesses in Departmental record keeping. Further, the introduction of OIS has changed the way in which business is done."

Do you know what OIS is?

A. I think it was the move to the electronic system.

Q. It then sets out:

"The Department continues to need traceable records for three reasons:

"- to ensure we can account for actions taken;

"- to enable us to take action that is consistent with our past statements and actions; and

"- to avoid inefficient searching for material."

Then it goes on to indicate that there will be a rolling programme of training and a leaflet will be provided to each staff member.

Do you recall anything about this initiative dealing with document management?

A. I don't recall the training. I don't, I'm afraid, no.

Q. Then if we go to WITN6955037, this is the leaflet that's referred to. Again, do you recall receiving anything like this?

A. I expect I would have done but I couldn't recall it.

Q. Just while we're looking at it, so that those listening can also be aware of what's here, it's a leaflet that folds up. So we actually start on page 2. We can see the note of "Why keep records:"

"Good record keeping is an essential part of the work of any government department and is, largely, the result of efficient filing."

Then there's a setting out of the three bullet points about why it's important to keep a record of the work done:

"... those coming after you can find out what has been done, or not done, on a particular case or issue;

"any decisions made can be justified or reconsidered at a later date; and

"you can work with maximum efficiency ..."

If we go back a page, which would have been the other side of the leaflet, we pick up the heading "Storing and closing files":

"Any file no longer needed should be sent to your registry for filing. Files should only be kept at your work station if you're using them."

Then, I'm sorry, we have to go to the next page, which is the flipside. Carry on reading:

"Files should be closed if they are over 3 cm thick, if they are over five years old or if nothing new has been added for two years."

It advises how to close a file. So much the same advice on how to deal with documents; is that right?

A. Yes.

Q. I then want to pick up in June 2003. You were tasked with answering a Parliamentary question about Lord Owen's papers being missing and Charles Lister

responded with a memo.

A. He did, yes.

Q. DHSC0020720_081, please, Lawrence.

We can see here that it's an email from Charles Lister to you, and it sets out the remit of the Burgin report on self-sufficiency and then we pick up the paragraph starting "Unfortunately":

"Unfortunately, none of the key submissions to Ministers about self-sufficiency from the 70s/early 80s appear to have survived. Our search of relevant surviving files from the time failed to find any. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV Litigation have since been destroyed in a clearout by SOL (there is an email from Anita James to me confirming this). This would have happen at some time during the mid 90s.

"I suspect that Lord Owen's allegation about pulped papers refers to the papers kept by Private Office which are never kept after a change of Government. They are either shredded or handed back to the relevant policy section. However, the fact that we can no longer find any of these documents -- so can't say what Ministers did or didn't know about the state of play on self-sufficiency -- just plays into the hands of

the conspiracy theorists."

The email then deals with what has to be done before the self-sufficiency report can be published. From your statement, Ms Seedat, this is when you think you first became aware that papers on blood and blood products have previously been identified as having been destroyed.

A. I think so, yes.

Q. Your involvement became more significant in 2004/2005, and the issue of missing documents came up in relation to three things I want to explore with you: lord Jenkin's papers, part of various Parliamentary Questions and correspondence, and the work that was done on the Burgin report.

But before we deal with those specifics, could you explain to us how things practically worked when you were dealing with Parliamentary Questions and correspondence. Where did you get your information from to know how to answer those questions or correspondences?

A. On this occasion, it was an issue I didn't know anything about. I think Charles had just left the team and I may have emailed him in his new post to find out what this was -- you know, what the issue was around, and Charles then responded. As I mentioned before, we had lots and

lots of correspondence, PQs, on the subject areas. So I was very heavily reliant on previous Parliamentary Questions, statements in Parliament, and information I generally managed to find from the file.

Q. Just so we're all clear, in the file in the Department you would have previous answers to Parliamentary questions?

A. That's right, they would have been filed.

Q. You'd have previous answers to correspondence?

A. That's correct. Yes.

Q. I think what you just said to us was you would use those to answer new questions?

A. I did. I mean, obviously when I first joined the team, Jill Taylor was still in the team, so we did have some level of corporate knowledge within the team. So if I were to be answering some correspondence or a PQ, Jill would check those facts for me, and kind of that's eventually how I, I guess, built up my knowledge of the lines to take being used within the team.

Q. Just so we're clear in terms of your role, you, I don't think, were -- you weren't preparing the lines to take, as such, in terms of unless it was something new that needed to be addressed?

A. That's correct. I didn't develop any of the lines, for the most part, that I was -- within the team. That's

correct.

Q. Can we then pick up in relation to Lord Jenkin. If we turn to WITN4912003, we have an email from the Scottish Executive which has been forwarded to you and it's the beginning of the matters. It attaches a letter from, we will say, "Mr X":

"You will see that he requests copies of papers and mentions a secret report funded by Westminster. I would be grateful for any comments you can offer on this and your advice on the review of papers/files within [DH England] to allow me to prepare a response."

The Inquiry has looked at the correspondence on this already with Richard Gutowski but, in turn, it triggered a letter from Lord Jenkin. If we can turn to that, WITN4912005. We can see here:

"I enclose a letter I have had from a Mr [X], who raises a number of subjects including a so-called secret Westminster-funded report into haemophilia and hepatitis non-A non-B between 1979 and 1982, for most of which time I was the Secretary of State for Health and Social Services. I also enclose a copy of my reply to Mr [X] which makes it clear that because I was the Minister at the time he is enquiring about, I feel under some duty to try and satisfy his curiosity.

"You will also see I have no present recollection

of any secret report into the subject, but it may be that the files could disclose something along those lines.

"I would be most grateful if you could consult officials and let me know whether there is any point my taking this matter further."

You then helped draft a reply to this letter; is that right?

A. I did.

Q. The final version that was sent is at WITN3996005. If we just pick up the second paragraph:

"I do understand your wish" --

Sorry, the letter was sent by Lord Warner to Lord Jenkin:

"I do understand your wish to be helpful to Mr [X]. As you rightly say, however, it is very difficult to go back some 25 years to recollect details, especially as many of the people involved are, sadly, no longer with us.

"My officials have carried out a search of the relevant files, but can find no trace of information relating to the 'secret Westminster-funded report' that Mr [X] mentions.

"However, I understand that Mr [X] also wrote to staff at the Scottish Executive, who have traced

a report of the Haemophilia Centre Directors' Hepatitis Working Party for the year 1980/81. A copy of this report has already been sent to Mr [X] but I am enclosing a further copy for your records. I apologise for the poor quality of the copy ..."

Can you explain what involvement you had in terms of searching the relevant files?

A. I can't recall at this point in time, but I think, from previous correspondence, I had been in touch with Sandra Falconer at the Scottish Executive and that's how I think I came to be aware of the document that we then sent to the correspondent.

Q. If we then turn to WITN4912011, please and the second page of it. This is an email from Shaun Gallagher, the head of the Chief Executive's office. It says this:

"We discussed this case. As Frances knows, I had a phone call from Lord Jenkin in response to the letter he received from Lord Warner. He was concerned that the reply he had received gave the impression that the Department held no records on the subject in question, and was looking to take up the issue of DH's filing and document management with the Permanent Secretary.

"Although I've looked at the original letter and the reply sent ... I do not really understand what the situation is -- for instance, whether the Scottish

papers are likely to be the 'secret Westminster-funded report' that Mr [X] was talking about; whether our records have anything on the subject of the Haemophilia Directors' Hepatitis Working Party at all; and why the Scottish Executive have records that we don't ..."

The plan was then for a further letter to be sent to Lord Jenkin.

A. It was, yes.

Q. You prepared a draft reply and background note.

A. I did, yes.

Q. Could we turn to that, DHSC0200048, and if we pick up at page 3, please. This is the background note that I think you prepared; is that right?

A. I did, yes.

Q. It sets out the background and then in the third paragraph:

"Unfortunately, in this case the reply from Lord Warner to Lord Jenkin was drafted by the correspondence unit using a number of standard lines, and the reply did not fully address the points raised in the letter. It also left Lord Jenkin with the impression that we had inadequate file records. Lord Jenkin rang Sir Nigel's office to take up the issue of the Department's filing and document management system.

"The draft letter seeks to reassure Lord Jenkin that DH does operate an effective records management system. We have also used this opportunity to give Lord Jenkin a fuller response to his letter."

Just before we look at the draft letter, the reference there to the response having been prepared by the Correspondence Unit, using a number of standard lines, were you in providing those lines to the Correspondence Unit.

A. My recollection at the time is that correspondence team had, from not just our team, sort of across the Department, it was quite a central system they had, standard lines to take. So when correspondence came in, not just necessarily on blood, but any particular policy, in the first instance, if it was quite routine correspondence, they relied on those standard lines to take. If they were slightly more complicated or needed additional information, then they would come to the policy team.

Q. Then if we turn the page, we see the draft reply. It says this:

"I have been advised that you recently contacted Sir Nigel's office about my letter dated 27 January. I understand that you expressed concern about the Department's filing and record management systems.

"I would firstly like to correct the impression I may have given that we hold no records on the treatment of haemophilia patients, blood safety and related issues. The Department of Health has a Departmental Records Office that holds closed files on these issues. These files have been subject to a branch review.

"Clearly, keeping good records is fundamental to the day-to-day running of the Department. We recognise that much of the work we do has long term consequences and accurate records are essential if future users are to be able to see why certain decisions are made, or why certain things did or did not happen. This is a message that is regularly communicated and reinforced to staff."

There's then a discussion about Mr X's request and what the Inquiry has come to understand to be the line to take in relation to non-A, non-B hepatitis.

Then we pick up in the final paragraph of the letter, over the page:

"With regards to the reference to minutes of the NBTS. Officials have identified files on the Advisory Committee on the National Blood Transfusion Service which was established in 1980. The first meeting was held on 1 December 1980. It would be helpful if Mr [X] could confirm firstly if it is the papers for this

Advisory Committee that he would like to see and secondly if he could be specific about the period and issues he is interested in, before officials make an assessment on the release of the documents."

Mr X is then invited to contact William Connon. When there is a reference to the Advisory Committee on the Blood Transfusion Service, was this a reference to the Advisory Committee on the Virological Safety of Blood.

A. I don't think so. They're very different, the names of the committees. So, I mean, obviously I can't recollect my thoughts at the time but, looking at the papers now, they are very different committee names.

Q. By this stage, I think you were aware that some files had been destroyed, the GEB files.

A. That's -- what date is -- this was -- I expect --

Q. This was 2005.

A. -- I would have done. I would have done, yes.

Q. But there's no reference in the letter to papers having been destroyed.

A. No.

Q. Do you recall why that wasn't made clear to Lord Jenkin at the outset?

A. I can't recall, I'm afraid.

Q. Do you recall any discussion about that within the

Department, with perhaps Mr Connon?

A. I don't, no.

Q. From your statement, your background note was unfortunately included in the reply to Lord Jenkin --

A. Yes.

Q. -- and it wouldn't normally have been?

A. Sure. Can I just also make the point, although I would have drafted the letter, it would have been cleared by my Grade 6 at the time, so I completely take ownership of the fact I would have done the first draft but it might have been tinkered with by William and, obviously, I couldn't tell, kind of, the points that he may have added or which were my original ones. I just wanted to make that really clear.

Q. Absolutely. Thank you, Ms Seedat, that's very helpful and it goes back to what we were discussing at the beginning: that your seniority in the Department would mean -- would it mean everything you sent out would be cleared?

A. Because most of this would be ministerial or senior offices, most of it -- the majority of it, I'd say, would need Grade 6 clearance, or Grade 5 clearance, definitely, yes.

Q. There was then a meeting held between Lord Crisp and Lord Jenkin, and you prepared a briefing note for that

meeting, which again went out in Mr Connon's name?
A. It did yes.
Q. It would therefore have been cleared by Mr Connon?
A. That's correct.
Q. Could we look at that, WITN4912039.

If we pick it up on page 2, please, we can see that, at the top, it's from William Connon and it's dated 11 April 2005. There is a set of paragraphs dealing with the background and then a heading, "Previous request from Lord Jenkin":

"We understand from colleagues that on a previous occasion, in 1999, Lord Jenkin wrote seeking access to policy papers, including unpublished research studies, that he had brought with him when he arrived at the DHSS in 1979. On that occasion, colleagues were unable to locate the documents. In fact, it is unlikely that they would have been retained, as they would not have been required either to support administrative needs or accountability."

Do you recall any discussion about why those very early papers hadn't been retained?
A. I can't recall, I'm afraid.
Q. When the memo talks about "they would not have been required to support administrative needs or accountability", what was that dealing with?

Office to check which files related to the treatment of haemophilia patients and blood safety are still in existence from the period between 1979-1981. We have obtained a list of some files from this period. However, at first glance it is not clear about the extent to which these files will hold papers that Lord Jenkin will have handled. It would require significant staffing resource to go through these files to identify official papers that Lord Jenkin handled at the time.

"We have not sought to deny Lord Jenkin access to any official papers. The reply from PS(L) focused on addressing summary serious comments from Mr [X] about blood safety and the transmission of Hepatitis C.

"We are aware of the Civil Service Guidance on access to official papers by former Ministers, produced by the Cabinet Office. If Lord Jenkin is able to be more specific about the subject matter or documentation that he would like to see then we can undertake a search for specific papers."

At this stage, it seems from the lines to take that a list of the files had been obtained.
A. Mm-hm.
Q. Was any thought given at that point to whether the files on the list should be put in the public domain in some

A. I don't know if these were perhaps his own papers or whether they were necessarily Departmental papers, so it's difficult to kind of give a view on that, I think.
Q. Just stepping back from the specifics of Lord Jenkin's papers, that phrase, that papers were not required "to support administrative needs or accountability", was that a touchstone for a decision on whether to retain documents?
A. I mean, in my view, in terms of file retention, I would always -- as I say, I can only speak for myself, obviously. You know, I would always assess the administrative value of a file, and I think in the whole time I've been in the Department and we had paper files, very few occasions I had any reason to mark papers for destruction within a particular date or anything like that. So I can only speak from my own personal experience, I think.
Q. We then have the lines to take:

"Many key papers from the 1970s and 1980s have been destroyed. During the HIV Litigation in 1990 many papers from that period were re-called. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s."

Over the page:

"We have been in touch with Departmental Records

way, given what you've said, there were ongoing requests and correspondence and questions about this?
A. I can't recall, I'm afraid.
Q. Do you recall ever having any discussion about that with Mr Connon?
A. Um, I don't, no. I just don't recall.
Q. You then also attended the meeting --
SIR BRIAN LANGSTAFF: Are we leaving this document?
MS FRASER BUTLIN: We are, sir, yes.
SIR BRIAN LANGSTAFF: I wonder if I may just ask a question.

Could we go back to the page before, please, on the screen, and the very first bullet point at the bottom of the page, those words are yours, are they?
A. Um, they would be based on information that I had gleaned from Charles Lister when he first informed me about the destruction of these documents.
SIR BRIAN LANGSTAFF: Can you help with the link between something being "not adequately archived", whatever that may mean, and destruction?
A. So, I mean, they were obviously not adequately archived in the sense that they were not on registered files.
SIR BRIAN LANGSTAFF: So what this is really saying is that the papers weren't put in a file which was identified as a registered file.
A. That is correct, I think, yes.

SIR BRIAN LANGSTAFF: Why would that lead to destruction?
A. I don't know. Um --
SIR BRIAN LANGSTAFF: Because that's what this implies, doesn't it? Doesn't it suggest that there's a link between the failure to have a registered file and the fact of destruction?
A. I mean, I can only go by what I was told at the time, that the papers were after the litigation. They were not adequately archived, and they might have been in a Cabinet somewhere and somebody may have taken a decision to destroy them. That's how I'd interpreted it.
SIR BRIAN LANGSTAFF: So nobody is actually clear, at this stage, that they have been destroyed; would that be right?
A. Well --
SIR BRIAN LANGSTAFF: They can't be found but they --
A. Well, I'd had information from Anita and from Charles that they had been destroyed.
SIR BRIAN LANGSTAFF: Right. So you understood from them that someone somewhere had chosen to destroy these files -- it may be for good reason, it may not be.
A. That's correct, yes.
SIR BRIAN LANGSTAFF: But you can't help with any more detail?

A. That's right. I mean, these were events that happened in the past. I was only going by information that people had told me.
SIR BRIAN LANGSTAFF: If you'd had more detail at the time, would that have been in your briefing note?
A. It would have depended on the information I was given. I don't know. I can't say, because I wasn't given any additional information.
SIR BRIAN LANGSTAFF: Because the briefing note is at a fairly high level. It doesn't descend to very much by way of detail.
A. As I said, I can only provide information that I was aware of at the time.
SIR BRIAN LANGSTAFF: Yes, of course. So this is the limit of your information, as given to you by Mr Lister --
A. That's correct, yes.
SIR BRIAN LANGSTAFF: -- at the time? Yes, thank you.
MS FRASER BUTLIN: You attended the meeting between Nigel Crisp and Lord Jenkin, I think.
A. Yes.
Q. It was quite an unusual meeting for you to attend; is that right?
A. Yes.
Q. You have said in your statement you don't have no real independent recollection of the meeting?

A. I don't. I remember it happened, I think vaguely I remember it was a fairly short meeting. I remember talking to Shaun, Sir Nigel's private secretary, just before the meeting, but I don't remember the actual detail of the discussions.
Q. I want to ask you about one point and it may be you can't assist us but could we go to ARCH0002968, please. It's the statement of Lord Jenkin to the Archer Inquiry and it's paragraph 7 on page 2 that I want to pick up with you.

Lord Jenkin explains that it wasn't until 13 April that he met Sir Nigel Crisp and put the whole matter to him. Then, five lines down, he says this:

"He [Sir Nigel Crisp] then went on to explain that there are indeed a large number of files held at the Public Record Office and that it would be necessary for his officials to extract all those files which might be relevant to my enquiry. However, and this was perhaps the most important point to emerge from this meeting, Sir Nigel made it clear to me that all the files that bore upon the issue of contaminated blood products had been destroyed. He went on to explain that there had been a long process of litigation by and on behalf of HIV sufferers which had culminated in those who were identified as having contracted their disease via

contaminated blood being offered substantial sums of compensation. He then said that when this litigation had been settled and the compensation paid, it was felt by the Department that there was no longer any point in retaining the files about contaminated blood and that they were accordingly destroyed."

Do you ever any recollection of anything being said in those terms?
A. I don't, I'm afraid, no.
Q. Do you have any recollection of anything that might have been said, might have given Lord Jenkin that impression?
A. I don't, no, I'm afraid.
MS FRASER BUTLIN: Sir, we've obviously heard the evidence of Lord Crisp dealing --
SIR BRIAN LANGSTAFF: Yes, and we've just, a moment ago, heard your own knowledge in advance of this meeting but you didn't know why or in what circumstances they had actually been destroyed. So you can't recollect that it had been said that it was because someone had thought, "There's no point in keeping these, therefore we'll destroy them", that would have been a reason for destruction. But can you recall anything like that?
A. I'm afraid I don't, no.
MS FRASER BUTLIN: Thereafter, Lord Jenkin came and looked at some of his papers.

We can take that off the screen, thank you.

When he came in to look at the papers, I think you were there to assist him. Do you recall how those papers had been gathered for him?

A. I mean, I obviously went through the DROs of the file office and I think I also went to The National Archives. I went through to various routes to try to narrow the search between his period in office, to try to obtain files that might be of relevance from his period in office.

Q. When Lord Jenkin came to look at the papers, you said that he was concerned about so many being destroyed. What did he say to you about what he thought was missing?

A. I can't recall.

Q. Do you remember anything of your discussion with Lord Jenkin at that time?

A. I really don't, no.

Q. Lord Jenkin sought a further meeting with Sir Nigel Crisp, as he then was, and if we could turn to WITN3996019.

This is a minute from you to Sir Nigel.

Would it have been cleared by anyone before it went to Sir Nigel?

A. It would almost certainly have been cleared by William.

Q. We see here at the start of it:

"1. Lord Jenkin has asked to meet you again to discuss the issue of record management in the Department of Health and why papers from the 1970s and 1980s on the issue of haemophilia patients infected with hepatitis C have been destroyed."

We then go down to the bottom of the page and the heading "Destruction of papers":

"4. At your meeting with Lord Jenkin and his two visits to the Department to inspect the files, we made clear that many key papers from the 1970s and 1980s have been destroyed. These events took place a long time ago. However, our understanding is that during the HIV litigation in the 1990s many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s.

"5. In addition, we have established that many other important documents, mostly papers and minutes of the Advisory Committee on the Virological Safety of Blood were destroyed in the 1990s. This should not have happened. During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that many files were missing. A low key internal investigation was undertaken, by colleagues in Internal Audit, to

establish why files were destroyed. We have managed to obtain the report by Internal Audit."

And you set out the conclusion there, which was that two experienced members of staff had left the section, and that the upheavals of the process had meant that there was:

"- a delegation of responsibilities without proper instruction, or

"- an assumption of responsibility without proper authorisation.

"Either occurrence, likely given the organisational context, is the most probable explanation for the decision to mark the files for destruction, and the short destruction dates assigned."

The report made recommendations. And then, under the heading "Advice/Recommendation":

"7. We advise that you decline to meet with Lord Jenkin. He was informed from the outset, that papers from the 1970s and 1980s were missing, and the draft letter attached explains in detail our understanding about why papers were destroyed."

Just before we look at the draft letter, was it your decision to recommend that Lord Crisp declined a meeting with Lord Jenkin?

A. I couldn't recall. I mean, I can't say for certain.

I may have had a view at the time, I wouldn't remember what it was, but it would certainly have been discussed with William before a decision was made.

Q. And do you recall anything of that discussion about why a meeting was going to be declined?

A. Um, I mean, looking back at the papers and reflecting on it now, there's a couple of reasons I could think of. I mean, at this point, Lord Jenkin had already met with Sir Nigel on one occasion. He'd had an opportunity to come in a couple of times to review the papers, and I think on one of those occasions might have met with William. It's probable they would have discussed the destruction of papers then.

And there was nothing further to add at this point. I'd kind of made further investigations around destruction of the papers for the Advisory Committee on the Virological Safety of Blood. And although I wasn't -- when the meeting with Sir Nigel took place I wasn't aware of the background to that because I hadn't at that point followed up the Internal Audit report, so I didn't know any of that background, but by this point I did, and we just set it all out in a letter to him, and I suppose the general view was there was nothing more to add.

Q. I want to then pick up the draft letter you prepared.

SIR BRIAN LANGSTAFF: May I just ask a question about what is said at the top of the page there. The first question is, was the unit which had the files, which were then marked wrongly for destruction, was that the Blood Unit you worked in?

A. I imagine it would have been, yes. I don't know what the team would have been called in the 1990s but it would have been in some shape or form a blood policy team, I imagine.

SIR BRIAN LANGSTAFF: And that team, you've already described, by the time you were in it you were rather left high and dry with no one beneath you and no one above you and nothing between you and the Grade 6.

A. No.

SIR BRIAN LANGSTAFF: Now that rather fits with what's described here in the paragraph:

"... the implementation of the Functions and Manpower Review ... which resulted in two experienced members of staff leaving the relevant section."

Does that -- is that likely to be the two people who were under you initially who left, or not? Do you think?

A. Um, I mean, this would have -- this description was obviously --

SIR BRIAN LANGSTAFF: Sometime earlier?

A. Earlier than when I was in the team.

SIR BRIAN LANGSTAFF: Yes. So how big, roughly, do you think the team would have been then? Do you have any sense?

A. I can't say, I'm afraid. I've no idea. I can only speak for the time that I would have been in the team, but I was never ever given a sense of how big or small the team might have been at the time these papers were destroyed.

SIR BRIAN LANGSTAFF: I mean, you were working incredibly hard, so it's not unreasonable to think there may have been a further support earlier, but your sense of the structure of it when you first joined was that there would be, what, an Administrative Officer --

A. An Executive Officer.

SIR BRIAN LANGSTAFF: And then a Higher Executive Officer, and then a Senior Executive Officer?

A. Yeah, sure.

SIR BRIAN LANGSTAFF: So four people doing the work which you, ultimately, were covering yourself in the office. And then above that there would have been, what, a grade --

A. A Grade 7.

SIR BRIAN LANGSTAFF: A Grade 7.

A. I mean, not all teams necessarily had that full

complement. Sometimes if you had a Grade 7 you might not have a Grade 6. Mostly you did. Sometimes if you had an HEO you might not have had an SEO. So it doesn't necessarily follow that every team had every single grade, but we certainly had more resource than we did during the time I was in the Blood Policy Team.

SIR BRIAN LANGSTAFF: So although you don't know for sure, the likelihood is there would have been something like five people, thereabouts?

A. I can't say. I can't really speculate on what that team would have consisted of or comprised of. No idea.

SIR BRIAN LANGSTAFF: Put it this way: would it have been as many as ten?

A. No, it's unlikely. I've never come across a team, a particular policy team, that big before. No.

SIR BRIAN LANGSTAFF: Yes.

The reason I'm asking is that when we had evidence from Lord Crisp on Monday, he was saying that in his view, that within a team which was relatively small, most people tended to know what other people were doing.

A. I think that -- I mean, this report talks about somebody of a fairly junior grade. I don't know if I necessarily accept that. I've been an EO myself, I've been an AO, I'm currently an SEO and I have an EO in the team. I don't think it necessarily follows that at EO level

you would necessarily know about -- or everything that's going on in terms of discussions with ministers on a particular grade at EO level. You're very often not copied in to submissions or correspondence with other bodies about formulation in policy or decisions about funding, necessarily. So, I mean, it might vary within the Department, but certainly in my experience, most EOs would not necessarily be copied in necessarily on decisions around the formulation of policy. They are very junior grades and they'd kind of be focused on administrative tasks, arranging meetings, that kind of thing.

SIR BRIAN LANGSTAFF: Yes, thank you very much.

MS FRASER BUTLIN: Could we turn, then, to the draft reply that you prepared. It's page 3 of this document. There's some introduction and I want to pick up on the third paragraph.

"As previously mentioned, it is our understanding that during the HIV litigation in the 1990s many papers from that period were recalled for the purpose of the litigation. We understand that papers were not adequately archived and were subsequently destroyed in error in the early 1990s."

The briefing you wrote in the April we looked at before had said that the papers were unfortunately

destroyed. In that earlier briefing there was no reference to whether that destruction had happened deliberately or in error. Do you have any recollection of why that phrase was added to this letter, that the destruction was "in error"?

A. I don't, I'm afraid, no.

Q. Had there been any further investigation or enquiries that allowed that statement to be made, that the destruction was in error?

A. No, I don't recall doing any follow-up on this -- on the destruction of papers at this point in time.

Q. So your recollection is that from the April briefing that you'd written, without the words "in error", through to this letter, there hadn't been any further investigations?

A. I don't recall doing any at the time.

Q. And do you have any recollection of any discussions about whether that destruction had been deliberate or in error?

A. I don't, I'm afraid.

Q. If we then pick up the next paragraph:

"Officials have also established that a number of files were marked for destruction in the 1990s."

That relates to the GEB files, I think, is that right?

A. It is, yes.

Q. "Clearly, this should not have happened. When the discovery was made that files had been destroyed, an internal review was undertaken by officials.

I understand that a decision, most probably made by an inexperienced member of staff, was responsible for the destruction of a number of files. The decision to mark the files for destruction was not a deliberate attempt to destroy documentation. It is very unfortunate that the staff member at the time was not fully aware of the significance of the files and the possibility of future litigation."

Now, my understanding of the Internal Audit report is that it was unable to identify the actual member of staff who had decided that the documents should be destroyed, and why they'd done so; is that right?

A. That's my understanding too.

Q. It might be said, then, that this letter goes too far in making a positive statement about how the decision had been taken and what the position of the staff member was when they took that decision. Do you have any recollection of how you came to --

A. I don't --

Q. -- put that paragraph in?

A. No.

Q. Again, do you recall any discussion or further investigation about who the staff member was and why they'd done what they'd done?

A. No, I -- we'd never, during my time, kind of investigated that at all.

Q. And again, is it right that this draft reply would have been cleared by William Connon before it went up?

A. Yes.

Q. Throughout this time frame you were also dealing with a Freedom of Information Request for the documents that were withheld for public interest immunity reasons --

SIR BRIAN LANGSTAFF: Can I just ask a question, please, about the next paragraph. Because this was also part of the draft.

MS FRASER BUTLIN: It is.

SIR BRIAN LANGSTAFF: "I am aware that this explanation ..."

Now, the explanation is that it wasn't a deliberate attempt to destroy documentation.

"... may disappoint some haemophilia lobby groups ..."

What was it, do you recall, that led to your expecting disappointment with a conclusion that the files had been either destroyed in error or not deliberately destroyed?

A. Obviously at this point there were growing calls --

I was dealing with FOI cases and there were growing calls for documentation to be made available. The fact that we knew of papers being destroyed was going to be an obvious disappointment to people, that we were not able to provide documents that they were seeking.

SIR BRIAN LANGSTAFF: Right. So the "explanation that may disappoint" is that documents have gone missing?

A. I think so, yes.

SIR BRIAN LANGSTAFF: Thank you.

MS FRASER BUTLIN: So picking up the Freedom of Information Request that you were dealing with in relation to the public interest immunity documents from the HIV litigation, could we turn to WITN4912013, please. If we particularly pick up on the second page.

Can you explain to us what this is? From your statement you dealt with requesting of files.

A. I can't, I'm afraid, no. It looks like it's in connection with to file requests, but there's no particular identifier on this to help me. So I don't know.

Q. We heard from Anita James that LIE files were litigation files.

A. Oh, okay.

Q. In terms of this document, can you explain how you obtained documents, perhaps from storage or from

a different office. What was the process?
A. I mean, there was a fairly standard process. We would -- to obtain any registered file, we'd email DRO Nelson. So there were a couple of people I knew within the team, and often I'd email them and request a particular file. I'd give them the full reference number, the name, and they'd kind of respond to say whether or not they'd had the files, whether they'd been sent to me.
Q. Do you recall something like this being a log of those files?
A. Yeah, I can't say that LIE files seem familiar to me, but certainly these are registered files that we would have. The kind of, like, prefix indicate that.
Q. If we turn, then, to your background note on the issues relating to the public interest immunity documents, WITN4912017, please. And if we turn to page 3.

We see that you've set out under the heading "Disclosure of documents" the following:

"2. During the HIV litigation, the DH made available a very large number of documents for inspection by the plaintiff's lawyers. Other documents, that were wanted by the plaintiff's lawyers were withheld. These papers related to the inner workings of Government and were subject to a Public Interest

Immunity ... claim by the Department.

"3. Initially the High Court ruled against disclosure of the majority of the documents. However, on appeal on 20 September 1990, the Court of Appeal Judge ruled that certain documents should be disclosed. There is a paper on file dated 10 October 1990 which says 'that the judge is now inspecting the documents to see which meet the criteria for disclosure'.

"4. We would need to conduct a further search of the files to establish the outcome of the inspection of these documents. However, a further search would take us to the 3.5 days limit that we have.

"5. At the same time, DH were considering proposals for a settlement. A settlement was reached."

Then in paragraph 7 -- sorry, paragraph 6 notes that Mr Y was requesting copies of the documents which DH had claimed that public interest immunity applied to.

Then paragraph 7:

"We have two cabinets of papers (about 60 folders) which we understand was sent to our solicitors at the time of the litigation. However, it is not clear which of these papers (if any) would have been made available to the plaintiffs lawyers during discovery."

Then over the page:

"8. We have also looked at a number of registered

files to locate the papers. We have found a minute dated 6 September 1990 which refers to documents identified under the PII claim and which were sent to Sol. There is also a list of documents marked 'PII claim category 2' (vol 17). In addition, we have consulted with Sol Division. However, we have been unable to establish what happened to These documents.

"9. It is also our understanding, having spoken to the previous head of the blood team that an earlier search for papers (about self-sufficiency into blood products) from the '70s/early '80s could not be found. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have been destroyed in error at some time in the mid 1990s."

That was your background note.

And if we'd go back to page 1, we have an email that you sent to Ronald Powell sending him the background note and saying this:

"I have had a search for the documents requested, and have put together a background note on the events that took place ... I would be very grateful for your advice on some of the DNs. It would also be helpful to have a steer on how we should respond. I am sorry to trouble you, particularly as this relates to events that

took place over 14 years ago."

Ronald Powell was in the Solicitors' Division, is that right?
A. He was, yes.
Q. And he had previously been involved in the litigation?
A. He had been, yes.
Q. You then received a reply to your request, WITN4912018. It came from Mike Pattrick. If we go over the page to page 3, we see that Ron Powell had passed the query on to him. And pick up at paragraph 3 -- sorry, we should probably pick it up in paragraph 2:

"Under section 1(1)(a) of the Freedom of Information Act 2000 there is duty on the Department of Health to confirm or deny whether it holds the information. It is clear from paras 2, 3, 7, 8, 9 and 10 that there is uncertainty about which documents the enquirer has requested, what these documents were and whether these documents exist. DH cannot, of course, disclose something that no longer exists."

"3. Given that the litigation happened nearly 15 years ago and appears to have been settled ... it would not be unreasonable for the Department of Health to have destroyed those documents. Under the Limitation Act 1980 there is a requirement to keep documents for 6 years, this is because at the end of

6 years no court proceedings may be brought. The law recognises that there must be finality to decisions. Given the lapse of time and the settlement it appears likely from what you say that the documents no longer exist. You may therefore write back and say to the enquirer who has made the request that the Department believes that the documents requested no longer exist and cite the reasoning in this paragraph as justification."

When you received that advice from SOL, did it give rise to any concerns for you?

A. Again, I can't recall. Reading the papers, I think some of the issues have got really muddled up in my own mind, so Anita James had previously given me a reason for the destruction of the papers, and then Mike has given me something slightly different. At the same time, I think -- in my background note I might have been conflating two issues. So I -- I was probably just doing too much at the time, but reading the papers now it does feel some of these emails to me feel very muddled and I might have been getting mixed up in how I was conveying particular issues. So I don't know if I can add any more but it does feel quite confusing reading back in some of these papers.

Now, I might have not -- I might have muddled some

of the issues up, I think.

Q. The reply that was then sent to Mr Y, who had made the Freedom of Information Request, simply said:

"Following an extensive search of our records we do not appear to have retained the documentation. Given that the litigation was settled nearly 15 years ago, it would appear that the documents have been destroyed."

Do you know whether the 60 folders of documents were ever assessed as to whether they had -- could and should be provided?

A. I expect I would have looked at them at the time. I think that's the bit that troubles me the most, reading these documents now. I must have made a judgement of some kind that they were not relevant, which is why I then further went back to solicitors at the time to find out more information. But I just can't recall. You know, these events happened so far back. But yeah, it does trouble me slightly that what were my thoughts at the time that I found those documents, knowing that I knew papers had been destroyed. I can't say, I'm afraid, because it was just such a long time ago, but it does trouble me a bit, reading back.

Q. What understanding did you have of whether a document would fall within public interest immunity or not? Was that something you were familiar with?

A. No, definitely not, no.

Q. So can I just make sure that we've got the process right. You found 60 files?

A. I did, yes.

Q. You weren't confident on public interest immunity?

A. No. I think there's reference somewhere, though, to me finding a file and I think possibly from Justice Burton, or something, listing documents, so -- but I wouldn't completely in my mind be clear about what these documents were, but I think there may well have been a list with the documents there that I may have uncovered.

Q. But your understanding of public interest immunity was relatively limited?

A. It was, yeah.

Q. So would you have been able to assess, as at 2005, whether public interest immunity was still of concern?

A. I don't think so, no.

Q. Did you go back to SOL at all to have a further discussion about this and whether it was right to say to Mr Y, "The documents have been destroyed", when there were 60 files in a cabinet?

A. Yeah, that's what troubles me the most. I don't know if I -- if I -- if what I'd seen on the file I might have had in my mind that they were not relevant to the

particular FOI case. That's the only explanation I can offer. I don't think it was in any way to try to conceal the fact that there were -- you know, that there were documents there. I think it was probably just me not really possibly sufficiently understanding what was in those files.

Q. Because if we just go back to your briefing note, WITN4912017, page 3, please, you've set out at paragraph 7 that there were the 60 folders but "it is not clear which of these papers (if any) would have been made available". So would it be fair that you weren't sure whether they had or hadn't?

A. I think so, yeah.

Q. You referred a moment ago to the question if there was a list, it's in paragraph 8 of your briefing note, you'd set it out for the solicitor -- over the page -- that you had found a minute referring to the documents, but you hadn't been able to establish what had happened to those documents?

A. That's correct.

Q. You said you are troubled by the reply to Mr Y.

A. No, I've been reflecting on these at the weekend and I can't offer an explanation. I wish now, you know -- I don't know, I'm afraid.

Q. During this time, you were requesting a number of files.

A. I was, yeah. I mean, I think that's probably a point worth mentioning, as well as dealing with this, there would have been -- you know, at the beginning of my session, I kind of outlined all the other work I was involved in at the time, so it may be -- I don't know, I just would have had so many other competing priorities I would have been dealing with. It might have been I didn't give this my full attention at the time, or not sufficient, with hindsight. I just can't tell, I'm afraid. Yeah.

Q. In terms of the documents you were requesting you've set them out in your statement. Could we turn, just before we take a break -- WITN4912001 is the statement, and could we turn to paragraph 60 on page 22. We can see at the bottom of the page you've set out the bullet points of some of the searches that you were making just by way of examples, "specific request for a file on the Central Committee for the National Blood Transfusion" -- then turn over the page -- and was told that had been destroyed.

You then asked whether it was possible to carry out a search using keywords, and you were in contact with the Iron Mountain Storage team. There was an email from Mr Proctor dealing with further requests and seeking spreadsheets of the files, and then trying to

narrow those down. Then if we go down the page a little bit further, there was contact with the Departmental Records Officer trying to find lists of files, contacts with The National Archives and an access work order, as well, that you had tried to obtain records from?

Two short questions that arise. Did you give any consideration to requesting documents from the Scottish Executive or anyone like that?

A. I don't recall doing that, no.

Q. Why was that?

A. I don't know. I mean, obviously -- I mean, they were devolved administrations and they were very separate to the Department. Although we did work with them and consult with them on particular issues, they were quite separate to the Department of Health and it's just that it never occurred to us at the time, I think.

Q. Given the number of requests that were being made, in 2005 was any consideration proactively given to which files could be provided to people, rather than responding reactively?

A. Sorry, I don't understand the question.

Q. In 2005, you were getting lots and lots of requests.

A. Yeah.

Q. Was there ever a conversation or a discussion to say, "We're getting lots of requests, instead of responding

reactively to all these requests, could we do something proactive to put documents into the public domain?"

A. Not at that point, although I know somewhere in the bundles of papers there's reference to me contacting Steve Wells to see if we could --

Q. Yes.

A. I can't remember now what I was actually asking him but I was trying to be proactive rather than reactive, but I can't remember my exact words but it's definitely there in the bundle of papers.

Q. We'll come to that later this morning. But at this point in time, you don't recall --

A. No, I don't think so, no.

MS FRASER BUTLIN: Sir, I note the time and I wonder if now is a good time to take a break.

SIR BRIAN LANGSTAFF: Yes, we'll take a break, then, until 11.45.

Now, this is the first break in your evidence. You're giving evidence under oath. The rules are that you must not discuss the evidence you have given or, for that matter, anything which you think you may yet be asked about with anyone, whoever that anyone is, but you're free to talk about anything else you like.

A. Thank you.

SIR BRIAN LANGSTAFF: 11.45.

(11.16 am)

(A short break)

(11.44 am)

MS FRASER BUTLIN: Thank you.

Ms Seedat, I've been asked to make it clear that before the first letter to Lord Jenkin, that the point that we raised about them not referring to the GEB files, that very first letter to Lord Jenkin, before you wrote that very first letter, you had received an email from Anita James referring to the audit report, but in your witness statement you say you may not have appreciated the significance of it until November 2005 --

A. That's correct.

Q. -- when you requested a copy of it?

A. That's right.

Q. Picking up again on the freedom of information requests, and at the end of March 2005 you provided a reply to another FOI request in much the same terms as you had in the reply we'd looked at before the break. But on this occasion, one of the FOI team queried it and we want to look at that.

WITN4912036, please.

The query is at the bottom of the page:

"I am concerned that the answer put forward by

Zubeda (see below) would be difficult for [Mr Z] to accept given this was a discovery claim to support an extensive litigation case. May I suggest that you contact SOL to see whether they have the records (the documents which were provided for the judge and the appeal court). It may be a good idea for you to clear your answer with them also.

"If SOL do not have the documents, can we be sure that some, if not all, are not on archive either at Nelson the National Archive, or with the Department Records Office? If you do find the documents, it may be that the £600 limit would be breached in redacting them. If that is the case, please let me know and we can discuss how to handle".

Were you made aware of this email at the time? I think you were copied in.

A. I think I may have been on leave at the time it may have come in.

Q. The --

A. Which is --

Q. The email at the end of the document suggests you were going on leave.

A. Right, okay. I can't recall. So it was addressed to Michelle and William. I don't know if I'd have been copied in.

Q. We can see that you're copied in.

A. Ah, okay, right.

Q. But you were on leave on that day. I mean, around that time were you made aware of this query that had arisen over whether the response was quite right?

A. I wouldn't be able to remember.

Q. Do you remember whether any steps were taken in relation to going and checking the storage or --

A. I don't think -- I can't remember. I don't want to speculate on that, I can't remember.

Q. If we turn, then, to WITN4912037, please --

A. Although, sorry, can I just say, at this point I think there might have been references prior to this where I'd been trying to find papers from DRO, so it's possible I may already have looked at previous files. So, yeah.

Q. If we pick up the reply from SOL, middle of the paragraph:

"Michelle, My colleague Ronald Powell had conduct of the litigation all those years ago. Once the litigation was finished the files were sent to remote storage. About six years ago I looked for them in relation to another case we had and was unable to retrieve them because they had been destroyed. Department of Health records (as opposed to ours) were inadvertently destroyed in the early nineties as the HEO

working in the branch had given them a ridiculously short destruction date. I take out the 'do not appear stuff'. There are no records."

We see that this is provided to you by Michelle Heywood:

"William asked me to contact SOL regarding this FOI case. [They] wanted us to check with them to see if they had any records ..."

And these are their comments.

Do you remember any further discussion about this particular issue?

A. I don't, no.

Q. We have your response after you come back from leave, just to tie up the jigsaw.

WITN4912038.

SIR BRIAN LANGSTAFF: Can I ask a question? The answer by Michelle Heywood, the third sentence:

"Once the litigation was finished the files were sent to remote storage."

Now that's presumably --

MS FRASER BUTLIN: Sorry, it's from Mrs James to Michelle Heywood.

SIR BRIAN LANGSTAFF: From Mrs James.

So she appears to be under the impression at this stage that the files are sent to the appropriate Records

Office for remote storage, as opposed to there being some failure to archive properly. I'm not quite sure how the two fit up. Can you give any help at all on that?

A. I mean, obviously from this memo, Anita is saying it's Department of Health records. But I don't know, I vaguely recall that in the previous advice to me, Anita may have said that -- after the litigation, I don't know if it was that the papers had been held by SOL, I can't remember. I don't know if there is a distinction between the two.

MS FRASER BUTLIN: Sorry, sir. I'm just looking for an earlier document that might assist. It's not what I was thinking of but Mr Moss has very helpfully flagged the document we looked at at the very beginning of my questions. DHSC0020720, where Mr Lister had informed Ms Seedat that the documents had been destroyed in a clear-out by SOL.

SIR BRIAN LANGSTAFF: Yes, so -- the clear-out by SOL is not, I would have thought, quite the same thing as an assertion that the files were sent to remote storage.

MS FRASER BUTLIN: Indeed.

SIR BRIAN LANGSTAFF: It may be clearing them out of the office, but they go into remote storage, as opposed to a clear-out and destroying as you go, shoving them in

the waste bin.

MS FRASER BUTLIN: I can certainly check over the lunch adjournment or the next short break we have whether there is anything earlier that deals with remote storage. I can't put my finger on anything at this moment in time.

SIR BRIAN LANGSTAFF: I mean, it just adds confusion to an already unclear picture.

MS FRASER BUTLIN: If we can then pick up your reply after you came back from leave. WITN4912038.

Second page, please. You have written:

"I was on leave last week so apologies for the delay in replying. Further to the comments by Chris, I can confirm we did contact colleagues in Sol about this case. It is both our understanding and theirs that the papers that were subject to a public interest claim have been destroyed. Sol confirmed that about six years ago they looked for these papers in relation to another litigation case they had and were unable to locked the papers because they have been destroyed."

That was your response, just to tie up that part.

There were continuing questions about documents, and I want to pick it up now in December 2005. Charles Clarke MP wrote to Patricia Hewitt, the then Secretary of State for Health, asking about departmental

role?

A. I don't know. I mean, I think I said in my witness statement that that would be an issue for the team that looks after policy on departmental records rather than a policy team.

Q. Now simply as a marker at a much later date, July 2007, destruction dockets from the files, the decision to go to -- for destruction -- were provided, but that's a different thing, I think, to the Certificate of Destruction; is that right?

A. That's correct.

Q. Then if we can turn to WITN3996023, we have the reply from Patricia Hewitt to Charles Clarke. And we pick it up in paragraph 3:

"[Mr X] asks specifically why ..."

Sorry, let me start again. She is responding to his earlier correspondence and the constituent had raised questions about Sir Nigel's letter to Lord Jenkin.

Paragraph 3:

"[Mr X] asks specifically why an inexperienced member of staff was allowed to make decisions to destroy important papers. The plain answer is that we do not know enough about what happened to answer that question. Clearly, the papers should not have been destroyed.

files, and sought the certificate of destruction for the ACVSB documents. You were tasked, I think, with addressing his question, and you made contact with Roseanne Pratt, Records & Information Services Manager.

A. Yes.

Q. If we can look at her reply to your queries, DHSC0200107, please. And it's page 2. And she writes this, in fact to a colleague but it eventually gets to you:

"We keep certificates of destruction on a working file at DRO Nelson, but I doubt there'd be any useful purpose served by anyone having sight of them, as they only state that an amount (in weight), has been collected from us on a particular date and received by the recyclers and destroyed. As I said previously it forms part of the audit trail, but does not give any specific details of any individual files that have been destroyed."

Do you have any understanding of why the weight of documents is required and not the reference of the files?

A. I don't, I'm afraid, no.

SIR BRIAN LANGSTAFF: Or how it makes any sense if it's an audit trail?

MS FRASER BUTLIN: Would that have played any part in your

I am very sorry that they were.

"When the records in question were destroyed, the general guidance on records management was broadly the same as it is today. Departments are obliged under the terms of the Public Records Act 1958 to identify records needing long-term retention, while destroying most of their records as soon as their administrative value ends. Decisions on retention and destruction of records should always be made by individuals with knowledge of the content and likely future importance of the records.

"The guidance current when the records were transferred to the Departmental Record Office stated that decisions on retention or destruction of Departmental files should be made by an officer of at least Executive Officer grade, who was 'appointed by senior officers who are satisfied that the officer is sufficiently aware of the administrative needs of the section to be able to make the decisions'. A decision to destroy a file was appropriate when files either had:

"- no further administrative value at all; or

"- only a short term administrative need.

"Files marked for destruction would have been destroyed by the Departmental Record Office either two or five years after the date of the last paper on the file.

"The appropriate decision for the records we are discussing would have been to retain the records for review after 25 years when a further decision would be made, whether to destroy or retain the files. After 25 years we would only retain files if they had historical or continuing administrative value.

"These particular records were destroyed between 1994 and 1998, in line with instructions written on the file by a member of the policy team when the records were transferred to the archive three or four years before. Sir Nigel's letter made it clear that records should not have been destroyed. I do not believe we can go further in examining the causes of the mistake."

First of all, what involvement did you have in drafting that reply?

A. I'm not sure if I did draft this, or if I had, it would have been -- it would have had a huge contribution from the team that provides policy on holding of departmental records, because it kind of talks very specific about the whole area of the policy, so it wouldn't necessarily be something I would have written. I think it would have come from somebody else. But I'm not sure if -- so I'm not sure if I was responsible for coordinating a response or whether in fact somebody else, ie, somebody, you know, the team looking after departmental

records, whether they provided the response, because at this point they were engaged certainly in the whole issue around the destruction of documents, so it's a possibility I was involved. But if I had been, most of that contribution would have come from somebody else.

Q. Just two points arising from the letter I wonder if you can assist us with. There is reference here that decisions on -- sorry, if we go back a page, please, Lawrence, at the bottom of the page:

"Decisions on retention and destruction of records should always be made by individuals with knowledge of the content and likely future importance of the records."

It also goes on to say it should be someone of at least Executive Officer grade.

In your experience, would an Executive Officer have the requisite knowledge to really know whether something would be --

A. No.

Q. -- of future importance?

A. I would disagree with that. I think it has to be somebody at HEO/SEO level. I think I said before, at EO level you're not necessarily involved or engaged in all the -- you know, the nuances of a particular policy and kind of engagement and the types of records that

would be on there. I think it's a fairly junior grade. And I think it was -- that was acknowledged in the Audit report as well.

Q. Secondly, before this letter went out, were you asked to do anything further to try to identify any of the documents or investigate anything more about their whereabouts?

A. So what year -- can you just talk back the date for me, please?

Q. Yes, it's February 2006.

A. At this point I don't think so. I can't recall.

Q. Do you remember any discussion, if we go over to page 2, about the sentence that has been put in in paragraph 4:

"I do not believe we can go further in examining the causes of the mistake."

A. I mean, we kind of had information about the destruction of the two sets of documents. I think, you know, in my view, reading this here, at this point in time, I don't think that there was any -- anything further that we could have done.

Q. Moving forwards then, to February 2006. You emailed Steve Wells about some Parliamentary Questions on document destruction.

SIR BRIAN LANGSTAFF: Can I just raise one question before we go there, just looking at that last document, the

paragraph which begins:

"These particular records were destroyed between 1994 and 1998, in line with instructions written on the file by a member of the policy team when the records were transferred to the archive three or four years before."

So that would mean the indication to destroy would have been written sometime in 1991 to 1994.

MS FRASER BUTLIN: These are the second set -- stage of the GEB files.

SIR BRIAN LANGSTAFF: Yes. Does this fit with the other documentation which we have in respect of the particular files showing the dates when they were marked for destruction?

MS FRASER BUTLIN: I would need to go back to the destruction dockets.

SIR BRIAN LANGSTAFF: Well, deal with it in due course. It's just a question from me --

MS FRASER BUTLIN: Yes.

SIR BRIAN LANGSTAFF: -- just wondering about whether that's an accurate phrase or not. It may be, it may not be.

MS FRASER BUTLIN: I think I may be able to deal with it, if you just give me one moment, because we have the dockets available to us. No, sir. I think I need to take a little bit more time before I respond on that.

SIR BRIAN LANGSTAFF: Yes, it's not for Zubeda Seedat to deal with because, plainly, the information didn't come from her, but --

MS FRASER BUTLIN: We have the dockets, sir, and I can just double check those dates.

SIR BRIAN LANGSTAFF: Yes. Thank you.

MS FRASER BUTLIN: Steve Wells. You emailed him in February 2006. Could we have DHSC5402137, please.

We can see at the bottom of this page his email footer as being, "Freedom of Information, Records and Data Protection".

If we go over the page, we can see he's the "Consultations Coordinator". Can you help us with what his role was?

A. Um, I think Steve worked in the team that essentially had the policy around document retention, giving advice to staff within the Department on that and, it would obviously appear from his footer, a role in terms of FOI cases as well.

Q. Your email reads as follows:

"I would be grateful for your advice/comments on two PQs (Parliamentary Questions) that we have received about the destruction of papers.

"Given that this has become an issue, I think it would be helpful if we could try to draw up a list of

files on blood safety that we do hold by subject area, ie committees, finance, briefings, PQs, imported plasma, etc ... going back to the 1970s and 1980s. It makes us vulnerable to say that we are aware of papers that have been destroyed, without having a clear understanding of what we do hold.

"When we met last week I mentioned that we are not resourced to undertake detailed enquiries about past papers. I wondered whether you would be able to identify someone to help out so that we could establish what files exist. Grateful for your views on this approach. At present it's difficult to assess if this issue will quieten down."

Can you explain for us why it was February 2006 that you sought his advice, rather than perhaps earlier when you'd had a lot of PQs then as well?

A. I can't at this point in time. I perhaps should have sought advice earlier. I don't know, I can't offer an explanation for that. It obviously clearly got to a point at this -- it could -- you know, it obviously got to a point, during this period in time, where it was becoming unsustainable, given the enquiries that we were getting. And I think we were needing to get on the front foot of it rather than just being constantly reactive to the whole issue.

Q. The idea in the email that a list of documents should be drawn up, was that something you'd been tasked with or something that you had decided needed to be dealt with on your own initiative?

A. I can't say. I'm sorry.

Q. Do you recall anything about how that idea came to arise?

A. I don't. I don't know if it was my idea or somebody -- or someone had suggested it. I really don't know. I can't tell.

Q. This email suggesting a list of the documents is February 2006, 8 February 2006. We know that the Burgin report on the -- the self-sufficiency report was published at the end of February 2006. Did you have any concerns about the fact that a report had been written and was about to be published but there were, it might be suggested, still ongoing concerns about documents, whether they were held or not by the Department?

A. Um, I can't recall. I do know that, in relation to the Burgin report, it was based on the documents that we did have and that had been assessed by Peter Burgin who originally looked at the document. But I don't recall, I'm afraid.

Q. Do you recall any discussion about it, saying, "We need a list, we're not really sure what we've got, what's

been destroyed. But we've got this report coming out." Do you recall any discussion around those issues?

A. I don't, I'm afraid.

Q. Then if we turn to DHSC0015858, please. If we look at the bottom of the page, we have an email from 21 February 2006 from the litigation team:

"I write further to our conversation earlier and attach a copy of the letter received from Blackett Hart & Pratt ...

"You have stated that in principle you have no objection to having the papers returned, although you would like to see the letter before making a decision."

Documents were returned to the SOL team --

A. They were.

Q. -- from the solicitors who'd acted in the HIV Litigation?

A. That's correct.

Q. This is the email saying, "We've got the letter dealing with that"?

A. That's right.

Q. Before we look at the contents of that email, were there any discussions at this point again about "We're about to get a whole batch of documents back from external solicitors and we've got a report coming out"?

A. I don't recall the -- you know, the fact that these

documents were coming in, and the report about to be published. I'm afraid, I don't, no. I can't recall.

Q. Do you recall any discussion about pausing the publication of the report to allow consideration of these documents?

A. I don't but I do know that there was a lot of ministerial pressure to get the report published, given that it had taken so many years to get to this point of publication. So there was definitely that pressure. But I don't recall anyone saying, "Let's pause it because these documents are coming in", no.

Q. Just in terms of the hierarchy of the Department, would Mr Connon have been aware of these documents coming back in?

A. Oh, of course, yes. Mm-hm.

Q. So whose decision would it have been if there had been a discussion to pause the report?

A. William's ultimately, I think.

Q. Looking at this email specifically, and the second paragraph particularly you've stated in principle you have no objections to have the papers returned, though you'd like to see the letter before making a decision.

I've been asked to ask you whether there was some reluctance on your part to receive the papers?

A. I don't -- I mean, I can't say what I thought at the

time but, given everything that was happening at that point in time, the knowledge we had about destruction of papers, I don't know that we would have had any reluctance. I don't know. I don't know. If that's just, perhaps, a phrase Stephen has used, possibly, I don't know. I can't see why we'd have any hesitation, because I recall the reason we found out about these documents is because one of the campaigners brought it to our attention through correspondence, and we had then suggested to her to write to the firm of solicitors to make them available to the Department so then I don't see why we would have any hesitation to have these documents, because we almost -- we encouraged her to write -- to get the papers back.

Q. We can take that down now, Lawrence. Thank you.

In relation to the publication of the self-sufficiency review, can you assist us at all with why there was such a lengthy delay between its commissioning in 2002, before you joined the team, and its publication in 2006?

A. We were not resourced at all in the team, as I said before, it was literally me doing the work with William there. I mean, there were other people in the team, so we did have somebody working on the blood directive, we had somebody at some point taking over the

responsibilities I had on MSBTO, and we had a new committee. So there were other people in the team but they had very specific roles. They were not related to the issues around contaminated blood products but there were no other staff in the team.

Q. Once the -- did you have any involvement in the report itself, in terms of finishing it and finalising it?

A. I do recall having some. I think my involvement on the report was -- I think I contacted the Blood Service, Professor Zuckerman at the time, BPL and also the UKHCDO. It was all very scientific. I was obviously of an administrative grade, it was kind of beyond my level of understanding, a lot of it. So I would have, I think, sought input from them on some of the points in the report. I very clearly remember contacting them, and I think I assisted with some of the referencing of the documents as well.

Q. When you were contacting these external people, what were you asking them to do?

A. I think they were all aware of this report. It had been in the team for a very long time. I don't know, there's no documentation which indicates -- so I would have written to them, so I expect I would have filed my commissioning note to them, but I expect it would have been to comment in terms of some of the -- I don't know

if science is the right word, but just -- I can't recall. I don't want to put words in. You know, I can't recall from the time. But I guess they were the experts from -- on these particular issues, so just seeking their advice on some of it.

Q. Once the review was published there were, again, a large number of Parliamentary Questions and Freedom of Information Requests for the underlying documents and you were involved in preparing the briefing pack for Lord Warner to respond to a starred question which Lord Jenkin had tabled. That question asked whether the report was a complete account of the circumstances leading to patients' infection.

Could we look at that briefing pack, WITN4912062. If we turn to page 16 of it, we have the heading "Destruction of Documents", and the point is:

"How can the report have any credibility, when you have admitted that papers have been destroyed?"

The briefing pack provides an answer:

"We have always stated that the review is based on surviving papers. The report was commissioned to establish the facts around the achievement of self-sufficiency in blood products, based on available papers."

Then:

"You deliberately destroyed documents.

"We regret that papers have been destroyed in error. There has been no deliberate attempt to destroy past papers.

"Officials have established that, during the HIV Litigation in the early 1990s many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed following the litigation.

"Officials have also established that a number of files on the Advisory Committee on the Virological Safety of Blood between May 1989-February 1992 were unfortunately destroyed in error. These papers were destroyed between July 1994 and March 1998."

If we turn the page we have a potential question in relation to Lord Owen's papers, just the second half, please, Lawrence:

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

"The review was never intended to consider why papers from Lord Owen's Private Office were destroyed. Papers kept by Ministerial Private Offices are not kept after a change of Government.

"*If pressed*: they are either shredded or than about back to the relevant policy section."

If we turn to WITN4912064, please, we have an email raising a query from Caroline Flint's Assistant Private Secretary, it's at the bottom of the page:

"My only query related to Page 20 -- destruction of papers from Lord Owen's Private Office -- the answer if pressed states a private office will either shred papers or return them to the relevant policy section. My understanding (and what we prepared for during the last General Election) is that private offices file all documents to be sent to DRO at Nelson.

"This could of course have changed from practices in the 1980s but I think this needs to be double-checked."

We see your answer back on the first page, at the top of the first string of emails:

"It may be practice for Private Offices to send papers to DRO. However, my understanding is that at that time papers kept by Private Office were either destroyed or returned to the policy section after a change of Government. The line to take is based on enquiries that the previous head of the blood team made following a statement from Lord Owen about the destruction of papers from his Private Office.

"Cabinet Office (Propriety & Ethics Team) has also confirmed that they are unaware of any guidance about

the retention/destruction of papers in ministerial Private Offices once there is a change in Government."

That's your reply to the query. Had you contacted the Cabinet Office team?

A. I expect I would have done.

Q. Further questions were raised by Lord Warner. The response to that is at DHSC0041198_062. We see question and then answer, question and then answer. It has been provided by William Connon. The first question:

"Why didn't we check what papers the Devolved Administrations held when we found out we had destroyed some files?

"I don't know, and there is no way of establishing the facts now. It appears that no-one did think to check with DAs which I agree was remiss."

Do you recall any discussion around this time about that question of why papers hadn't been sought from the Devolved Administrations?

A. I don't, no.

Q. Then the third question:

"Finally, PS(PH) is not convinced by the argument about the destruction of documents from Lord Owen's private office. She said there surely must have been guidance from Cabinet Office -- isn't there guidance now?"

The answer:

"Private Offices are not required to hold papers. All papers should be routinely either returned to officials in the department or destroyed. Cabinet Office have never issued guidance for that reason."

I am aware this is an email from Mr Connon rather than from you but did you have any further involvement in answering the question about Private Office papers when it came back again?

A. You mean this email?

Q. Yes.

A. I don't think so. It was very much in William's style, so I think it's his form of words, not mine.

MS FRASER BUTLIN: I'm sorry, sir, I've got a reference that doesn't quite make sense in my notes. Can I just take a moment? Yes, here it is.

WITN4912066, please. Page 2.

It's an email from Mr Connon to which you were cc'd, where he attaches a revised PQ and brief with the changes requested by the minister. Then he wrote this:

"I remain concerned at the Minister's intention to announce in the House tomorrow that in principle we are not against the release/realising of documents used in the [self-sufficiency] review. As I mentioned this morning this may well open the floodgates and that would

have a significant impact on our already stretched resources. The current FOI case has already been very time consuming and is not yet completed. I am also concerned that it will encourage similar requests which are not covered by the FOI provisions. When Scotland issued all the documents, they released I am told they had to employ additional staff at significant cost."

Were you involved in any discussions about the possibility of releasing all the documents underlying the review?

A. Sorry, which review?

Q. The self-sufficiency report.

A. No, not in that -- so -- sorry, say the question again?

Q. We can see here Mr Connon is expressing concern about the Minister's proposal to release all the documents that underlay that self-sufficiency report?

A. Yes.

Q. Were you involved in any discussions about that?

A. No, I -- no, probably not, no.

Q. Ultimately, the decision was that the documents would be released.

A. Yes.

Q. But it took quite some time.

A. It did, yes.

Q. Can you recall why that was?

A. Well, at this point in time, we were not sufficiently at resource, as William says, but by the time we did come to release the documents, we'd had additional staff in the team who were specifically dealing with that, plus other papers that we had as well.

Q. A similar issue appears to have arisen in relation to resources relating to the solicitor files that were received from the external solicitors. On 17 May, you were told that the external solicitor files had been received, and you asked Mr Connon what was to be done with them.

For the transcript it's DHSC5412535. His response was that there needed to be a discussion about the need for additional resources to deal with them.

A. That's correct.

Q. That is also your recollection?

A. It is, yes.

Q. There was then a story in The Observer and a question from Lord Morris questioning the Department's stance on the documents. And a briefing was prepared.

If we can turn that up, WITN4912068, please.

It comes from Steve Wells, this. What involvement did you have in this briefing?

A. Um, can you page up so I can see the rest of it, please? Steve was in a completely different team to me, so

I expect very little. I expect I wouldn't have even inputted to this.

Q. In your statement you say you don't think you were involved at all.

A. No, no.

Q. We can see on page 3 -- we don't need to go to it -- that you are in the copy list for it, but it -- but what sort of recollection do you have of this briefing?

A. I don't know, I'm afraid.

Q. If I may, we will still just go through what is here and then look at another document, and then I want to ask you some questions about this.

Mr Wells notes that a briefing had been requested in relation to the story in The Observer which argued as follows:

"2. 'Until now, officials have always said an inexperienced staff member was probably responsible for the destruction of the files. However, in a later dated February this year, Health Secretary Patricia Hewitt stated that under the Public Records Act 1958 all departments were required to identify records requiring long-term retention. Such rulings, she said, would be made by a senior member of staff'.

"3. This statement is based [this is the explanation] on a mis-interpretation of a letter from

SofS to Charles Clarke ... and appears to conflict with previous statements by Ministers and officials that an inexperienced member of staff was probably responsible for the destruction in the mid 1990s of files covering the work of the Advisory Committee on the Virological Safety of Blood."

Then we have the heading "Key Messages":

"5. Decisions on retention and destruction of records may be made by relatively junior staff (IP2 or above).

"6. Line managers after all levels are responsible for ensuring that record keeping in their areas is consistent and meets Departmental standards. This includes making sure that staff making decisions on records retention and destruction are 'sufficiently aware of the administrative needs of the section to be able to make the decisions'.

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

Then it notes that an internal audit report had been conducted and led to improvements in guidance and procedures, and we see in four bullet points some of those recommendations.

In this briefing there is no suggestion that further work was required in relation to records, in

terms of records that still needed to be reviewed. Did you have any involvement in that aspect of this?

A. I don't think so, no.

Q. There was then the meeting with ministers and Mr Connon followed that up with an email. If we could turn to that, WITN4912069. At the bottom of the page, it's an email from Mr Connon to Gerard Hetherington. That would be his boss?

A. That's correct -- no, William's boss was Ailsa and Ailsa's boss would have been Gerard.

Q. So two layers up. And he indicates:

"Following yesterday's meeting with Caroline Flint and Lord Warner the following action is urgently required ..."

Then at the bottom of this page we see:

"Destroyed documents: although not explicitly requested, I think it would be helpful to compile a definitive list of all the sets of documents, which have been destroyed (there are two sets and we know more about one than the other), when they were destroyed (if we know), circumstances of destruction and likelihood of the documents which have just been found by the solicitors being copies of some of the destroyed documents. We have this info but just need to pull it together in a crib sheet. We should also perhaps attach

the list of documents (of which there are thousands) recently released by Scotland."

We can just pause there, that idea of a list of documents was essentially what you'd suggested in February 2006, wasn't it?

A. It is, yes.

Q. And between February and your suggestion and now, in May, are you aware of whether there'd been any opportunity to undertake that work?

A. I don't think there was, no.

Q. We then have the paragraph relating to public inquiry.

"... Ministers asked that we look carefully at the issue surrounding the continued and increasing requests for this, including the Scottish position. You mentioned the name of a departmental contact re Inquiries (Richard Humphries?) and I think we need to speak to him urgently, in order to establish exactly what we can/should do in regarding this and establish just how decisions on inquiries are taken, costs involved, timescales etc, as the pressure to hold one looks set to continue."

Do you recall any discussions about this issue, or any conversation with Mr Connon about what had been discussed with ministers?

A. No, I think at this point it is clear to me that it has

been escalated to Ailsa and to Gerard. So I think I would have had very minimal input or discussion. It was clearly: we had this meeting with the ministers, we need to do something now. And it was Gerard and Ailsa involved at this point.

Q. Then we see in the next paragraph:

"Documents returned to Sol: Ministers suggested that we could ask independent legal expert to examine the returned documents and provide an initial analysis of what they contain."

So at this point those documents that had come in from SOL hadn't been analysed.

A. That's right, yes.

Q. And we can see from the documents that they were then sent out to counsel, to a barrister, to be reviewed. And just for the transcript, that review is at WITN4912073.

I then want to pick up with a series of correspondence arising from a letter from John Austin MP to Caroline Flint, and forwarded to you, to address. If we first of all look at his letter to Caroline Flint.

DHSC6548520, please.

He says this:

"I appreciate that the Government does not accept that any wrongful practices were employed and I note

your comment that papers were destroyed in error. Whilst I do not allege that papers were destroyed to frustrate litigation, I do not believe that those affected and in particular the victims will accept that without some form of independent investigation. I am not necessarily suggesting a full public inquiry but I think it could be in the government's interest, if there was no wrongdoing, for an independent assessment to be carried out."

Then if we turn to DHSC6548519, we have a background note. Do you recall your involvement in this?

A. I expect I would have drafted it.

Q. If we just work through it:

"MS(PH) will be familiar with the request for the Government to hold a public inquiry into the issue of haemophilia patients infected with hepatitis C through contaminated blood products. MS(PH) will also be aware of the sensitivity around the destruction of past papers on blood policy.

"In view of the parliamentary interest on this subject, we have recruited a member of staff to carry out a full examination of relevant papers, both registered and unregistered, to classify and record all the papers on this subject that are still in existence."

Can you tell us who that was and what that was involving?

A. So by this point we'd recruited Linda Page to undertake a review of all the papers and catalogue them as well.

Q. Were you involved in that process as well, or was it left to her?

A. It was Linda, and I think she had someone called Patrick Hennessy helping her as well. But I wasn't involved in that project.

Q. The third paragraph:

"John Austin's comments are very helpful. However, at this stage we do not recommend that we give details about this work, as this may raise public expectation about the release of documents."

Do you recall any discussion about this point of whether there should be anything said publicly about the Page report or the work that was being undertaken?

A. I can't recall the discussion, but it's kind of like in keeping with the way Government would work, you know, if you have a policy idea you kind of want to work through it a little bit before you make a public statement about it.

Q. Then just below that:

"We are currently considering the comments by MS(R) that we should use the powers under the 1977 Act

for Secretary of State to commission a review of all the documents, with a view to producing an independent legal/judicial commentary on them and putting all these into the public arena. We were currently considering these comments which we were informed about yesterday."

Again, were you involved at all in any discussions about this proposal, this thought?

A. No. So this is -- so the independent -- I don't recall this, no. I wouldn't have been involved in the discussions so I expect I would have been given a line to put into this background note.

Q. Where would that line have come from?

A. Sorry, can I just read it once again?

Q. Of course, yes.

A. I expect there would have been discussion about it and I would have been given a steer to use these lines in this background note.

Q. Who would that have come from?

A. It would have been with William.

Q. Then just for the transcript, the reply that went to John Austin, or at least what appears to be the final draft, is DHSC6548518.

It simply highlights that there has been an internal review in relation to the destruction of documents and that documents were being disclosed --

were considering which documents could be released following the Burgin report.

After that time you've said in your statement that you became less involved in the document issues because Linda Page was dealing with that side of it.

A. **(Witness nodded)**

Q. And ultimately the work by Linda Page became the report entitled "The Review of Documentation" --

A. Yes.

Q. -- "regarding Government policy in relation to the safety of blood products"?

You were involved in a couple of responses to correspondence and FOI requests.

A. Yes.

Q. But I just want to go thorough to tie up the chronology.

DHSC0200132.

I'm sorry, that's not where I intended to go. Apologies. WITN4912074, apologies.

In August 2006 The Observer had published an article stating that 45 new files had been found in the Department. We then have this letter from Linda Page to Lord Jenkin. And we see at paragraph 3:

"With reference to the 47 files you mentioned, these are not newly discovered but have always been held by the Department."

Were you involved in this reply at all?

A. I wasn't, no.

Q. Then if we pick up an email between Linda Page and William Connon which you were cc'd in, DHSC5435079.

Linda Page is emailing William Connon:

"Lord Jenkin rang me today, I've briefed Zubeda on the conversation ...

"He wants to know if the files he went through last time he visited are the same as the 47 we refer to. Told him I'd check with Zubeda and you when I got back from leave, he was OK to leave it till then.

"Liz's secretary is arranging a meeting of the Project Board for when I get back, we'll need to consider what approach is going to be taken to the Wellington House files, the 47. Those papers I reference in my report should be processed for release but there will be few of these compared to the whole. Among the 47 files are some that were the subject of non-disclosure during the HIV/Hep C litigation, about four files, I checked the status with SOL on Wednesday and their view is that, although they were previously withheld they will need to be checked to see if they should remain withheld. I've not read through them yet in detail but a quick scan indicates that they are part of formulation of policy and could be withheld should

any decision be made to release them - my own view is that we should apply Section 12, over £600 to any requests made for 'bulk' release."

Firstly, is it right that these files, these 47 files, had been found in Wellington House?

A. That's correct, yes.

Q. So although strictly they were always present in the Department, they hadn't previously been identified as relevant files?

A. Well, I don't know. Reading through these papers, it could be that these were -- I think they were not in registered files, so I don't know that any of us -- well, I didn't -- I don't know if I knew about them, although these are -- obviously that reference back where I found 60 -- you know, the folders, but by then we'd moved offices as well at this point.

So it's very difficult to kind of really give a view on these papers, I think, because we had that move and I was mostly working from registered files. I'd never worked from unofficial papers in the time I'd been in the team.

Q. Do you have any clarity on what these 47 files were, where they'd been found and how they'd come to be found?

A. I don't, I'm afraid. As I said, all the files that I was familiar with, at the time these were found and we

were in Wellington House, were registered files. So I'm not sure, I'm sorry.

Q. You said a moment ago you'd already found the 60 files?

A. Yeah, that was when we were in Skipton House, so during that period we'd moved offices. So I don't know if these were the same files, I don't know. Because they're different numbers. That was 60, this is 47. I was just really unsure when I was reading through my bundle of papers about the papers and the contents.

Q. How much involvement did you have in the finding of these 47?

A. I don't think I -- I think it might have been Linda or Patrick found them. I don't think I was involved. Or I don't recall it at all.

Q. There's reference here to them containing -- or at least four of the files containing documents that had been subject to non-disclosure in the litigation. Might these then have contained the documents that were thought to have been destroyed?

A. I think we can assume that there, yes.

Q. If we then turn to DHSC5154769, we have an email from William Connon to Elizabeth Woodeson, it's the second paragraph I want to pick up:

"On the question of the 47 files I will speak to Linda once she comes in to the office and will see what

can be done. This is whole area is far from straightforward hence Linda's arrival to tackle it. I am by no means certain that the 47 'files' were included in the self-sufficiency report and I am told they were not shown to Lord Jenkin either. The reason being that they are not actually registered files but folders of papers which were simply found in a cupboard in the office. We will need to word any response carefully which is one of the reasons I advised against rushing this one."

They'd been found in a cupboard in the office. If there had also been a move from offices, did you have any involvement in their moving?

A. I mean, I can't say whether I specifically would have handled these papers. Normally, with all office moves, it's always a bit of a rushed affair, you're trying to, you know, doing your day-to-day job and trying to prepare for a move. And you just, basically, get the papers and stick them into a crate, and then you unpack them when you get to the other end. I can't recall whether I would have been involved. I really don't.

Q. This email was sent at 7.48 in the morning of 9 October. If we then turn to DHSC0200135, we have a minute from William Connon up to Lord Warner, again dated 9 October 2006. If we turn the page, we see

"Conclusion":

"The 47 files have only recently been examined as part of this review when it became clear that they contain relevant documents. We are confident that they were included in the analysis for the self-sufficiency report, as colleagues who were present at that time recall seeing the consultants working on documents from the cupboard where the files were held. But we cannot be certain and I have therefore not included this in the reply to Lord Jenkin.

"However, they were not made available to Lord Jenkin when he came to examine the registered files. This was simply because as they are not registered files we were not aware that they contained relevant information. You may now wish to invite Lord Jenkin to come into the department and examine any papers contained in these files, which are relevant to his period in office."

It might be suggested that there is a reasonably significant change between the email at 7.48 in the morning, which said that he was by no means certain that the files had been included in the self-sufficiency report to this, where Mr Connon indicates that they are confident that they were included, but couldn't be certain. Do you know anything of what happened during

the day that might have changed from a real uncertainty to a "We're confident but not completely certain"?

A. I don't know, I'm afraid.

Q. The page report was published in May 2007, and then in July 2008, further documents were found. If we turn to DHSC5533007, please. An email from Patrick Hennessy to Mr Connon. The subject of the email is "Litigation files found in [Wel 517]:"

"This refers to the hanging file system at the entrance of bay 517. It contains 41 folders of documents apparently compiled at the time of HIV Litigation (1988-90). Some of it is out of scope of our review and disclosure of documents (ie it's later than mid-1986). However, there are papers from 1970-86. Both Linda and I took a look and concluded that these appeared to be copies or top copies of documents that were contained in the 'Wellington' and 'Solicitors' file series, and that had therefore been redacted and released under FOI. Some of the earlier papers appear to be unreleased, but until they are inventoried and cross-checked it is hard to say how many, and whether they add anything to what is known. Neither Linda nor myself nor Laura has found anything in these folders from 1970-86 that adds anything new. However, now that there is to be a public inquiry I think we have to be

absolutely certain."

Then over the page:

"Quite apart from the FOI aspect, the folders contain any top copies of eg correspondence with Ministers and advice from DH solicitors, so this material really should be inventoried and put in new registered files. Laura estimates that she could inventory this material by the end of August."

Then the next paragraph:

"There may be a question as to whether we should tell Lord Archer now that we are going through some old unfiled papers from the litigation period, and that, if we find anything new and relevant to his inquiry, we will let him know. However, this could simply get his team excited for nothing, as there is so far little sign that we will find many, if any, papers that add to what he already knows. I would be inclined to review the situation when these papers are inventoried."

In relation to these documents, do you know anything about how they came to be found?

A. I don't, I'm afraid.

Q. Can you help us at all with where and what sort of location the entrance of bay 517 is?

A. I don't recall, I just don't remember. I mean, it was an open-plan area, and there were lots of different

teams, there would be lots of filing cabinets within the office separating the different teams, but that's all I can really recall of the layout when we were in Wellington House.

Q. Subsequently, Mr Connon wrote to Lord Archer telling him about the papers and noting the Department's commitment to releasing the papers, and the reference for that is DHSC6700949.

In relation to the Archer Inquiry -- we can take that document down, thank you -- in terms of the decisions by the Department about how and how much to in engage with the Archer Inquiry, what was your involvement in that?

A. I had no involvement.

Q. Were there discussions within the team between you and Mr Connon about how involved the Department should be in the Archer Inquiry.

A. I don't recall. Sorry, the only involvement I may have had would have been in response to any correspondence or PQs because it was part of my day job, so to speak, but in terms of the decision making, I wouldn't have had any involvement on that.

Q. The Inquiry is aware that there were meetings between the Archer Inquiry team and the Department officials?

A. That's right.

Q. Did you attend any of those?

A. I did not, no.

Q. The final topic I want to discuss with you, Ms Seedat, we've touched on a couple of PQs and correspondence which deal with the need for a public inquiry. When you had a question or correspondence to answer, you've said in your statement that you simply used the line to take --

A. I did, yes.

Q. -- about whether there should be a public inquiry. You were asked in your statement about Andy Burnham's speech in the House of Commons where he said there was a resistance in Civil Service to facing up to historical injustice, and you were also pointed to Charles Lister's evidence that there wasn't resistance but more an issue of groupthink, so the sense that when you worked closely and collectively together there is a risk of a group mindset developing.

Can you assist from your perspective why you think infected blood issues weren't addressed sooner, why some of the challenges weren't grasped at an earlier stage?

A. Um, I mean, in terms of the policy team -- I mean, I speak for my own perspective rather than from the team leaders' perspective, but sometimes what can happen within a busy policy team, you're just so constantly

reacting to events, to ministerial requests, Parliamentary, et cetera, that sometimes there is very little, so there can be little scope to sit back, for people to reflect on what the policy should be or whether we should be looking at it from a fresh perspective, perhaps.

So I think there's an element of that, certainly, and I've seen it, not just in Blood, but also in other policy teams I've worked in. So that might be one of the factors that you're just -- because you're constantly under pressure -- it's not an excuse, but I think it's a factor.

Q. You talked about simply taking the lines to take from previous correspondence or previous answers to Parliamentary questions --

A. Yes.

Q. -- what part might that have played in whether those lines were challenged or questioned?

A. Um, I mean, I personally didn't challenge them. I -- when Jill was there, those were the lines I used while she was in the team, and she was the one person with that corporate knowledge. I think there's a reference somewhere in an email to Richard Gutowski, the team leader at the time, where I've said to him "These are the lines on public inquiry. I've got them from the

file and a submission to the Permanent Secretary". So I kind of -- to me, in my, you know, from my perspective, these are authoritative lines that officials and Government are using on a particular area, and that's, essentially, why I would have continued those lines while I was in the team, and not perhaps challenged them.

MS FRASER BUTLIN: Sir, those are the questions I have for Ms Seedat. We obviously need a little bit of time for Recognised Legal Representatives to provide any further questions they'd like me to ask.

I note the time and I'm not sure, sir, I'm in your hands as to what you want to do.

SIR BRIAN LANGSTAFF: Well, we plainly have to take a break --

MS FRASER BUTLIN: Yes, indeed.

SIR BRIAN LANGSTAFF: -- and it would be sensible, I think, to take a break and combine it with lunch. So the only question is whether you want an hour or whether you think we may need more than that.

MS FRASER BUTLIN: Sir, I don't anticipate needing more than an hour, no.

SIR BRIAN LANGSTAFF: Very well. Well, what we'll do is we'll take a break now until 1.50. That's not before 1.50, just in case there are more questions than counsel

anticipates, and come back not before 1.50. If there's any delay, you'll be told. But I can't tell you how long you'll be kept after you come back, it depends on how many questions there are.

Not before 1.50.

MS FRASER BUTLIN: Thank you, sir.

(12.51 pm)

(The Luncheon Adjournment)

(1.50 pm)

MS FRASER BUTLIN: Ms Seedat, just a couple of matters I've been asked to raise with you.

Did you receive any training on the Freedom of Information Act?

A. Goodness, I can't recall at this -- I just can't recall it. I may have done, but I don't remember.

Q. And is it right that you received no training on public interest immunity?

A. No.

Q. In your evidence you mentioned there being little time to reflect on lines to take, and it's suggested that this might mean that there's a risk that the line to take can become embedded.

Do you have any practical suggestions of how this might be addressed to try to prevent it from happening in the future?

A. It's very difficult, because of the pace that we work sometimes. The deadlines are always very short that we need to work to and kind of taken together with all the other work, I don't have any immediate solutions, I'm afraid. Obviously the easier answer would be if we had more resources. That's the easiest answer but not always a practical solution.

Q. If you'd come across a document or correspondence or other evidence in the course of your work that suggested to you that there might be cause to question the line to take on an issue, how would you have brought that to the attention of the senior members of the team?

A. I think I have been -- so when I worked on flu policy, you know, I recall the odd occasion where if I was uncertain about something I would raise it with my immediate line manager or often, because it was quite scientific advice, with flu policy specifically, I'd speak to people at Public Health England who were the experts, just to get a bit more clarity about the issue.

Q. Did you always feel confident that you could have raised things that you weren't comfortable with?

A. To be honest, I don't know if I really thought about it while I was in the job. I think it was just a question of getting through the workload most of the time while I was in that post.

Q. Sir Nigel said in evidence that if in the meeting with Lord Jenkin he'd said something that went against the line that the officials -- let me start again, apologies, Ms Seedat.

Sir Nigel said in evidence that if in the meeting with Lord Jenkin he'd said something that went against the line, the line to take, that officials would have raised this with him after the meeting. Is that right? If he'd said something wrong or that went against the line, would you have raised this with him following the meeting?

A. I think I would have and I think Shaun would have raised it well as, so Shaun was the Private Secretary at the time.

Q. You've obviously worked at a variety of branches in the Civil Service.

Would you consider that the issue around the destruction of documents in the 1990s was unusual or unprecedented in your experience?

A. Most certainly, yes.

Q. In your second witness statement you note a briefing document from February 2007 that was prepared by Linda Page, that recorded this:

"Following publicity surrounding the loss of documents relating to HIV and hepatitis C a firm of

solicitors acting for claimants advised that they held documents relating to the HIV litigation."

Then you say this at paragraph 35.4:

"We suggested that Carol Grayson should contact the Solicitors and ask that papers are returned to the Department. We were notified on 17 May by the Solicitors' Division that papers from Blackett Hart and Pratt (BHP) Solicitors had been returned. It would have been around this time that I first became aware that a firm of solicitors held papers."

There's also in the papers a letter from Blackett Hart & Pratt dated 7 February 2006. For the transcript, the reference is DHSC0015865.

It's addressed to the Treasury Solicitor, setting out that Blackett Hart & Pratt held various documents, which may have been thought to be lost or destroyed. They concluded their letter seeking an assurance that the documents would be preserved so that Ms Grayson and any other interested person could access them.

First of all, on being notified of the papers being held by BHP, do you know why the Department of Health didn't seek their return directly rather than asking Ms Grayson to arrange for their return?

A. It's very -- yeah, I couldn't figure it out when I was looking at the papers, but there might have been

a rationale behind it. I can't say what that was at the moment, I'm afraid.

Q. Were you involved in that decision, as far as you can recall?

A. I just can't recall.

Q. To the best of your knowledge, did the Department give any undertaking or assurance in line with that requested, in other words that documents would be preserved and interested parties would be -- have access to them, would be granted access to them?

A. At the time I can't recall. I remember discussion about ensuring that they were in a secure place but I can't recall, at that point, whether there was that discussion about making them available.

MS FRASER BUTLIN: I'm just going to look behind me, sir.

Sir, there are no further questions from those behind me or from Mr Moss.

Sir, are there any matters you would wish to raise at this point?

SIR BRIAN LANGSTAFF: No, I have no further questions.

MS FRASER BUTLIN: Ms Seedat, is there anything else you would like to say?

A. I don't.

SIR BRIAN LANGSTAFF: Well, it remains for me to say something to you, and it's this: I don't know if you

noticed when you looked through some of the documents, there is one document in which, in the course of a generalised expression of disappointment in the Department's ability to retain documents, a particular exception is made in your being singled out for being particularly helpful to the writer.

It seems to me that that's something which is perhaps in your nature. You have been particularly helpful, as it seems to me, in the way in which you've tried to give the best of your evidence today and to us, and, overall, particularly helpful to us, so I just want to thank you for that.

A. Thank you.

SIR BRIAN LANGSTAFF: Now we have David Armstrong waiting in the wings.

MS FRASER BUTLIN: We do, sir. I wonder if we could just take a short break so that matters here can be turned round, as it were, and then we can start with Professor Armstrong.

SIR BRIAN LANGSTAFF: Yes, of course. It gives Ms Seedat a chance to withdraw.

MS FRASER BUTLIN: Exactly.

SIR BRIAN LANGSTAFF: So we'll come back, shall we, in ten minutes, let's say 2.10 for this afternoon's hearing. So 2.10.

MS FRASER BUTLIN: Thank you.
(1.58 pm)
(A short break)
(2.10 pm)
SIR BRIAN LANGSTAFF: Welcome, professor.
Now, you may have heard me say on other occasions, but I'll say it again to you, about your audience. There's a limited audience here in Aldwych House. Those in front of you are participants, Core Participants, and others, and to your left there are lawyers representing the various interests.
At the back there are members of the Inquiry staff and representatives of the press, but really your audience is beyond this room. It is a large audience, I should say -- I don't mean any disrespect to this audience, of course -- how could I -- but the larger audience is out there somewhere watching on YouTube or live stream, around about 100 probably today, and they will be interested to know what you have to say.
Ms Fraser Butlin will be asking the questions.
A. Thank you.
MS FRASER BUTLIN: We need to have Professor Armstrong sworn.
SIR BRIAN LANGSTAFF: Of course, sorry. I'd forgotten about that too. I'm not having a very good afternoon, am I?

PROFESSOR DAVID ARMSTRONG (affirmed)
Questioned by MS FRASER BUTLIN
MS FRASER BUTLIN: Before we start, I think it's worth just highlighting at this point that this afternoon we will only be addressing the part of the public health administration expert group report that deals with NHS medical records. The rest of the report will be explored by full panel including yourself, Professor Armstrong, on 3 and 4 October.
A. Yes.
Q. So this afternoon is just a limited slot in relation to one part of the report.
SIR BRIAN LANGSTAFF: Yes, I'm very much looking forward to both events.
MS FRASER BUTLIN: Professor Armstrong, could you first of all just introduce yourself and tell us a little bit your background?
A. I'm -- yes. I'm a professor of medicine and sociology, because way, way back I studied medicine and I qualified in medicine and then I deciding to do some sociology, as a hobby, really. But then I -- eventually I became a professor of medicine and sociology.
I was also interested in general practice and I work in a department of general practice and I qualified in general practice and I worked closely

over the last few decades with GPs, so I think I'm very well aware of what happens in general practice.
And I also became a public health physician, qualified in public health, and became an academic public health physician. And I do research across those fields.
Q. In terms of your understanding of medical records, both now and previously, what sort of work have you done that's involved medical records?
A. Well, so my knowledge stems from some personal experience of medical records, both in hospital and general practice. It stems from conversations with clinical colleagues over the years, and it also stems from some of my research interests, which in part have looked at clinical records, examined clinical records, but also I've used extensively online clinical records to do research. Secondary data analysis, it's called.
Q. And the secondary data analysis I understand from your research has been in quite large datasets of records?
A. Yes, so we collect 50,000 patients with a certain disease and compare them with 50,000 without that disease.
Q. If we can start with the late 1950s and the Lloyd George system in general practice, can you help us with how that system in general practice operated, very

practically?
A. Yes, I think it was called the Lloyd George system because it was introduced with the 1911 National Insurance Act. We still pay our National Insurance contributions following that Act. And this was a small A5-sized cardboard folder in which one placed cards of the patient's record. I think before the NHS these were very infrequently used, though they did exist because this was part of the panel system where the GPs got paid for looking after low-paid employees, and they used to write -- this was the clinical record. And I remember when I was in general practice we merged -- our group practice merged with a neighbouring single-handed practitioner who had retired and all of the records were delivered in a large box, just thrown into this box, and I remember looking through some of them and all they had on would be one word: they would say, "sore throat", "headache" or something like that.
Now, the reason for that is that this GP would have known all his patients personally. So, in a way, there was no need for that reminder of what this patient's past problems were because they'd see them regularly and would understand what they were. So I think in those days of solo practice it was very unusual to have comprehensive records because they

simply weren't needed.
Q. And in relation to hospital records, you refer in your report to the 1956 Minister of State health guidance that records should be kept for six years after treatment and destroyed three years after the patient's death. But also that clinical records of historical importance should not be destroyed. Can you help us at all with what was considered to be a record of historical importance?
A. I think it was a very haphazard judgement. At that time hospital records were pretty haphazard anyway because every hospital had a separate system. Every hospital would store them differently, everyone would dispose of them differently, so it would be made on a case-by-case basis. I suspect that if they found a record that told you something about the patient at the beginning of the century, somebody would have said, "Oh, that's historical, we should somehow keep that because it's got historical interest".

But I don't think beyond that sort of subjective judgement, there was any pattern to those decisions.
Q. And it may be a similar answer but who would make those decisions as to what would be kept and what wouldn't be?
A. Yeah, I don't know who would make those decisions. Partly it would be clinicians who had been involved in

the patients' care, but it also could be the medical records officer. So every hospital had a huge department where all the medical records were stored, and these would be miles of folders all stacked up like in a very complex library, and they would have to be sort of filleted out now and again, and pruned and removed, and somebody would have made that decision in the record office, but I don't know who it would have been.
Q. Then can we pick up RLIT0001173, please.

This the 1965 Tonbridge report, the Central Health Services Council report called "The Standardisation of Hospital Medical Records".

Before we look at some particular passages, do you know how this report came about?
A. I don't -- I don't know exactly but I presume it was because of the chaotic state of hospital records prior to that time. As I said, every hospital that joined the NHS in 1948 had a different system of storing records, and the Tonbridge report was an attempt to standardise those by using A4 folders, which is -- when I came in, A4 folders were a general part of hospital care.
Q. If we pick up in page 9, I think it's page 9, internal page 6, thank you, just under the heading "The management of medical records":

"The case record of a patient is compiled from a number of different notes brought together in such a way as to give the doctor in charge of the case quickly accessible information about the patient at any time whilst the patient is in his care. This information reaches the record from his own notes and from a variety of other sources -- from the family doctor, from the specialist diagnostic departments, from nurses, from relatives and from the social services."

Then a little further down:

"Anyone who has had to plough through hospital medical records in search of the currently relevant information about a patient will recognise the value of the good management of records which ensures that those needed are in the correct place at the right time, yet will admit how rarely this is achieved in most hospitals today."

You've mentioned a moment ago that part of the problem was that different hospitals had different systems, and in the expert report you've referred to record keeping being "chaotic and varied".

Other than the different hospitals having different systems, what were the other factors causing that chaos and variation?
A. Well, I think I can summarise with the Tunbridge Report

and number of other reports following those, from the audit commission, and so on, about the state of hospital records, that they have always been rather chaotic, and they probably still are. And the reason is that, first of all, there's meant to be one record for every patient but if a patient is admitted to hospital and then goes home and comes back as an outpatient, the notes should somehow appear in the outpatient department at -- on the appointed day to meet the patient.

But this was very difficult to organise and sometimes one of the outpatients consultants would keep the notes, and think "Oh, the patient's coming back in a week, we'll keep these notes until they come back", but in the meantime the patient might have been needed in another clinic or have another admission and the notes weren't there.

So lots of patients had lots of sets of notes that were circulating in the hospital under these different consultants and, now and again, an attempt would be to pull them all together into a unified system, but it depends on how many visits the patient was making. If they were making a lot of visits, it became very, very difficult to carry through these notes to follow the patient.

So there were lots of different notes. For some

patients, particularly those with multiple illnesses, they got very thick.

So I've seen notes two or three inches thick with all the notes, which is the clinical record, which is all the investigation records, which is all the letters from GPs, from social workers, and so on. All in those notes. And it became impossible to find. So you pick up one of these three-inch documents and say, "What's wrong with this patient?", well, it would take you many hours to find that out.

So there were various attempts over the years to prune these notes, to get it down to the essential elements of this patient's clinical history. But, of course, that took a lot of time. Somebody had to take time off from their clinical work to actually fillet these notes down, prune them down, to something much more focused. So a lot of the time it didn't happen and when it did happen it was up to the clinician who was doing that pruning to decide what was important and what was not important. So sometimes, I'm sure, important records got disposed of because they didn't seem important, whereas others were retained.

So we talk about a retention policy over time, it's already being messed around by that pruning process and by the fact that different notes appeared at

different points of time in the patient's journey through the NHS.

Q. In terms of what that might mean for somebody who is seeking their records to establish what treatment they've received or if they've received a blood transfusion or certain blood products, what are the implications of that for them?

A. They may be lucky and they might find them but there's number of factors which would militate against them actually finding them. First of all, there is the retention policies. They always had a retention policy, which has been, between eight and ten years after the patient's death, the notes would be retained before being destroyed. There was also the same thing was either eight or ten years after the last course of treatment. Now, that's a slightly odd idea nowadays, when people have chronic illnesses, when was the last course of treatment? Because you might have diabetes and then you're discharged from hospital, does the hospital then destroy those notes? You've still got diabetes and you may well come back with complications for diabetes in 10 or 15 years' time.

So it was really odd, it seems to me, to destroy notes prematurely when they might be needed by patients, by the clinicians.

So that's -- partly the problem, is that. And then, of course, what are in those notes? Every department seemed to have different policies with regard what was in the notes. What was in the obstetric notes would be very different from what was in the psychiatrist's notes, which would be very different from what was in the haematologist's notes. They would have different colour papers to signify which specialty was looking after the patient. But, again, when someone was pruning those notes, which of those coloured pages were retained and which weren't is anybody's guess.

So when things were pruned, things were lost, and so some of those notes are an edited version of the full notes.

And the other phenomenon I'm sure we'll come on to is the ability of hospitals to lose notes. It is notoriously difficult to keep notes in hospitals. They always get lost. And one of the interesting experiments that -- about 20 or 30 years ago they got patients in antenatal care to carry their own notes and one of the great triumphs of that experiment was that none of the notes were lost because the patients were looking after them. But when the doctors were looking after them, when the hospital was looking after them, notes got lost.

Again, it was between one clinic and another clinic, and sometimes they'd end up in the back of the consultant's car because he'd want to take them home to write some notes or do an audit or something. They just got lost.

So the system was not designed to maintain notes as a sort of a -- as a top priority.

Q. You mentioned retention periods. If we could just pick that up in the Tunbridge Report 1965. If we turn two pages on, please, Lawrence, under the heading "Medical Records Proper", it reads:

"Information relating to previous admission or to attendance at hospital is of great importance to the management of the case when the patient requires further treatment in hospital. All the relevant information ought to be available but if it is filed with a mass of documents containing information no longer relevant the task of every person who looks at the record is made unnecessarily complicated every time he picks up the document."

I think that's a point you were just making.

A. Yes.

Q. "There is also the practical problem that storage space for records is necessarily limited and we were told frequently that the storage of records was a serious and

ever growing problem.

"Circular HM(61)73 which is current guidance on the preservation and destruction of medical records gives for the life of a medical record a minimum period of 6 years after conclusion of treatment (or 3 years after death of a patient)."

So that's 1965 in terms of the retention period. It's slightly different in relation to psychiatric records.

If we just turn the page:

"We found in practice that the majority of consultants do not agree to the destruction of medical records at all and therefore although the HM circular pointed out that micro-filming was uneconomic a considerable number of hospitals had been forced to micro-film records in order to release space."

So it's perhaps worth flagging now that tomorrow, in the presentation on medical records, I will be going through the changes to the retention periods over time. So there will be a fuller explanation there of retention periods.

But just in relation to here in 1965 and this reference to microfilming, the Inquiry has heard evidence from several witnesses who have been told that their records had been transferred to microfilm or

microfiche. Are you familiar at all with that process?

A. I know what it means but I have never seen a microfiched record.

Q. And --

A. I think it was probably unusual for that to happen, because, again, it's the resources. You have got to imagine these medical records departments, I was reading that -- it was a Norfolk hospital, a 700-bed hospital had 30,000 new hundred new records every year to add to what was being stored. So it was a major undertaking to manage these new records coming in and the records had to go out to the various clinics and inpatient departments throughout the hospital. So I think -- I think this was enough, without getting too involved in the minutiae of -- sometimes policy was stated but the practice on the ground, I think, was often very different.

Q. Thinking of that policy and practice distinction, here we've got retention periods of six years or three years after death but we've got a practice that suggests that that wasn't really happening at all.

A. Yes.

Q. Can you shed any light on that?

A. It would not happen in practice because, first of all, some of them would be disposed of earlier, because they

were lost. Some of them would be -- they would follow the guidance because somebody was very efficient about it but, most of the time, I think record departments were really hard pressed just to manage the flow of records in and out of the department and to the different bits of the hospital. So that was a major undertaking.

And the records officer that therefore to go through them and find out when was the last -- so they're all arranged in alphabetical order, because you've got to find the patients for the clinic, and you've got to go through all these notes and you've got to find out which ones, where the last treatment was six years ago or eight years ago. That was a very, very difficult task. So I don't think the organisation or the cataloging of the notes enabled anyone, really, to follow these instructions, this guidance.

Q. The Tunbridge Report recommended some standardisation of medical records and I think that was to make them all A4 --

A. Yes.

Q. -- and folders that were standardised?

A. Yes.

Q. But you say in the expert report that records continued to be a jumble of different sections that struggled to

encompass all the clinical care delivered to the patient. Removing what was considered extraneous material happened on a haphazard basis. What was your understanding of how widespread that haphazard approach was?

A. Everywhere. **(The witness laughed)**

Yes. I can't think how it could have been organised any differently because the only way to be non-haphazard is someone had to take responsibility for the pruning of the notes and getting it down to the core clinical problem that the patient faced. And that was a big undertaking. For some patients with enormous amounts of notes, it would have taken a clinician, you know, three hours to whittle down to the core bits of the patient's note, and that clinician needed those three hours to see current patients. So there just wasn't the time or the inclination, I think, to follow a lot of this guidance. It just couldn't be followed.

Q. You said it was haphazard everywhere. Are you aware of whether it was particularly bad in particular specialities or was it just across the board in all specialities in all hospitals?

A. My guess it would be across the board in all specialities. And the other thing to remember is every hospital had its own records, so if a patient went to

two hospitals or three hospitals, which was not unusual, then they'd have three sets of notes, which were completely separate. And, also, when hospitals merged, they had to merge these medical records departments. And, again, it just increased the problem, the likelihood that notes would go missing and things wouldn't be followed through.

I think it just is the nature of medical records -- you remember, they started off as a sort of *aide memoire*, as a sort of memory for the clinician to see the individual patient and, over the last few decades, the role of the record has changed incredibly because now it isn't the individual clinician who's got to be reminded of what this problem was, it's the whole clinical team. So it's a means of communicating between the clinical team.

The sorts of problems the patients are presenting with used to be fairly acute, short-term and now we get multiple problems over a longer term. And, finally, there is the sort of changing relationship between the doctor and patient, from a rather paternalistic system, towards a more shared care model. And so, again, the function of the record has changed over time. So, although we call it the clinical record, it is a very different phenomenon today compared with what it was

50 years ago.

SIR BRIAN LANGSTAFF: I wonder if I may just ask a couple of questions. The first is what the Tunbridge Report is talking about here is medical records.

A. Yes.

SIR BRIAN LANGSTAFF: To what extent does that include nursing records of inpatient care?

A. I don't think it would. So the nurses kept their own records, separate records. The physiotherapist would keep their own records, the occupational therapist would keep their own records. So when we talk about clinical records, these are medical records.

SIR BRIAN LANGSTAFF: It's been, I think, a general experience of those who have practised in the area of clinical negligence that the nurses' records, nursing recordings, nursing Kardex, as it used to be called, could be much more informative --

A. Yes, yes.

SIR BRIAN LANGSTAFF: -- very often than the admitting doctor's notes and then the treating doctor's notes, and then the various observations from time to time, not least because the consultant might, as it were, swan in and swan out, and the more junior doctor would be responsible for care, et cetera. And that no doubt would create its own problems.

A. Yes. I'm afraid I don't know what happened to nursing records. Whether they were stored as well, I'm afraid I don't know.

SIR BRIAN LANGSTAFF: The same would go, presumably, for fluid charts --

A. Yes.

SIR BRIAN LANGSTAFF: -- and diagnostic material.

A. All of those things were at the end of the bed -- would be the temperature chart, the fluid chart and everything, and they would be stored with part of the nursing record, I think. But what happened to them, I don't know.

SIR BRIAN LANGSTAFF: Was it the case that some outpatients would keep their own outpatient records and they were separate from the inpatient records at the same hospital?

A. Yes. That is true. That's why several sets of notes for the same patient could circulate in the hospital, and they'd be kept separate. So every new patient coming in to an A&E would automatically have a new record opened, even though they'd been in the hospital ten times before. They wouldn't retrieve, because they didn't have the time to retrieve their record from the record office if they were being seen in A&E. So a new record was opened.

And I guess the intention was that these should be merged. Now, whether they always were, there's a lot of chance there.

SIR BRIAN LANGSTAFF: I suppose if someone comes into A&E and is admitted for treatment, the notes from the A&E triage ought to go with the patient.

A. They should, and they should be merged with the patient's existing clinical record.

SIR BRIAN LANGSTAFF: Do they, as a matter of course?

A. Well, that's the problem, that sometimes they did and sometimes they didn't. Because the notes -- because notes were often -- new notes were set up very often because they couldn't find their record, so you'd go to the dermatology clinic, they can't find the record, so the dermatologist opens a new set of records. These circulate in the hospital and sometimes they go to the rheumatology clinic and, there they pick up the dermatologist's past record but not the inpatient record.

So there's a number of records circulating in the hospital and it was very difficult for one person to sort of say how these all should be brought together because the records officer simply had to file them in that great big cavernous warehouse, where all these records were being stored. And it wasn't their job,

really, to do that sort of clinical integration and pruning.

SIR BRIAN LANGSTAFF: Let us suppose, that somebody admitted for inpatient treatment in the view of the treating doctor requires a transfusion. The doctor will presumably notify the hospital blood bank and say, "I need so many units of", whatever it is, and then the blood bank will make a record of that somewhere in their records.

A. Yes.

SIR BRIAN LANGSTAFF: They won't be married up, presumably, with the patient record?

A. No, they wouldn't be, though it should be in the patient record that they received a transfusion.

SIR BRIAN LANGSTAFF: Yes. Is that always, again, the case?

A. I would imagine receiving a transfusion would be in the clinical record, as that was quite a significant clinical event. Transfusions weren't that common. When they did occur, then there could be all sorts of consequences from the transfusion, so I think -- I would have hoped that most of the time they would be in the clinical record.

SIR BRIAN LANGSTAFF: That would then depend upon how that clinical record was handled thereafter, whether it was in due course destroyed after treatment, after so many

years or whether it was lost --

A. Indeed.

SIR BRIAN LANGSTAFF: -- et cetera, et cetera.

A. Indeed, indeed.

SIR BRIAN LANGSTAFF: Thank you.

MS FRASER BUTLIN: Following on from those questions, and your answers earlier about culling or weeding case notes, what was intended by that? What sort of documents would be expected to be removed in a culling process?

A. Well, it was for the next clinician who saw that patient to be able to quickly summarise what was the patient's clinical history, what was their past diseases they'd suffered from, what were the treatments they'd had in the past and what were the treatments they were currently on. And there was a move in the 1990s from the US, in fact, called -- it was called "problem oriented medical records". So the idea that the front page of every medical record should simply list the key problems that the patient had. So there's a list of the disease, there's a list of problem areas, and so any clinician could open the folder and there in front of them would be that list.

So there was an attempt to develop that in the -- that would be the mid to late 1990s but, again, it

required a lot of time and effort. Somebody had to go through these notes summarising and pulling out, often from different specialities, what was the patient's underlying problems. And I think, although one or two enthusiasts did it quite well, most of the clinical workforce didn't have the time to do that.

Q. Just thinking about the culling of case notes, the Inquiry has heard evidence that transfusions were sometimes put into something like the fluid balance charts or the prescription charts, rather than the chronological clinical notes. If there was a cull of case notes, would you anticipate that that might include something like a fluid balance chart or a prescription chart would be removed?

A. Yes, yes. I mean, very often the people doing this culling would be junior doctors who were, you know, they were available, they could be instructed to cull/prune some of these notes, "That's your job tonight, junior, go off and do that, and here's ten notes, can you pull them down to a reasonable size?"

So that would be a junior's judgement about what was important for the future, for the future care of that patient.

And I guess at the time, having a transfusion, if it didn't have any immediate consequences -- because

there could be immediate consequences with mismatching, and so on, you had to be aware of that, but I guess a few years after the transfusion then the interest in that transfusion was considerably less, and so that could well have been culled.

Q. From your answer, I think it follows that then there wasn't any particular consistency or guidance on what should and shouldn't be removed?

A. No, no. Because every patient's notes were very different. It was very difficult to give a standard of what should and shouldn't be in there. Even today.

Q. Earlier today you referred to the Norfolk and Norwich hospital with 762 beds, creating some 30,000 new files every year.

A. Yes.

Q. I just want to pick that up from the journal article itself, which addresses some other points, as well. RLIT0001704, please. It's a British Medical Journal article from January 1985. It sets out at the beginning of the article the guidance in 1985, with slightly different retention periods, which is the eight-year minimum period. Then the bottom of the first column says this:

"For various reasons many hospital clinical records have survived beyond these minimum retention

periods. Their storage, however, is causing immense problems -- and these are becoming more acute as hospitals close down or find that the space taken by clinical records is not cost effective."

Then there's the example of the Norfolk and Norwich hospital:

"This concern led in 1977 to a one-day conference at the King's Fund Centre, which found that the threat to medical records was if anything more serious than had been assumed and concluded 'that the danger to medical records was so great that it was not possible to rely on long term action by central authorities to amend and enforce official guidelines.'"

I just want to pick up from there the point about hospitals closing down. Some other evidence that the Inquiry has heard, particularly around maternity hospitals, is that women who were treated there have struggled to get their notes because the hospitals had closed down.

A. Mm.

Q. Can you assist us at all with what happens with the records when a hospital closes down?

A. Well, they would be transferred to the hospital -- hospitals don't close, they merge. And I think they would be merged with whichever hospital they were

notionally merging with, so that would be where they went -- where the notes would go. I mean, it's possible they're just thrown into a skip but I imagine that they would go into this new hospital, but -- the twin hospital with which it was merging.

But what that new hospital did with the notes from that old hospital that had closed is anyone's guess because, again, there's a huge storage problem. So, you know, you're already packed in all your shelves with clinical notes, and then suddenly a few hundred thousand more arrive. What do you do with them?

And I don't think anybody knows what happened to them. But, clearly, there was a bit of an incentive then to get rid of them.

Q. We then pick up, if we may, the Audit Commission Report, RLIT0001172. It's from 1995 called "Setting the Records Straight". If we turn to page 9, please. We have a summary of this chapter on the left:

"Casenotes are complex documents that need a clear structure; while some are satisfactory, others have major flaws.

"Too many are 'fat', cluttered and untidy and should be culled and sorted periodically.

"Many hospitals keep more than one set of casenotes per person, making coordination of care

difficult.

"Coding of data to produce information for research, planning and the contracting process needs to be more accurate."

Then page 22, please:

"Medical records departments provide casenotes to clinicians on request and retrieve them for storage when an episode of care is completed.

"The first task is to find the casenotes. Some will be in the library, others will not be on the shelves, but found eventually, and a few will not be found at all -- jeopardising care. A proper system for tracing and tracking casenotes is required. Closed libraries appear to have fewer casenotes not traced out.

"Libraries need systematic procedures with overcrowding reduced through a combination of 'culling' -- the process of removing unwanted material from casenotes ... and 'weeding' -- the removal of whole casenotes from the system for archiving, for example if the patient is dead. Many hospitals have more than one main library which complicates matters.

"Finally, unless case notes are stored and moved under a proper set of arrangements, the security and confidentiality of the information they hold can be put at risk."

So this is relatively, it might be said, late in the piece, 1995, but it appears that the problems were still ongoing.

A. Mm.

Q. Can you help us in relation to this passage on the screen. What is meant by a "closed library" and why that might be that there were fewer case notes not traced out from those?

A. I don't know, I'm sorry, I don't know what a -- you weren't allowed to take the case notes out? Yeah. It's absurd. You've got to be able to take the case notes out because you've got to write in them the latest episode of care. So I'm not sure what a closed library is.

Q. The other part of this page where there's the discussion at the top that medical records departments provide case notes to clinicians on request and retrieve them for storage. Practically, how were case notes retrieved? Was it for the clinician to return them or --

A. Yes, it was for the clinician to return them.

Q. So it was entirely reliant on the doctor saying, "I'm finished with this, thank you, it can go back"?

A. Exactly. And if the doctor decided "I might need this again in a few days and if I don't keep it, someone else will grab it", they would keep it themselves and hence

then the other clinic couldn't get access to the notes. So it was entirely up to the clinician.

Q. There's a Health Service circular, sir, in March 1999 but I'll look at that tomorrow within the chronology.

We then come to the introduction of computerised records, particularly in general practice.

A. Yes.

Q. When computerisation was brought in to general practice, was that just a forward looking exercise or was there also an exercise undertaken to digitise historic records?

A. I think there was a bit of both. For a while, the two systems ran alongside each other, so the GP would have the Lloyd George folder on their desk and the computer, and they did it. And I guess while they were looking through it they might have transferred some stuff to the computer but, again, it was a considerable undertaking if you've got 10,000 patients in a group practice on the list -- the average size at that time would have been about 10,000 patients in a group practice. That was a lot of notes to go through to transfer onto the digital system.

So I think they ran alongside each other. But very quickly GPs realised the efficiencies of using computerised data, partly because things didn't get

lost, everything was in one place, and different members of the healthcare team could access those notes, at different times.

Q. You say in the report that these notes rely heavily on structured medical codes --

A. Yes.

Q. -- rather than free text. Can you explain for us what you mean by that?

A. Yes, it means that if -- if a patient has a diagnosis, they've got a diagnosis of pneumonia or they've got a diagnosis of diabetes, instead of writing in "Diabetes" or "This patient could have diabetes", you've got to put in a code which would be -- I don't know what it would be, it might be RD41, might be the code or diabetes. So there's a code. The computer would then store that code.

So a lot of things were coded with a diagnosis because there was a coding scheme. You'd start to type in "Diabetes" and RD14 or whatever it is would appear and you'd put that in the box. So most diagnoses were and are coded nowadays, and that's -- as I said at the outset, some of my research, I wanted to find 50,000 patients with colorectal cancer, I just had to ask for that code and all those patients would then appear in the database.

So that was the code. Then there's a section called "Free text", where the GP could write whatever they want. Now, obviously that requires a bit more effort because, coding, you're just ticking boxes, and there's number of things you can tick boxes for: the diagnosis, the prescription, the investigations. There's a number of things you can tick boxes for. But if you want to listen to a patient's miseries and problems, you know, with life, there wasn't a box for that, so you either had to use free text or you ignored it. So there's been some criticism of the notes: the way they codify the case record, it doesn't allow that human element which is often -- people say is very important for general practice.

Q. I'm asked to ask you, have you done any work or are you aware of any work having been done about how accurate GP records now are?

It depends what accuracy means --

A. Yes.

Q. -- but in terms of recording, say, medication that's been given or tests that have been undertaken, so things that can be measured.

A. Yes, I think they're probably quite good. I can't think of any studies that have been -- because partly, what are you comparing it against? You know, you've got to

have a gold standard of: this is a really accurate record and this is yours, and it isn't up to the mark. But who's going to have that perfect record?

So I'm not sure it would be there, but it's in the GPs' interests to put down all the prescriptions.

Well, in fact, the prescriptions would automatically go in because one of the things the electronic health record did very quickly was to allow automatic prescriptions, so you just pressed the button and the prescription would be printed out. And that was a far easier way for the GP to prescribe. So I think almost all prescriptions were -- one of the first things to go into the electronic health record were all the prescriptions. So they would all be there.

And the same for a lot of the investigations because the investigations, if you wanted to send the patient for a blood test, you'd tick the box and that request would be automatically sent. So in a way, I think most of that clinical care -- as long as it could be put in a box, most of that clinical care was well recorded.

Q. Computerisation in hospitals didn't follow until the new millennium.

A. Yeah.

Q. Why was there that delay?

A. First of all, British GPs I think were the first in the world to computerise. So British primary care was the first big sector of healthcare anywhere in the world to computerise. And that was because I think number of vendors got into that space and offered them systems where they could set up on their PCs in the practice and they could use it for general practice. And there are now three or four systems now you can buy from the suppliers which you can use to digitise your practice.

Hospitals, they had to start from scratch. They didn't seem to be the same vendors with this systematic system, because in a way every hospital ran itself differently. And as I said before, all these specialities had different requirements, and so the chemical pathology department just had a lot of -- I don't want to do them down but I think I they had a lot of box ticking, whereas the psychiatrists had a long spiel of free text because they had to listen to what the patient said before they could make a diagnosis. So the requirements of different departments in the hospital required different sort of spaces in this digital space which was going to be the electronic health record.

So I think every hospital has done it differently, which means that there is difficulty of interrelating

between general practice in the hospital, because the records can't be communicated directly, and also between different hospitals, because they've often got different systems. So there is a problem of we call it interoperability between these different sections of the healthcare system. Especially if a hospital had a particular interest in maternity, for example, they would have a different sort of system than one which was mainly mental health. So you can understand why they might have different systems.

Q. I want to come to that interoperability in just one moment but before I do you say in the report that the effort involved in digitising records means that reports were kept in paper and digital form. What does that mean practically when trying to get a full picture of someone's medical history?

A. Yeah, difficult, I think, is the answer. Because you had to -- so you've got to imagine the clinic -- the hospital consultant, either in the clinic or on the ward, they've got an immediate problem in front of them they have to solve: they've got to make a diagnosis, they have to decide on investigations and treatments. And sometimes the previous history of the patient is important and sometimes it isn't. And it depends what the problem is. So if a patient is in a road traffic

accident, well, maybe it's not important that they've got a history in the dermatology department of having dermatitis or something. It might not be as important.

So the immediate problem is done digitally but the consultant would then refer to the paper copy, which would be next to them, for anything which might be relevant to the current problem. So that's the way it would work.

So I can't tell you how often they were both referred to, but obviously, over time, the paper copy was gradually replaced by the digital copy.

Q. With the introduction of digital records, do you think that the existence of the paper records might have become more problematic? By that I mean do you think there might have been a greater loss of paper records because of the reliance on digital records?

A. I imagine it was quite probable. They would be running down the medical records departments, and it takes a lot of space and takes a lot of staff and, in terms of hospital efficiencies, the quicker that can be closed the better it is for the functioning of the hospital. So there must have been pressures to reduce use of paper and to deprioritise it, and so those paper records might well have been lost more frequently at that handover time.

Q. Just returning to the interoperability question, can you help us with how hospitals with a digital system interact with GPs, first of all?

A. There is some -- a lot of things happen electronically. For example, if a GP orders a blood test, this will go to the hospital haematology department, who will carry out the test, and the results will be fed back to the GP electronically. So the GP will get every day, every week, they'll get a whole list of all the patients who were sent for a blood test with the results. But of course the GPs have got to set up a system to check through all of those results, and usually it's one GP takes that responsibility on, and just look through and see any of these are of concern where the patient needs to be brought back or they're just simply filed away in the patient's own notes.

So there's good communication at that level of requesting tests and having the tests fed back. There are also some ability in some places for the GP to see the hospital record. They can go into the hospital system and see the record but they can't add to it or alter it or anything, but they can see components of the record if it's important.

But remember, a GP should be in possession of all the -- everything that's happened in the hospital should

have been reported back to the GP, so there will be letters from the -- in the old system, there would -- paper letters would be filed in this folder from the hospital consultant to say, "I saw your patient who's got diabetes and I treated them, they were this, that and the other, and I think you should continue this treatment". So that would be stored in the patient's record.

And in the electronic record, that email letter would also be stored in the GP's electronic record. So the communication is good, in terms of digitally, but the systems are different.

Q. But in terms of storing those letters, does that rely on someone in the GP surgery uploading them onto the system?

A. Yes.

Q. There's still a human element required?

A. Yes, yes, yes.

Q. Then in terms of the interoperability between hospitals or between a hospital and, say, a hospice or the district health teams, how does that work?

A. I'm afraid I don't know the details of that, but I -- because they have different systems. Yeah, I don't know whether, for example, the district nurses can access the hospital record or not, I'm afraid.

Q. Fine. And as we stand today, how much progress has the digitisation of records brought to the accuracy and the state of medical records?

A. Um ... yeah, I think it's a difficult one because digitisation allows you to store everything. And the problem with storing everything is you can't find what you're interested in. So once everything is stored, and you look throughout this -- you know, these fat-folder patients, they've got gigabytes of data which is their clinical record. And actually finding your way through that -- because it doesn't get pruned, because it's so easy to store, it just accumulates. So some of these digital records are getting bigger and bigger and bigger. Now, whether that is -- I suppose the record is always there to look back and there are search facilities and so on to look back, but whether that has improved care in that sense, I'm not so sure. But what it has done is allow all members of the healthcare team to look at that record. And that's important. Nowadays medicine isn't delivered by individuals; it's delivered by teams. So all the teams can look -- members of the team can look at it. Either the general practice team or the hospital team, can all look at the same record and they're all singing off the same hymn sheet, so to speak.

It also has facilitated patient access, which I don't know if you want to come on to. I think patient access has been facilitated by having digital records.

Q. We'll come on to patient access almost immediately. One question before we do.

I've been asked to ask you what you think could be done to improve the state of records as they currently stand?

A. I'm not -- the thing -- you've got to think about the purpose of the record. And the purpose of the record is constantly changing. So if I told you what the perfect record is today, in ten years' time it would not be appropriate. And the things that I've mentioned have changed since we moved from solo practice to team practice, so the record must now act as a communication medium between members of the team, which it didn't have to do 50 years ago because there was usually only one clinician looking after that patient at a time. So that's changed.

In the past the patients used to have fairly acute short-term conditions, it's a bit of a generalisation, but nowadays, especially with an aging population, we have multiple problems, patients with multiple problems extremely common, with multiple -- especially the elderly, with lots of problems. And again, the records

have got to cope with that, which is a new challenge for them. And then there's the interoperability, which we discussed, which again remains a challenge.

So yeah, I'm not an expert on -- although I'm sitting here, I'm not an expert on records, and I really don't know what the nirvana of the future is.

Q. I want to move on, then, to access to medical records. You've described in the report that access to medical records was only really developed in the 1980s with the advent of Freedom of Information and data protection legislative provisions. With the advent of that access, what issues arose for clinicians and for patients?

A. Well, first of all, for clinicians they were rather -- I think they were rather shocked, because they'd say things in the record which were sometimes unfortunate. They were sometimes rude. They were sometimes damning of the patient. So sometimes they would be quite cruel. I've seen quite cruel comments in records by clinicians, who maybe had had a bad day and they'd say some things about patients. But I've also seen things in medical records which would be -- I remember seeing -- reading a GP record that said, "I've seen this woman, she is a rather grey woman", which was describing her demeanour as grey. Now, I think I knew what that GP meant when I read that, but would the patient have understood that

in the same way? So there are issues about the interpretation of the words the doctors are using.

Then there's the issue of -- there may be things that the doctor doesn't want the patient to know, and there are two categories there, really. First of all, there are those where there's a third party involved. If there is a patient -- a patient comes in who's depressed, well, the GP sort of might want to put in the spouse's notes that their partner is depressed because that might have a bearing on what they're presenting with. So there are often things in patient's notes referring to other people which, in a way, you can't give access to patients to, for that sort of thing.

Then there are some things where there might be a tentative diagnosis where it's judged best not to tell the patient at that time, and that would sometimes occur, but it would be in the notes. Or even, you know, "I must see the patient -- I must inform the patient next time I see them, that is the diagnosis". That would be in the notes. But if somebody sees the patient -- if the patient then gets access to it before that conversation, there's a problem.

Then of course the patients reading the notes, a lot of this is complex medical terminology and the patient often needs somebody with them to explain what

is in the notes. So, again, that can be a challenge for patients as well.

Q. The expert report describes that the first response to the legislation that gradually gave patients the right to see their records was to start writing more sanitised notes. And the second was to edit and censor older records, which was a time consuming business.

A. Yes.

Q. How extensive do you think was the editing and censoring process?

A. Well, I think patient access to notes really took a decade or so before it was happening. So I think clinicians were primed to begin to write more clearly, more sanitised. You know, it's like your personal emails. If you knew your personal emails were going to be read by the world, you might not say some of the things about your auntie that you would otherwise say in your personal e-mail. So it's the same thing in the medical records. I think doctors just started to sanitise, be more careful about what they would write in the record. And I think that applies today.

And perhaps there's been some loss on account of that. Sometimes you want to communicate something to the rest of the team about a patient, but whatever you wanted to say the patient could misconstrue or see it as

stigmatising or see it as damning when it wasn't intended to be, it was just simply a communication to the rest of the team. You know: okay, this patient is very depressed, I want to put that in and communicate it to the rest of the team. And the patient might not have been happy about that. So you've got to judge about what you actually enter in the notes these days, given the patient may have access. Or at least they have -- yeah.

But again, what they have access to, given these complicated notes I've described, which bits do they have access to? Do they have access to the codes? Do they have access to the free text? Do they have access to advice on what these codes mean? And so on. So it is a complicated process for the patients nowadays.

Q. And in relation to that second element that was noted in the expert report of censoring and amending historic notes, what's your view of how extensive that was?

A. I -- as I said, I think it was probably fairly minimal, because they just realised they had to -- they weren't writing for themselves; they were writing for a wider audience, and so, over a ten-year period, as that patient access movement gathered pace over that 10-year period, I think the notes were increasingly sanitised.

Q. In terms of the benefits of access to records or

disbenefits, can I just go to two general papers and then ask you about it.

A. Yes.

Q. RLIT0001710. It's an article from the British Journal of General Practice in June 2007. Headed "Patient record access -- the time has come". If we turn the page to the second page, we're going to pick up at the bottom of the first column and go on to the second:

"*Clinicians' reactions*. Clinicians are often initially sceptical and worried about the impact of record access. They fear that mistakes and confusion will be exposed and that litigation may increase. However, there is no evidence for this. On the contrary, evidence is clear that record access improves relationships between clinicians and patients. Experience with record access tends to convince clinicians that its benefits outnumber its potential problems.

"*Benefits of record access*. The benefits of record access appear to be substantial. Patients describe improved trust and confidence in their clinicians, and they feel more informed and in control of their condition and its management. There is some evidence for improved health practices by patients. For example, improved compliance in heart failure and

improved cigarette quit rates have been demonstrated.

"In general, patients are keen on record access in principle and in practice. Record access can increase safety by alerting the practice to any recording errors. Furthermore, patients can save time for practices and themselves by looking in their records for information rather than asking reception."

Then a second paper, RLIT0001706, again, from the British Journal of General Practice, March 2015:

"Patients' online access to their electronic health records and linked online services: a systematic review in primary care."

Then if we could turn to, I think it's page 8, please. The headings "Discussion" and "Summary", and it says:

"Users of online access and services report increased satisfaction in terms of better self-care and communication with clinicians. Online access and services also positively impacted on patient safety, especially when patients are given access to medication lists and are offered prevention or health maintenance reminders."

There is then a note about disparity in who accesses online records and some discussions of limitations.

Would that be your experience as well, from your research and from your discussion with clinicians, that access to records for patients is broadly positive?

A. Yes. There was those initial reservations about it but, as I said earlier, what is a clinical record? Its purpose has changed and now the clinical record becomes part of the mechanism through which you can have shared care, shared decision making with the doctor and the patient. So when that happens, you do get better compliance, you get better satisfaction, the patient gets a better deal. But that's because the nature of the record has changed and it is this medium for sharing between doctor and patient.

I might add that I'm not sure that that many patients actually do request it but, when they do, all the results are, positive as we've seen, but also, I think it has led to the doctors also thinking about the patient, seeing the record as something that is shared, much more than it used to be. It used to be their own personal memorandum for the future, and now it is a shared document and I think the function has changed and all the evidence is that it's beneficial to both parties.

Q. In your report you then discussed the NHS Digital strategy of Connecting for Health, and the 2010

Department of Health's vision of an information revolution for practices. That's addressed fully in the report. But what are your views on the ongoing challenges to accessing medical records? What are the difficulties that remain?

A. Well, partly it's getting the actual access and the security around that. So who can get access to what? And is it the patient's executors after the patient has died? Can they get access to the record? Can the patient's family get -- the parents get access, and so on? So who gets access and what are the security measures around that? So it can't be hacked or whatever, anybody can get access to it.

So I think there are problems around giving that access. And then, when you've got the access, do you get access to all the record? This is general practice, I'm much more familiar with general practice, but obviously in hospital it would be how much of the record do you get access to? Because it could be a huge, huge volume. And then do you need support in making sense of it? And, again, that is a resource-intensive business to sit with a patient and go through and explain what everything is.

But, as I said before, I think it's -- the record reflects a change in the doctor-patient relationship, so

there's shared decision making now, and the fact that the GP or the clinician is writing the record for both parties, means that the GP, the doctor, should be explaining to the patient what is going on. It isn't sufficient to say, "You've got this, this -- you must take this treatment", there now needs to be a discussion of the diagnosis, of its implications and what the treatment is and the treatment side effects.

So I think that is generally accepted now that that is what should be happening in the consultation between doctor and patient and, in a way, the new record reflects that. Even if you don't have to access it, the record reflects the fact it is a joint decision making document.

Q. One final point you highlight in the report: that the system of record access, it remains something of a patchwork because there is still the system of GP --

A. Yes.

Q. -- electronic systems and hospital systems, which are separates.

A. Yes, yes indeed. And every hospital will have a slightly different system, and so when you get permission to see the hospital record, I don't know how this actually works, but who decides which bit you see. If you want to see your record in the obstetric

department, can you also see the record in the dermatology department, in the psychiatry department? Does that give you access to all bits of the record or only segments of it?

In general practice, do you get access to the free text, all these notes that have been written about you, or just the coded information, such as the diagnosis and what treatment you've been under?

MS FRASER BUTLIN: Thank you, Professor.

Those are the questions I had for Professor Armstrong but I'm conscious we need to take a brief break to see if there are further questions from the Recognised Legal Representatives.

SIR BRIAN LANGSTAFF: Yes, we'll do that. How long do you think you might need?

MS FRASER BUTLIN: I don't anticipate needing very long. Perhaps 15 minutes, sir, would suffice.

SIR BRIAN LANGSTAFF: Well, let's say not before 3.30. If it's longer than that, of course, it's longer than that and we'll let the professor know.

Professor, this is a break in evidence. You're under oath and you mustn't discuss the evidence you've given or anything that you may yet feel you might be asked about with anyone, whoever they are, but you can talk about anything else you like.

A. Okay, thank you very much.

SIR BRIAN LANGSTAFF: And not before 3.30, that's because those who are Core Participants have a right to think of what questions they want to ask you through counsel about what you've been talking about.

A. Of course.

SIR BRIAN LANGSTAFF: Not before 3.30.

(3.12 pm)

(A short break)

(3.44 pm)

SIR BRIAN LANGSTAFF: Yes.

MS FRASER BUTLIN: Thank you.

I just have a handful of matters. First of all, do you have any familiarity with open records as opposed to closed recordings in hospitals? Open records, where doctors could simply go and get the medical records, as opposed to closed records, where medical record officers provided them to clinicians? Is that something you've ever come across?

A. No. I think just -- I'm sure clinicians occasionally I would go into the Medical Records Department and retrieve a note, some records, simply because they were frustrated they hadn't arrived. I'm sure they could go and do it, but most of it was done by the administrative machinery that delivered the notes to the right place at

the right time.

Q. Are you aware of a situation where very old medical records have been sent to local public archives or libraries? Do you ever come across that?

A. No, there are -- I know one or two cases where old records have gone to the Wellcome Trust, which has got a history department, because they were seen as of historical interest. So some of them could have gone there. But of course nowadays, with data protection, it's not so easy just to transfer notes where you want them. I can't think in the past any public repository -- they weren't seen as important, I think, in the past. They were seen as -- they were simply the shorthand for the clinician to recall which patients they'd seen last.

So for a lot of people those records were not seen as important.

Q. Are you aware of anything relating to Scottish trusts using microfiche records?

A. I'm sorry, I don't know anything.

Q. Moving forwards to more modern day times, do you have any awareness of some hospitals who are only now moving to electronic records?

A. I'm afraid I don't know the national picture. I would imagine every hospital will have some degree -- the

thing is, it isn't a one-off for everything. There will be phases of it. As I said, in general practice, it started off with prescriptions, that was automated, and then other things were added. In the same way, appointment systems for hospitals will be digitised now, but some of the record will not be digitised. So it will vary. And I can imagine different hospitals will have different rates and some will be wholly digitised whereas others will still be using legacy systems in some way.

Q. You spoke about particular issues arising now where people have lifelong chronic conditions and particularly where they are multifaceted. Do you think that haemophilia is a good example of a condition where it is lifelong and therefore whole life records should be kept?

A. Yes, indeed. That's why -- that's a curious thing that eight years or ten years after treatment the records should be disposed of, doesn't make sense. Because you could be getting treatment but -- you could be getting it at home but you're still getting treatment. So the fact the hospital isn't delivering the treatment doesn't mean the record should go. So I'd have thought nowadays, with the recognition of long-term conditions, which, as I said, are very, very common, and multiple

long-term conditions are very, very common, there's no reason to dispose of records until well after the patient has died, and then only on the grounds that -- this is data protection, that somehow -- that the patient's personal data, should that be released into the public domain? And I think there are questions around that.

Q. And leading on from that, particularly in the context of those with hepatitis B, hepatitis C, and/or HIV, would that add to the picture of needing lifelong records?

A. Yes, absolutely. Though maybe at the time some of these diagnoses were made, they perhaps didn't realise what long -- for example, with hepatitis C, some of the consequences of hepatitis C might take decades to emerge. And at the time when hepatitis C was diagnosed a lot of clinicians wouldn't have been aware of that. So they might not have seen that these needed keeping for long-term reasons. But nowadays, we now know that all of those hepatitis viruses and HIV have got long-term consequences for the patient or may have long-term consequences for the patient, and therefore those records should be of value right the way through the patient's life.

Q. And in today's world, if somebody goes to a different hospital and provides their patient number, can the

clinicians at that different hospital access records using that patient number?

A. Yes, they can request the other hospital, "Please send over Tom Jones's records". Whether they will get that quickly, whether it will be acted upon, is another matter. I mean, sometimes it happens, especially if the consultant is very insistent that this record is very important for the ongoing care of the patient, and sometimes it'll go to a record department or whatever where it's -- you know, so somebody has got to act on that request. Whether it's in a physical folder or it's a digital readout, they've then got to transfer that digital readout somehow to the new hospital. So it isn't straightforward, though it is possible.

Q. In a similar vein, if a patient is away from home and requires emergency treatment at a different trust, how can the treating trust ascertain special treatment regimes or anything like that on an emergency basis?

A. That's more difficult. What they could do, and they sometimes would do, they would phone the consultant who's giving the care at the home hospital and ask them to look up on the digital record what sort of therapy is this patient getting at the moment, or what are the problems this patient has got, so that there can be that, but it requires a personal sort of message, email,

phone call, whatever, to get that. It isn't as if the system allows it. It's got to be a personal intervention.

Q. When there is access to an electronic medical record, is there different access for, say, consultants compared to nurses compared to receptionists, or is access to the electronic record open to everyone?

A. It tends to be open. If you've got access to it, it's open. Which is an issue for, you know, who can see what's in it. But as I said, because it is moving much more towards a shared record, both shared within the healthcare team, which includes a lot of people nowadays, as well as with the patients, then, yeah, we accept that it is a much more open record.

Q. Finally, when you describe situations where the GP can see a hospital record were you meaning geographically that's been set up --

A. Yes.

Q. -- or between particular Trusts or specialities?

A. Yeah, it's within a locality, so one hospital will have liaised with its local GPs and set up that arrangement. So it won't be universal in the UK.

MS FRASER BUTLIN: Those are the questions I've been asked to raise, sir.

SIR BRIAN LANGSTAFF: Yes, well, a handful of questions,

just following on from that last.

A little while ago there was talk of a mega computer linking all the hospitals in the NHS, and I think some investment was made into achieving that and it came to nothing very much, I think.

A. Mm-hm.

SIR BRIAN LANGSTAFF: What happened to it?

A. Well, I think that was probably Connecting for Health -- I think was the name of that initiative. And, as usual with big IT projects, they often fail and I think they fail for a number of reasons, partly the hardware, getting all those computers to talk to each other and the software to manage that, is difficult. The technical problems around it.

But also there's ways of doing things which different hospitals and different consultants have evolved over time. And so they find it very difficult to adapt to a completely new case record. They haven't seen that before. They're used to the one they see every day, and to impose a different one on different hospitals is rather difficult, especially as some specialty hospitals, if you've got, you know, a specialty in neurology hospital -- in London, the Queen Square, for example, or a maternity hospital, like Queen Charlotte's, they will have different needs in

terms of their records. So it's difficult to get a one-size-fits-all for medical records, so I think that's the problem.

So I'm sure there will be further attempts but I'm not sure that the grand designs ever work in these circumstances.

SIR BRIAN LANGSTAFF: You mentioned earlier the great advantage which there had been, at least in antenatal care when patients have their own records. They take their records with them, rather than left them at the hospital. And that, I suspect, was probably talking about paper records, rather than electronic records.

A. Yes, yes.

SIR BRIAN LANGSTAFF: What, if any, difficulties do you see, or advantages do you see, in the patient having a digital passport which they can take with them?

A. What an interesting thought. Yeah, maybe that could be in the future, that they could have that -- I mean, at the moment they can carry some. You know, there are now apps which enable you to carry some health records with you but the whole idea that you carry your own record with you, I guess the hospital will require some access to that record, simply because when the consultant sees a patient, either in the hospital or in outpatients, they usually write a letter to the GP to inform --

because the GP -- in the British system, the GP is responsible for your ongoing care and they sort of lend the patient to the hospital for specific periods of care, and then they are meant to return them to the GP.

So there's lots of letters going to the GP saying, "I have seen your patient and this is what I want from them".

So these letters have got to be written and they've got to be somehow incorporated in the record and they're usually written after you've seen the patient, not immediately at the same time. So there's that difficulty.

There's also the difficulty of when you get results of tests, which might be days or even weeks after you've organised the test, then how would that get filed in the patient's app or whatever it was? Maybe technically it can be solved, but that, you know, from the history of obstetric records, that is a solution at least to losing records: that the patients would look after them much, much better, I'm sure.

SIR BRIAN LANGSTAFF: It doesn't have to be, of course, one person looking after the same records, because data, of its nature, is not confined to a document any longer.

A. Indeed.

SIR BRIAN LANGSTAFF: If it's data online --

A. Yeah.

SIR BRIAN LANGSTAFF: -- then the data can be -- the same information can come from different sources.

A. Yes, absolutely. Yes, as long as you can manage the security, because obviously it's much more sensitive data, and as long as you can manage security access and things. But I guess some of the big social media firms have managed that, with passwords and things, to enable you to protect your own data. But it is a thought for the future.

SIR BRIAN LANGSTAFF: I mean, it may be a very simple example, and it may not help with the totality of the patient record, but in the recent Covid outbreaks, and people travelling abroad, there is an app which, certainly in personal experience, downloads pretty well instantly every inoculation in respect of Covid whenever and wherever it arises. Simply by using the NHS number.

A. Yes, yes. I've used it too. You're absolutely right. So maybe that system could be extended over time.

But if it is extended, I think it would be better to do it incrementally rather than the sort of big bangs, which don't seem to work. But an incremental movement towards online records would solve a lot of problems, I think.

SIR BRIAN LANGSTAFF: Well, if it would, then what I would

ask you to do is give it some thought before we meet you again in the near future, just to see if there are any problems with it.

A. Right.

SIR BRIAN LANGSTAFF: Because the last thing anyone wants to do is recommend something which actually turns out to be the wrong choice.

A. Sure, yeah, yeah. It's an interesting idea. Thank you.

SIR BRIAN LANGSTAFF: The next question is to do with other sets of statistics which are available electronically. The hospital episode statistics, HES, contain quite a bit of information about patient visits to hospital, don't they?

A. Mm-hm, yes.

SIR BRIAN LANGSTAFF: Is that a system which operates in the same way across all the hospitals, at least in England and Wales?

A. Yes. Yes, it is.

SIR BRIAN LANGSTAFF: So it may not be entirely accurate because it may depend upon the input. How does that link up with patient records?

A. Well, it's a slightly different system. So the hospital has got to give a return to the Department of Health about all its activity. So it will be the main activity which will be coded, so they will say that this patient

had this diagnosis, were in for so many days, and so on, but doesn't have details about the care they received, for example which drugs they received or which operations they received might not be all covered in that. So it's rather schematic.

But where it is useful is where the GP record, which in its entirety can now be collected online -- as I said, I have used it, these are pseudonymised records so I've no idea who these patients are, but I can collect that data and now through record linkage you can get the linkage to the hospital record as well, to HES as well. So I can see, for all those patients, which of those patients who had that cancer went into hospital for an operation for that cancer. So this linkage can now be done.

It's a bit time consuming and it costs researchers like myself some money to do it but it can be done.

But a lot of that record linkage, of course, works in all sorts of other ways. Nowadays, we are getting more and more linkages with different datasets, so we can do research on them but, of course, there are ethical issues about you've got to maintain confidentiality, and so on, all the way through, and each time you pull in another linkage, it increases the risk of being able to identify individual patients,

which you can't do, obviously.

SIR BRIAN LANGSTAFF: So and presumably you may want someone's consent if their data is going to be subject to research?

A. Indeed, yes.

SIR BRIAN LANGSTAFF: The next question is about culling, where you made a powerful case for saying, well, records simply can get too big for you to find anything quickly that may be meaningful, and you don't have very long necessarily in a diagnostic interview at a GP's surgery. So culling might be an answer.

Is it a problem with culling that it is looking for someone to identify a particular condition, whereas in practice quite often some conditions the GP hasn't really got a firm idea, or the hospital clinician hasn't got a firm idea what the diagnosis actually is. He knows what the symptoms the patient is complaining about, and in a sense those symptoms are more fully described the more documents there are in the bundle.

A. Yeah, yeah.

SIR BRIAN LANGSTAFF: So how does that work? If you cull, you may lose all that valuable history.

A. Yes, one of the more common diagnoses in general practice certainly these days is medically unexplained symptoms which are -- by definition, nobody quite

understands what they are. The patient has still got the symptoms, they've got the pain, they've got whatever it is, but the doctor can't find anything wrong in a physical sense. And often those patients go through all sorts of investigations, all sorts of journeys through the NHS trying to sort them out, and I agree a lot of that information is of importance. But it depends who does the culling. If that's left to the trainee GP or the junior doctor in the hospital, will they appreciate that those little telltale signals one day will all add up to something significant?

So the danger is that if you -- you will cull out -- you will prune out the wrong things. So it's a cost and benefit. If you can cull it down and you can see a much clearer picture of the patient's problems, that's great for clinical care, but at the same time you might lose some of these essential flags which will tell you what's really wrong with the patient.

SIR BRIAN LANGSTAFF: Yes. I suppose it wouldn't really -- or would it? -- be a job for the medical records officer? They'd have to be pretty experienced clinically. What sort of qualifications -- what interests somebody in a career in medical records? What is the career structure? Is there one?

A. I don't know, but obviously they don't exist anymore in

the same way. Now you'll have the IT specialist who is running the show. But I guess it's the same sort of skills as a librarian, it's filing and retrieving documents on a massive scale in a systematic, hopefully systematic, massive scale. So it's a sort of -- whatever skills you need to be a librarian, I suppose. I'm not sure what they would be.

SIR BRIAN LANGSTAFF: Those that might be interested in reading books. I'm not sure the same necessarily applies to other people's medical records.

A. No, no.

SIR BRIAN LANGSTAFF: Yes. I think that's all the questions which I have. Thank you.

A. Thank you.

MS FRASER BUTLIN: We'll obviously be hearing from Professor Armstrong again in early October, sir.

SIR BRIAN LANGSTAFF: Yes, we shall. We do offer all our witnesses, and therefore this is no exception, the chance to say something if they want at this stage. Feel free. You don't have to but if there is something you wanted to tell us about what you've been talking about or anything else that crosses your mind, please do so.

A. I don't think I've got anything to add to what I've said. Thank you.

SIR BRIAN LANGSTAFF: Just let me thank you very much indeed. You've given us a great foretaste of what is to come, and you're such an enthusiast for your subject, it gets infectious. So thank you very much.

A. Thank you. Thank you very much.

(Applause)

SIR BRIAN LANGSTAFF: Ms Fraser Butlin?

MS FRASER BUTLIN: Tomorrow we will be hearing from Susan Douglas, followed by a presentation on the destruction and retention of medical records.

SIR BRIAN LANGSTAFF: Yes, so Susan Douglas, the journalist who wrote The Mail on Sunday article back in 1983?

MS FRASER BUTLIN: Indeed.

SIR BRIAN LANGSTAFF: Thank you.

(4.04 pm)

(The hearing adjourned until 10.00 am the following day)

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