

Friday, 23 September 2022

(9.59 am)

**SIR BRIAN LANGSTAFF:** Good morning, Baroness.

**THE WITNESS:** Good morning.

**SIR BRIAN LANGSTAFF:** Now, let me explain the arrangements.

You're talking here directly to an audience which contains participants and members of the public. On your left, there are lawyers representing various different interests in the Inquiry. At the back, there is representative of the press and some others. But beyond this room, you will be talking to those in a breakout room but, more particularly, a larger audience online, watching either on YouTube or live stream, probably numbering in three figures somewhere. Ms Richards will ask you the questions in a moment or two, once you've been sworn. Mary will invite you to take the oath in a moment.

Mary.

**BARONESS DAWN PRIMAROLO (affirmed)**

**Questioned by MS RICHARDS**

**MS RICHARDS:** Baroness Primarolo, I'm just going to start with a brief overview of your career. You became an MP in 1987; is that right?

**A.** That's correct.

**Q.** Now, between 1992 and 1994, you were Shadow Spokesperson

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for Health. What did that entail?

**A.** I was in a team of Members of Parliament from Her Majesty's Opposition, led by David Blunkett, who was the shadow Secretary of State, and our role as Her Majesty's Official Opposition is to try to hold the Government to account for its policies and the discharging of those policies through the Health Service.

**Q.** In 1997, when the Labour Government came in, you became financial secretary at the Treasury from '97 to '99 and then Paymaster General from '99 until 2007. Can you just outline what each of those roles entailed?

**A.** Sorry, could you repeat the date again?

**Q.** '97 to '99, Financial Secretary at the Treasury?

**A.** Yes. Yes. After the election of the Labour Government in 1997, I moved to being a Treasury Minister, a Minister of State. My responsibilities were in the area of taxation and I covered a wide range of policies through what was then Her Majesty's Customs & Excise and the Inland Revenue, and I had responsibility for ensuring the development of policy as agreed with the policy team and, in particular, the Chancellor of the Exchequer.

That later became HMRC, Her Majesty's -- I can't remember --

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**Q.** Revenue and Customs.

**A.** Thank you. Thank you for the prompt. I was the Minister that merged the two departments under policy development within the Labour government. So, essentially, my policy responsibilities were the same, although my title changed to Paymaster General. And, within that, I had primary responsibility for ensuring that the budget policy was developed and available for the Chancellor of the Exchequer then to agree or disagree with.

**Q.** Then on 28 June 2007, you took up a role at the Department of Health, as Minister of State for Public Health and you held that role until the 8 June 2009?

**A.** That's correct.

**Q.** Obviously, that's what my questions will be focusing on today. Just to put it into a broader political context, that was the point at which Gordon Brown succeeded Tony Blair as Prime Minister?

**A.** That's correct. Gordon Brown became Prime Minister in the June and it was part of the reshuffle, as he moved to Number 10 to become Prime Minister.

**Q.** Having spent approximately two years in that role at Department of Health you then moved to become Minister of State for Children, Young People and Families, and you held that role until the General Election in 2010?

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**A.** That is correct.

**Q.** Then you remained an MP, 2010 to 2015, in opposition and then became a member of the House of Lords in 2015?

**A.** That is correct, from 2010 to 2015 I was elected a Deputy Speaker of the House of Commons and I retired in 2015.

**Q.** Now, in terms of your role as Minister of State for Public Health, you succeeded Caroline Flint, from whom the Inquiry has recently heard?

**A.** That is correct.

**Q.** In terms of the ministerial team, you've set it out in your statement, so if we just put that on screen.

Lawrence, WITN5494001 please, page 11.

We can see in paragraph 2.2 you've described the ministerial team during your time as Minister of State for Public Health; the Secretary of State was Alan Johnson; Minister of State for Health Services, Ben Bradshaw; Minister of State for Public Health you; Parliamentary Under-Secretary of State for health, Ann Keen; Parliamentary Under-Secretary of State for Care Services, Ivan Lewis and then Phil Hope; and then Parliamentary Under-Secretary of State in the Lords, Professor Lord Darzi.

For the benefit of those following, we do have a statement from Mr Johnson, we don't need to put it on

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1 screen but the reference is WITN7197001. I think his  
 2 time as Secretary of State effectively coincided largely  
 3 with your time as Minister of State?  
 4 **A.** I believe it did, yes.  
 5 **Q.** Now, you've told us -- we can take that town, thank you,  
 6 Lawrence.  
 7 You told us that policy making in relation to  
 8 blood transfusion and blood products and hepatitis fell  
 9 within your areas of responsibility as the Minister of  
 10 State for Public Health.  
 11 **A.** That is correct, yes.  
 12 **Q.** But you had a number of broader public health  
 13 responsibilities as well?  
 14 **A.** I did, yes. Very broad.  
 15 **Q.** You've also told us in your statement that you had no  
 16 clinical or scientific background of your own, and you  
 17 didn't have a Special Adviser in your role as Minister  
 18 of State?  
 19 **A.** I didn't have a scientific background, no. And, as  
 20 a Minister of State, I didn't have a Special Adviser  
 21 attached only to me, no.  
 22 **Q.** So you've said in your statement you were therefore  
 23 heavily dependent on civil servants' advice but you  
 24 describe your role as being to scrutinise that advice,  
 25 ask questions and illicit further information in order

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1 to reach a considered opinion; is that right?  
 2 **A.** That is correct, that would be the role of any minister.  
 3 **Q.** We'll explore how that played out in relation to issues  
 4 that the Inquiry is considering in due course.  
 5 Do you have any knowledge of how different areas  
 6 of responsibility were allocated to different ministers?  
 7 **A.** Could you be clearer what you mean by that?  
 8 **Q.** In terms of blood transfusion, blood policy, hepatitis  
 9 falling within your area of responsibility, did that  
 10 come within the title of Minister of State for Public  
 11 Health, essentially, or do you know how it was decided  
 12 and by whom that one minister would be responsible for  
 13 one type of issue and another would be responsible for  
 14 a different range of issues?  
 15 **A.** Forgive me, I don't think I can answer that question, of  
 16 how it was allocated to me. When the subject emerged,  
 17 I was told it was within my brief. But it wasn't  
 18 specifically listed, so I'm not sure I can answer your  
 19 question directly.  
 20 **Q.** In terms of interaction with the Secretary of State and  
 21 your fellow ministers, were there regular meetings  
 22 between ministers at the Department?  
 23 **A.** Yes.  
 24 **Q.** Would they be weekly or was it on a more ad hoc basis?  
 25 **A.** No, it would be on a regular basis that there would be

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1 a ministerial meeting. It was regular. I think it was  
 2 approximately weekly. I -- to be honest, I can't quite  
 3 remember now, but it was very regular. Those would be  
 4 the formal meetings where the ministerial team would be  
 5 reporting back to the whole team, to looking at issues  
 6 that were arising that we all should be aware of. And,  
 7 in addition, there would be informal one-to-one meetings  
 8 with the Secretary of State, as and when was necessary.  
 9 **Q.** To what extent did you have regular interaction with the  
 10 Chief Medical Officer?  
 11 **A.** I'm afraid I can't actually remember that. Because  
 12 I would see a huge number of officials of -- forgive me,  
 13 my memory doesn't -- I can't answer that question.  
 14 **Q.** We will see from some of the documents we look at the  
 15 role of your Private Office, and we've had that  
 16 explained by other ministers, and we'll see your  
 17 interactions with civil servants dealing with blood  
 18 policy. At the highest level of the Civil Service in  
 19 the Department of Health, the Permanent Secretary level,  
 20 did you have much by way of interaction with the  
 21 Permanent Secretary or was that something that was  
 22 essentially undertaken by the Secretary of State?  
 23 **A.** That relationship is, essentially, a Secretary of  
 24 State's role, I can't say I never met with the Permanent  
 25 Secretary on individual issues but I would be

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1 speculating. I'm afraid it would, if you like, the flow  
 2 of information would be Permanent Secretary to Secretary  
 3 of State. I was lower down the pecking order.  
 4 **Q.** Now, you've told us in your statement you had some  
 5 knowledge of the position of those infected through  
 6 blood or blood products with hepatitis and HIV as  
 7 an opposition MP and from your constituency work. Apart  
 8 from that, did you have any other particular knowledge  
 9 of these issues or did you receive any briefing on these  
 10 issues when you took up your post?  
 11 **A.** The knowledge that I had came more specifically from my  
 12 role as a constituency MP, and I do not lay claim to  
 13 that being extensive, from what constituents would have  
 14 told me.  
 15 In terms of, if you like, a position briefing, if  
 16 that's what you're asking -- you're asking as I became  
 17 a minister, did I get --  
 18 **Q.** Yes.  
 19 **A.** No, I didn't get a --  
 20 **Q.** So was it very much a question of as and when issues  
 21 came to your Private Office, you would then be expected  
 22 to acquaint yourself with what that issue was and there  
 23 wasn't any kind of training, instruction, briefing  
 24 formally provided at the beginning of your time as  
 25 minister?

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- 1 A. No, there wasn't any briefing or instruction given at  
2 the beginning of my time as Minister. Ministers are  
3 expected to go in and start work.
- 4 Q. You've exhibited to your statement -- I don't think we  
5 need to look at it -- some of the occasions in which  
6 you'd either raised matters as a constituency MP or  
7 matters had come across -- or come to your attention as  
8 an opposition MP or Shadow Spokesperson for Health.  
9 Would it be right to understand that although you knew  
10 that people had been infected through blood and blood  
11 products and you understood that that was an appalling  
12 thing, you didn't have any kind of detailed knowledge of  
13 the circumstances in which NHS treatment had infected  
14 thousands of individuals?
- 15 A. Could you be a bit more specific about what you mean by  
16 "circumstances" before I answer you.
- 17 Q. Yes. Let me try to rephrase it.  
18 The documents you've exhibited to your statement  
19 show that you, for example, as a constituency MP had  
20 raised matters relating to the position of those who  
21 were -- had been infected. There's some I think  
22 correspondence with Frank Dobson in the late 1990s, for  
23 example.
- 24 A. **(The witness nodded)**
- 25 Q. So you had undertaken the normal role of

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- 1 a constituency MP, raising matters of concern to your  
2 constituents.
- 3 Did you have any particular knowledge of how it  
4 had come about that so many people had been infected  
5 with hepatitis or HIV in the '70s and in the '80s, in  
6 particular?
- 7 A. Forgive me, in order to answer that question I'd have to  
8 speculate about what I knew. And I'm not as clear on  
9 that as perhaps I -- you would hope I would be. What  
10 I can only say is what my motivation would have been, is  
11 that I understood that individuals had received  
12 a treatment for which there was high expectations within  
13 the health community which turned out not to be the  
14 case, and as a result of that, infected and affected  
15 people were suffering, suffered badly as a consequence.  
16 So I understood at least that point, and that I should  
17 pursue on the questions that were being asked of me  
18 through to the minister responsible. And I did it first  
19 to Stephen Dorrell, as Secretary of State, and then  
20 carried it across after the election of the Labour  
21 Government. That, I think, would be the extent.  
22 I didn't have detailed scientific -- or a sequence of  
23 dates to understand how that happened. Is that what  
24 you're asking me?
- 25 Q. Yes. Yes, thank you.

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- 1 Had you -- prior to your taking up your role in  
2 1997, had you directly met affected individuals or their  
3 family members, as far as you can recall?
- 4 A. I would only be able to assume that in my constituency  
5 surgery, where I would have seen constituents, I would  
6 have met an individual or individuals there. I don't  
7 recall meeting representative groups or being asked to  
8 do that at any point.
- 9 Q. Then during your time as Minister of State, first of  
10 all, to what extent, more generally, did you meet  
11 patients during that period, or representative groups of  
12 patient organisations?
- 13 A. As a Minister of State, obviously the duties are very  
14 wide-ranging, from signing letters through to reading  
15 policy documents, to undertaking visits, and to  
16 meeting -- having a series of meetings. And every day  
17 would be full of meetings. The majority of those  
18 meetings would be direct engagement with the Department  
19 or the relevant policy unit. For instance, if it was  
20 the Food Standards Agency, I would be at the meeting and  
21 dealing directly with them.
- 22 I would meet, under some circumstances, groups  
23 that were directly connected to the Department that  
24 wanted to express a view to me directly. But ministers  
25 are not necessarily -- ministers are not regularly

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- 1 meeting with a whole range of individuals or people who  
2 would want to see them. There has to be some sort of  
3 way of dealing -- it would be impossible to see  
4 everybody. But I can't say I never saw people, but ...
- 5 Q. During your time as Minister of State for Public Health,  
6 as far as you can recall, did you meet any of those who  
7 had been infected with hepatitis or HIV or whose family  
8 members had been infected with hepatitis or HIV?
- 9 A. I'm afraid I really can't remember. We're talking  
10 about, over the course of my ministerial time, hundreds  
11 and hundreds of meetings, and they're all pressing.  
12 Forgive me, I can't remember, I'm sorry.
- 13 Q. Can I just ask you a little then, next, at quite  
14 a general level about the extent of any interactions or  
15 dealings with the devolved administrations. Either on  
16 public health generally or specifically relating to  
17 matters relating to blood policy. We'll see a degree of  
18 interaction with the Scottish Executive.
- 19 A. **(The witness nodded)**
- 20 Q. Scottish Government, in relation to the Penrose Inquiry  
21 as we look through some of the material that you  
22 referred to in your statement. But more generally, was  
23 there much interaction at a ministerial level with  
24 colleagues in Scotland or Wales or Northern Ireland on  
25 public health matters?

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1 A. If it was required, I would be in contact with the  
2 minister in Wales, at the time I think was Edwina Hart,  
3 and with the Health Minister in Scotland, who I think to  
4 begin with was Nicola Sturgeon. That changed. There  
5 would be a range of issues that would affect all three  
6 of us that there would need to be discussion on, but  
7 it didn't arise that often.

8 Q. Do you have any knowledge of the extent to which there  
9 was interaction at an official level on a regular basis  
10 between Department of Health and the devolved  
11 administrations?

12 A. I'm afraid I couldn't comment on that, no. I don't  
13 know.

14 Q. Then you'd come to the Department of Health obviously  
15 after a number of years at the Treasury. As Minister of  
16 State for Public Health, did you have many dealings with  
17 the Treasury in terms of bids for expenditure or budgets  
18 or the like?

19 A. No. The Ministers of State would pass information to  
20 the Secretary of State. Engagement with the Treasury,  
21 because it would be directly Secretaries of State to the  
22 Chief Secretary, that would be the normal flow. You  
23 can't -- no, I wouldn't, directly as a minister.

24 Q. Now, I'm going to start now by looking at the issue of  
25 engagement with or interaction with the Archer Inquiry,

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1 Secretary of State. Would it have been open to you,  
2 however, to take a different course and to change that  
3 decision in principle?

4 A. The -- I -- could I have changed that? I would have had  
5 to have -- I could if I could demonstrate, because  
6 I personally wouldn't make that decision. You're asking  
7 me to speculate what I could have done.

8 Q. Yes.

9 A. That's very difficult. I could have gone to the  
10 Secretary of State and asked that that be reconsidered,  
11 I think.

12 Q. Did you ever, as far as you can recall, think about  
13 doing so?

14 A. The first thing I did was to ask for the rationale, of  
15 why not supplying witnesses directly to Lord Archer's  
16 Inquiry had been made. And it was explained to me,  
17 which I have explained in my statement --

18 Q. Yes, absolutely.

19 A. -- the reasons, the length of time, availability of  
20 those directly involved, no longer being with the  
21 Department and the officials in place having not been  
22 connected to it. And therefore, the release of all the  
23 documents and the informal, as Lord Archer called it,  
24 discussions with those currently in the Department  
25 seemed to me a reasonable way forward, and I accepted

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1 during your time as Minister of State.

2 A. (The witness nodded)

3 Q. Now, obviously, again, the Inquiry has heard the  
4 position from Caroline Flint from her time as Minister.  
5 If we could turn to ARCH0000001, please. This is the  
6 Archer report published in 2009, and we'll come at  
7 a later stage of your evidence to your consideration of  
8 the recommendations in the report. But, for present  
9 purposes, if we could go to page 10, please. Top of the  
10 page, this what Lord Archer said in his report:  
11 "The Department of Health maintained its view that  
12 the Inquiry was unnecessary, and declined to provide  
13 witnesses to give evidence in public, but they supplied  
14 documents which we requested, responded to questions  
15 from us and sent representatives to three private,  
16 informal and unminuted meetings."

17 Now, you were asked about that in your statement  
18 and you explained that, in relation to the necessity or  
19 otherwise for an inquiry, you inherited, essentially,  
20 an existing policy position which was that a statutory  
21 public inquiry was not called for, and we'll explore  
22 that shortly. But, in relation to the decision not to  
23 provide witnesses to give evidence, you've said in your  
24 statement that that had been a decision taken by your  
25 predecessors, so by Ms Flint and Patricia Hewitt, as

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1 that as the reason.

2 It did become -- it came out later, post-the  
3 Archer report, that Lord Archer was requiring -- was --  
4 made a request to the previous Secretary of State,  
5 specifically with regard to officials. He didn't  
6 mention ministers.

7 So, in theory, yes; in practice, I looked at the  
8 reasons that were given, I thought they were reasonable,  
9 and therefore I pursued a line of maximum disclosure and  
10 to be as helpful as possible within the constraints of  
11 the Inquiry being a private inquiry, not a public  
12 inquiry, which you might want to come on to the  
13 complications that that presents, as well.

14 Q. It's certainly right that I think one of the reasons  
15 that was contained within the documentation that was  
16 provided to you was that the current minister's current  
17 officials wouldn't have a direct knowledge of decisions  
18 and events and the state of knowledge in the 1970s and  
19 1980s, or even indeed potentially the 1990s.

20 Do you know if the Department ever gave  
21 consideration to itself proactively contacting former  
22 ministers, former officials, to offer support, should  
23 they wish to voluntarily provide evidence to the  
24 Archer Inquiry.

25 A. I'm not aware of that, no. And you will see in my

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evidence, shortly after I became a minister, Dr David Owen gave evidence to the Inquiry, which was reported and I received briefing on that. But that was in a sense of defending, explaining, what had happened at the time. So in direct answer to your question, I am not aware that those efforts were made. Whether -- no, I won't go further because it's speculation because I'm thinking into before I was a minister and I can't answer that question.

**Q.** Then, in terms more generally of the policy at the Department that there should not be a public inquiry and that one was not warranted, can we look at a briefing from July 2007, so not long after you and Mr Johnson had assumed your positions.

It's at DHSC5011228.

We'll see it's dated 19 July 2007 from Linda Page.

If we just go a little further down we can see the purpose of this specific briefing is to brief the Secretary of State who was due to be attending the Select Committee on Health and it was anticipated that the issue of a Government sponsored public inquiry was going to be raised with the Secretary of State at the Select Committee.

If we just go up the page to see the list of those who were copied in, did this include your office?

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please, Lawrence.

We've got the heading towards the bottom of that page, "Government Backed Public Inquiry", and if I pick it up at paragraph 17:

"Successive Secretaries of State have resisted calls for a government backed public inquiry into how patients became infected with hepatitis C following NHS treatment with blood and blood products prior to the introduction of heat treatment to eliminate the hepatitis C virus on the following grounds ..."

Then over the page, we have a number of reasons set out and I just wanted to explore some of those with you, Baroness.

So the first bullet point says:

"A full judicial Inquiry would be a major, costly, and time-consuming exercise that would depend on the recollection of witnesses about events that took place twenty or more years ago. This would make it difficult to construct a clear and detailed picture of what took place."

Now in relation to an inquiry being costly and taking time, those are fairly self-evident propositions, you say in your statement, however, that in your own mind the issue of costs, although not irrelevant, was less weighty than some of the other factors that were

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**A.** Yes. I, from recollection, I think Jacky -- at that point Jacky worked in my Private Office, yes.

**Q.** And this isn't a question, but this is just an observation for the benefit of others, we can see the last three names are from the -- what's in brackets against each name, SEHD will be Scottish Executive Health Department, and then WAG and DHSSPNI are the Welsh and Northern Irish administrations. So we can see at least this document being copied more widely.

Then if we go to the bottom of the page, we've got "Lines to Take" as a heading, then paragraph 4 reads:

"The line to take as agreed with Ministers previously is ..."

Then if we go over the page and we have a broad summary of the line to take:

"The Government has great sympathy for those infected with hepatitis C and HIV. The Government has considered the call for a public inquiry very carefully. However, we believe the Government of the day acted in good faith, relying on the technology available at the time and therefore we do not consider that a public inquiry would provide any real benefit to those affected."

So that's the broad line to take.

If we could then go to the bottom of page 3,

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put forward to you over the course of the two years you were in office; is that right?

**A.** I did say that, yes.

**Q.** In relation to the issue about the difficulty of constructing a clear and detailed picture of what took place, it might be said that's something of an assumption on the part of civil servants, because witnesses would have documents to prompt memory, which might help at least a reasonable construction of what took place. Would that be a fair comment in your view?

**A.** It is an opinion, isn't it? That could be constructed. But that wasn't the major bullet point that I was concerned with.

**Q.** Then the next bullet point is this:

"An inquiry would not add significantly to our current understanding of how the blood supply became infected with Hepatitis C, or the steps needed to deal with problems of this kind now or in the future."

Now, again, that rather depends upon the extent of the Department's current understanding of how the blood supply became infected with hepatitis C.

**A.** Mm.

**Q.** As far as you can recall, did you ever probe, yourself, what the current understanding was, in order to ascertain what weight might be attached to this reason?

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1 A. I think that that bullet point is tied up with a wider  
2 consideration of how it occurred, how people were  
3 infected, and a wider question about the developments in  
4 Health Service care over that period of time, and so  
5 I think you will see in later comments that I make --  
6 because these are recurring themes --

7 Q. Yes.

8 A. -- I was trying to drill down, if that's a fair enough  
9 analogy, into how knowledge could or couldn't be  
10 expanded and how our understanding could be enhanced.  
11 And that occurs subsequently.

12 So this is the first -- so this happens, forgive  
13 me, I can't remember the date?

14 Q. -- 19 July, so very early on, in terms of your time --

15 A. It's very early on, it's -- and it's a holding brief  
16 directed to the -- a brief --

17 Q. It is --

18 A. -- for the Secretary of State. So, to be honest, you're  
19 asking me about bullet points that demonstrated in my  
20 evidence that actually I required more information to  
21 sustain the observation that's there at bullet point 2.

22 Q. If we look at bullet point 2, the assertion "An inquiry  
23 would not add significantly to our current understanding  
24 of how the blood supply became infected with  
25 Hepatitis C", and then I think we look at the -- I think

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1 it's the fifth bullet point -- "no evidence that  
2 wrongful practices were employed", it's right to  
3 understand, isn't it, that this is ministers being told  
4 by departmental officials essentially, "We know what  
5 happened, and we don't think anything untoward or  
6 wrongful took place". Now, it might be said that  
7 there's an element of the Department marking its own  
8 homework to or, to paraphrase a rather more famous  
9 phrase, "They would say that, wouldn't they?"

10 Do you have any observations on that, Baroness?

11 A. The Department had, before I became a minister,  
12 undertaken two detailed pieces of internal work, which  
13 was then published and made available to the  
14 Archer Inquiry, the documentation, and so that is a view  
15 that they are expressing to the Secretary of State, yes.  
16 But that predates my tenure as a Minister of State,  
17 those two reports.

18 Q. And in terms of those reports, I think it's right to  
19 understand, and there's no criticism implied by this  
20 question, Baroness, you presumably wouldn't have had any  
21 knowledge yourself of how rigorous or accurate or  
22 comprehensive those exercises were?

23 A. Well, I would need to jump out of time sequence to  
24 answer that question, if that would be okay?

25 Q. Yes.

22

1 A. If you look at the response to -- from Liz Woodeson to  
2 me in 2009 sometime, as a result of Patience Wilson's  
3 comments to me, she talks in terms of spend that the  
4 Department has deployed: staff for over two years,  
5 trying to find some of the missing papers, categorising  
6 all the ones they had, and that it had been  
7 considered -- I can't remember her exact phrasing,  
8 forgive me -- several times by lawyers.

9 So I think that the Department was of the view  
10 that there were grounds for thinking that, and they held  
11 the line that the treatment was given in good faith with  
12 what they knew at the time.

13 Q. The third bullet point is:

14 "A public inquiry could undermine public  
15 confidence and affect the donor population, thus putting  
16 at risk the supply of blood to the NHS."

17 Was that something that you found particularly  
18 persuasive?

19 A. I don't recall that bullet point appearing again.  
20 I'm not sure that now I would agree with that  
21 proposition. It's -- public inquiries are very  
22 important, it goes without saying. I don't accept that  
23 point myself but I'm doing it from a position of I would  
24 need more justification before I accepted that line.

25 Q. And I think you're right, I don't think that does

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1 appear, at least not prominently, in any of the later  
2 material.

3 A. I don't think, no.

4 Q. Then the next bullet point again really picks up on the  
5 issue of resources, and then some issues relating to the  
6 current payment schemes, and we'll look at the position  
7 in relation to the payment schemes I think most  
8 conveniently by reference to the response to the Archer  
9 Report.

10 If we just look at paragraph 18 before we leave  
11 this document. It says this:

12 "There are a number of examples of countries such  
13 as France, Ireland and Canada where trials/inquiries  
14 have led to large compensation amounts. The  
15 circumstances are different as fault was determined,  
16 though the lobby groups do not make that distinction."

17 Now, the Inquiry has heard some evidence to  
18 suggest that a factor in opposing a public inquiry from  
19 the Department of Health's perspective might have been  
20 the fear that it would indeed lead to large compensation  
21 payments and a desire to avoid that. Was that something  
22 which you were conscious of, during your time in office?

23 A. Sorry, do you mean that the Department was motivated by  
24 compensation payments not by --

25 Q. Yes --

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1 A. -- and used that as the overwhelming reason for not  
 2 wanting a public inquiry?  
 3 Q. The Inquiry has heard some evidence to suggest, or it  
 4 might be submitted suggests, that a real reason why the  
 5 Department consistently opposed a public inquiry was the  
 6 belief that it would lead to, as it had in other  
 7 countries, recommendations for substantial compensation  
 8 which the Department did not want to have to pay?  
 9 A. No, that's not something that is an impression  
 10 that I have, that my impression, my evidence shows that  
 11 it's the question of fault liability which has wider  
 12 implications. So I don't think so, no. I'm sure I --  
 13 I'm not answering that question very adequately, but  
 14 that was not my impression at the time.  
 15 Q. Can I then ask you to look at a document which is  
 16 a letter from you to Norman Lamb MP.  
 17 It's at DHSC6548448.  
 18 It's undated, but we can see from the top it looks  
 19 like it's a letter sent in 2007, and it's responding to  
 20 a letter of 30 July, so presumably 30 July 2007, to  
 21 Alan Johnson.  
 22 Now, first of all, if we just scroll down the page  
 23 a little, evidence that the Inquiry has heard from other  
 24 ministers has explained that, generally, these types of  
 25 letters were not drafted directly by the minister but

25

1 would be drafted by officials within the Department on  
 2 behalf of the minister. Would it be right to understand  
 3 that, again, this would have been the text of a letter  
 4 supplied to you for you to approve?  
 5 A. Yes, that's correct, I wouldn't have written this  
 6 letter. It was drafted for me.  
 7 Q. Then we've got the general line to take in the second  
 8 paragraph about sympathy. The third paragraph refers to  
 9 interaction with the Archer Inquiry. The next paragraph  
 10 refers to one of the reviews, the internal reviews that  
 11 you've spoken about.  
 12 Then we have the last paragraph on the page which  
 13 says this:  
 14 "Turning to your comments about the Republic of  
 15 Ireland, it has never been established that any wrongful  
 16 practices were employed in the UK which is why  
 17 successive Governments have concluded that a public  
 18 inquiry is not justified."  
 19 Now just pausing there, it could be said that  
 20 there's an element of circularity about that reasoning,  
 21 because without a public inquiry, how is anyone to  
 22 establish whether wrongful practices were or were not  
 23 employed? Do you have any thoughts on that?  
 24 A. To call -- I'm trying to be fair and answer your  
 25 question, if I can. For a public inquiry -- in my mind,

26

1 for a public inquiry to be called, there has to -- there  
 2 are criteria, albeit non-specific, but that something is  
 3 not right. Something has gone wrong. And so the  
 4 question of wrongful practices is about: was there  
 5 a reason that meant that a further, more detailed  
 6 consideration, a full public inquiry, was the way  
 7 forward?  
 8 I can see the point that you are making now.  
 9 Hindsight is good. But at the time the Department was  
 10 holding to a line with evidence given to ministers,  
 11 justifications given to ministers, that there wasn't  
 12 a fault, it wasn't deliberate, there hadn't been errors.  
 13 It was the best -- they based it on the best information  
 14 they had at the time.  
 15 I'm not sure that quite answers your question.  
 16 But I don't feel that your direct proposition -- it's  
 17 a bit more complex than that, to be frank.  
 18 Q. I'll pick up, I think, the essential point you were  
 19 there making, as I understand it, and please correct me  
 20 if I'm wrong, Baroness Primarolo, is that irrespective  
 21 of the wording of this letter, is this right: you are  
 22 saying that for there to be a public inquiry, there  
 23 would need to be some cause for concern that there were  
 24 things that needed investigating.  
 25 A. I'm only referring to how I personally think.

27

1 Q. Yes.  
 2 A. It's not for a Minister of State to call a public  
 3 inquiry -- a Secretary of State probably to  
 4 Prime Minister -- and that it's quite a high bar to get  
 5 one, and it tends to revolve around this question of  
 6 liability. And that's what I'm saying. It's a very  
 7 complex series of considerations that do not fall  
 8 directly to a Minister of State, although as you can  
 9 see, inevitably, I was involved in the managing of the  
 10 policy.  
 11 Q. We'll come back to that a little later in your evidence,  
 12 to some of those issues. I just want to then look at  
 13 the next sentence with you, which says this:  
 14 "Donor screening for hepatitis C was introduced in  
 15 the UK in 1991 ..."  
 16 Correct so far.  
 17 "... and the development of this test marked  
 18 a major advance in microbiological technology, which  
 19 could not have been implemented before this time."  
 20 Now, the Inquiry knows, and the Department knew,  
 21 that there had been a judgment of the High Court  
 22 in 2001, under consumer product legislation, which  
 23 concluded that screening for hepatitis C could have been  
 24 introduced earlier than it was. So this statement  
 25 appears to be -- it's not the first time the Inquiry has

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1 seen it in the material -- incorrect. Did you have any  
 2 knowledge of that at the time?  
 3 **A.** I don't think I did. I would have signed a letter  
 4 drafted by the relevant policy divisions, and I would  
 5 expect that to be accurate. I would not be expecting  
 6 for the minister then to check whether what was in it  
 7 was accurate or not. I would assume that it was.  
 8 I have to work on that basis.  
 9 I don't offer this as an excuse, but, for  
 10 a minister, I would have received hundreds and hundreds  
 11 of bits of paper every day and be signing a large amount  
 12 of letters, and I felt I was -- I should be able to rely  
 13 on what the Department is telling me is correct.  
 14 Unless they've made a mistake, which they have to  
 15 then own up to, and it has to be corrected on the  
 16 record.  
 17 **Q.** Now I want to move next, chronologically, to 2008. And  
 18 the announcement of an inquiry to be held in Scotland.  
 19 So if we look, first of all, at WITN5494109.  
 20 If we go -- no, that's not it.  
 21 WITN5494019.  
 22 Sorry, Lawrence, my fault entirely.  
 23 If we go to the second page we have a clearer copy  
 24 of the document.  
 25 So we can see this is a briefing, 5 March 2008,

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1 "A further submission with legal advice will  
 2 follow -- however Scotland's decision could  
 3 significantly weaken our lines, which may be coupled  
 4 with the imminent publication of Lord Archer's review."  
 5 Then on the left side it says:  
 6 "Officials have advised that we would have a good  
 7 legal case for not joining the inquiry -- however they  
 8 are concerned re handling implications/risks re  
 9 highlighting devolution tensions and are concerned this  
 10 may become politically sensitive -- and as such is  
 11 seeking an initial steer as to whether you are still  
 12 minded to retain our current position. Your initial  
 13 views are sought before Friday."  
 14 That's the document you received and you were  
 15 asked to provide an initial view. If we go then to  
 16 WITN5494020. As I understand it, this is from you --  
 17 **A.** Yes.  
 18 **Q.** -- in response to the invitation for an initial view,  
 19 and you say:  
 20 "... for now we should hold our line. We are not  
 21 [underlined] to join Scottish Enquiry. Officials must  
 22 keep events under close scrutiny -- and report back  
 23 regularly so that I can keep our position under review."  
 24 Now, it would appear clear in terms that that was  
 25 an initial position and you were proposing to keep it

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1 from Patrick Hennessy to you, MS(PH), and if we just  
 2 look at the first paragraph, we can see it says:  
 3 "This is to advise you that the Scottish  
 4 Government intend to announce a public inquiry into the  
 5 contamination of blood and blood products with  
 6 hepatitis C and HIV in the 1970s and early 80s. It is  
 7 likely to be announced by the end of March. We are  
 8 awaiting legal opinion and will send a full submission,  
 9 covering options for the UK Government, when this is  
 10 available."  
 11 Then if we just look at the bottom of the next  
 12 page, please, Lawrence.  
 13 Paragraph 12, bottom of the page, under the  
 14 heading "Line to take":  
 15 "12. In the event that an inquiry is announced  
 16 before it is possible to consider fully the UK  
 17 implications, our line should be that ... 'We are  
 18 seeking legal advice on the implications for the rest of  
 19 the UK of the Scottish Government's decision. We have  
 20 already released all of the relevant documents held by  
 21 DH into the public domain'.  
 22 If we then just go back to page 2 of this.  
 23 I just wanted to look at the handwriting at the  
 24 top of the page. Thanks.  
 25 Someone has written:

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1 under review. But can you recall what your own thinking  
 2 was in terms of, reasonably emphatically, you underlined  
 3 "not", "We are not to join the Scottish Enquiry"; why  
 4 was that your initial thinking?  
 5 **A.** Because we should -- I should hold the Government's  
 6 current policy until I had further advice on whether,  
 7 for example, issues came to light that made it clear,  
 8 actually, that we needed to think again about our  
 9 commitment to not hold a public inquiry. Also, the  
 10 situation with regard to Scotland arose in two very  
 11 specific circumstances: one, the manifesto commitment  
 12 for the SNP, and, secondly, the ruling with regard to  
 13 the judgment with regard to, I think, was it Article 2  
 14 of the ECHR?  
 15 **Q.** Yes.  
 16 **A.** So the question was, was that relevant to England and  
 17 Wales as well? I'm not a lawyer so I needed advice on  
 18 it. What I expected, and I -- as you say, my words  
 19 speak for themselves -- I wanted everybody to keep  
 20 a close eye on it in case something did come up that  
 21 I needed to take more advice on.  
 22 **Q.** Then the fuller submission that you had been promised in  
 23 this submission, came on 1 April. So if we just look at  
 24 that, DHSC0038592\_075. We see the date at the top of  
 25 the page, again it's from Patrick Hennessy, and we can

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1 see that it's directed to you and to Hugh Taylor. Then  
 2 before we look at the handwriting, if we look at the  
 3 text, first of all, under the heading "Summary":  
 4 "This is to advise you about the announcement on  
 5 23 April of a public inquiry in Scotland. We recommend  
 6 that you maintain the position that an inquiry in  
 7 England is unnecessary."  
 8 Then there's a reference to legal opinion  
 9 supportive of that position being attached and  
 10 a background note also attached.  
 11 We'll just go over the page, please, to page 2.  
 12 We can see towards the bottom of the page we've got  
 13 "Pros and Cons for the UK Government of joining the  
 14 Scottish public inquiry", and then there's the heading  
 15 "Advantages of joining the Scottish inquiry", and the  
 16 advantages are said to be that:  
 17 "The UK Government could have some influence over  
 18 the proceedings, in particular the scope and identity of  
 19 the inquiry panel ..."  
 20 Then the second advantage is:  
 21 "Initial reaction from stakeholders and the media  
 22 would be likely to be favourable, although such a change  
 23 of direction would inevitably attract comment."  
 24 Then "Disadvantages of joining a Scottish  
 25 inquiry", if we go to the next page, this is really what

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1 be grounds for us holding it and we should decide to do  
 2 so. And I understood that the Scottish Inquiry was very  
 3 specifically to do with Scotland and, therefore, that  
 4 the -- that England and Wales should not join that  
 5 inquiry because the point of law didn't pertain to us.  
 6 That's what I understood.  
 7 I have to be honest and say I'm struggling with  
 8 you putting points to me that -- I can see them on the  
 9 page, I could pass a comment on them, but in terms of  
 10 what I was focused on, in this particular piece of work,  
 11 were slightly different questions.  
 12 Q. These are the reasons that are being given to you --  
 13 A. Yes.  
 14 Q. -- from the perspective of officials, as to  
 15 disadvantages of joining the Scottish Inquiry, and  
 16 you're absolutely entitled to say your own thinking was  
 17 perhaps slightly different or different in its emphasis  
 18 and focus. But, in part, Baroness, I'm exploring this  
 19 with you because it may provide some insight into your  
 20 officials' thinking at the time and, short of calling  
 21 every official to give evidence, inviting your thoughts  
 22 perhaps is a useful shortcut.  
 23 The second -- the next two bullet points are  
 24 "UK Government" --  
 25 A. Sorry, could I just ask you, is it -- if you're asking

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1 I wanted to ask you about. So:  
 2 "Public inquiries are very costly and the costs  
 3 are not easy to control."  
 4 We've addressed that already. That was obviously  
 5 part of the briefing that Alan Johnson had already  
 6 received. Then this:  
 7 "The UK Government would have little influence  
 8 over the direction of proceedings once the inquiry was  
 9 established."  
 10 Now, that's almost certainly right. Public  
 11 inquiries are intended to be independent of government,  
 12 but why was that a disadvantage? Isn't that just the  
 13 natural consequence of a public inquiry?  
 14 A. Yes, you're asking me about comments that are in papers  
 15 with whether or not I put sufficient -- whether I put  
 16 any store against those points.  
 17 Q. Yes, or inviting your comment on them now, looking back.  
 18 A. Um -- should I be using hindsight now? I'm --  
 19 Q. Well --  
 20 A. It's a view that was expressed. My view with whether or  
 21 not we should join or would be required to join the  
 22 Scottish Inquiry was based on a slightly different view.  
 23 There were obviously constitutional issues and  
 24 I suppose -- no, I'm not going to use that word.  
 25 If we should hold a public inquiry, there should

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1 me to speculate, the speculation is about the terms of  
 2 reference of the Inquiry, which, forgive me, I'm not  
 3 familiar with how they're determined, but there would be  
 4 some views expressed by the Department if there was  
 5 a full public inquiry that the Department had called  
 6 for. Would that not be the case?  
 7 Q. Yes.  
 8 A. It is possible -- you know, there is another reading of  
 9 that. That's not for me to speculate but nor do I see  
 10 necessarily there's a motive behind that that is  
 11 obstructive.  
 12 Q. The next two bullet points, as a disadvantage, is:  
 13 "UK Government Ministers, officials and NHS bodies  
 14 from England may be summoned to give evidence."  
 15 Then the next is that the recommendations would  
 16 apply to the UK.  
 17 Now, would you see -- did you see either of those  
 18 as reasons not to join the Scottish Inquiry?  
 19 A. No. If there's an inquiry, then those two bullet points  
 20 follow. The question is whether the Scottish Inquiry  
 21 and why it had been established, given the issues around  
 22 devolution and the complexities with this, was something  
 23 that the Department should agree to enter the Inquiry.  
 24 That's a different set of circumstances, so I think  
 25 I was concerned about it at the time. But it stands to

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1 reason there's a public inquiry, give evidence if you're  
2 required to.

3 **Q.** If we just, I think, in fairness, look at paragraph 10,  
4 that picks up on the two points that you've referred to  
5 in your evidence. It says:

6 "This is a Scottish inquiry in response to:  
7 "A policy decision of the Scottish Government, as  
8 set out in their manifesto.  
9 "A legal decision applying to Scotland (which the  
10 Scottish Government has chosen not to contest)."  
11 If we just then go to the first page of this, just  
12 to see your response, because we need to look at the  
13 handwriting for this. This, I think, is probably from  
14 your Private Office to you:

15 "This to inform you of the public inquiry in  
16 Scotland (to be announced [23 April]). Given that the  
17 existing position has not changed, and our position is  
18 supported by legal evidence, there seems no reason to  
19 change our position. Given your previous steer --  
20 I assume you are content for the [Government] to stay  
21 out of the Scottish Inquiry?"

22 If we go down we can see "Agreed" --

23 **A.** Yes.  
24 **Q.** -- and that's your confirmation on 17 April?  
25 **A.** It is, yes.

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1 candour, how much doctors disclose to their patients.  
2 That was a comment about now. I wasn't projecting it  
3 into the past, if that's what you are asking me.

4 **Q.** Yes, again, the question of what you did or didn't know  
5 about clinical practices towards those affected by these  
6 issues is something I want to come back to at a later  
7 stage.

8 **A.** Okay. Can we then just pick up a submission in  
9 November 2008, which is at WITN5494094. So we can  
10 see -- sorry, it's not a submission so much, it's "Lines  
11 to Take on the Inquiry [that's the Scottish Inquiry] and  
12 on Current Actions on Hepatitis C". Then we can see the  
13 handwriting at the top:

14 "This is the media handling for your approval if  
15 the judge in Scotland decide to effectively widen the  
16 inquiry?"

17 Then there's reference to a further submission  
18 coming and you say, "Agreed".

19 The bottom of the page gives us the date,  
20 20 November 2008.

21 If we just go over the page, we can see the  
22 "Issue" in bold print of:

23 "A judicial review in Scotland is considering  
24 whether to extend the scope of the public inquiry into  
25 the deaths of two patients from Hepatitis C, by

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1 **Q.** If we then, I think, go to your witness statement,  
2 WITN5494001, page 37. You have set out in  
3 paragraph 3.40 the factors that you think would have  
4 persuaded or the factors that would have most inclined  
5 you to agree not to join the Scottish Inquiry. The  
6 first refers to the case in Scotland. Then you say:  
7 "There is no new evidence showing lack of good  
8 faith by previous Governments.  
9 "There had been court cases and a settlement when  
10 the evidence would have been considered.  
11 "The development of policy and procedures for  
12 blood and blood product safety had continued to take  
13 a proactive approach to ensuring these treatments were  
14 as safe as scientifically possible.  
15 "Clinical practices towards patients in the NHS  
16 have been transformed to ensure patients are kept well  
17 informed about their treatments."  
18 I just wanted to ask you about that last point,  
19 because the reference there to transformation might  
20 suggest an understanding on your part that the patients  
21 who had been affected by this issue had not been kept  
22 well informed about their treatments. Was that your  
23 understanding at the time, as far as you can recall?

24 **A.** No, that wasn't my understanding. That comment is in  
25 recognition that clinical practice has changed, duty of

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1 requiring the participation of a UK Government Minister  
2 (the Advocate General for Scotland). This would  
3 effectively widen the scope of the inquiry from Scotland  
4 to the UK."

5 Now, I'm not going to go through the detail of  
6 that with you, your statement has referred to the  
7 various documents, but just so we can understand why  
8 this particular set of lines to take were being  
9 produced.

10 If we just go to the third page, please, Lawrence:

11 "Why won't the Government agree to a public  
12 inquiry in England?"

13 It says:

14 "We have considered the call for a public inquiry  
15 in England very carefully. However, as with previous  
16 administrations, the Government does not accept that any  
17 wrongful practices were employed by the NHS at the time  
18 and does not consider that a public inquiry is  
19 justified. The NHS took appropriate steps with the  
20 knowledge and technology available at the time ..."

21 Then we have, essentially, four assertions:

22 "Heat treatment of blood products -- introduced  
23 through 1985

24 "Screening of blood donations for HIV --  
25 introduced October 1985

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1 "Screening of blood donations for hepatitis C --  
2 introduced September 1991

3 "Each of these was a significant step forward in  
4 medical science and could not realistically have been  
5 introduced in England before this time."

6 Now, again, the reason I'm flagging that up,  
7 Baroness, is that it may be said that that assertion,  
8 that none of this could realistically have been done at  
9 any earlier stage, was not correct or at least that the  
10 position was rather more complicated than it might be  
11 thought from the way in which it's set out here.

12 Would it be right to understand that you would  
13 have no direct knowledge of your own with which to  
14 subject these kinds of statements to critical analysis,  
15 and you'd assume that what officials were telling you  
16 was correct?

17 **A.** I did assume that I was being given the correct  
18 information and, you know, the relationship between  
19 ministers and officials is based on mutual respect and  
20 trust. They do their job and the minister does theirs.  
21 So, yes, I had no reason to believe that that wasn't the  
22 correct information.

23 **Q.** I'm going to turn next to the response to the  
24 Archer Inquiry report. If we pick it up to start with  
25 in your witness statement -- so if we have the statement

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1 submission I received from officials following the  
2 recommendations being published. I-- yes, I did feel  
3 frustrated.

4 **Q.** If we just look at the initial submission that you  
5 received it's at WITN5494033, we can see it's from  
6 Rowena Jecock, addressed to you, dated 24 February 2009,  
7 the "Purpose" is said to be:

8 "To inform you of the recommendations of the  
9 Archer report, which was published yesterday, and to  
10 give an initial view on actions needed before the  
11 Government can respond."

12 There's then, if we go towards the bottom half of  
13 the page, a "Summary of Lord Archer's Recommendations",  
14 and just so we can follow the rest of your evidence, I'm  
15 not going to be asking you about each of these but the  
16 summary of recommendations was:

17 "Establishment of a statutory committee to advise  
18 Government of the management of haemophilia in the UK.

19 "Free prescription drugs and free access to other  
20 NHS and support services.

21 "Secured funding by Government for the  
22 Haemophilia Society ...

23 "Review of the current ex gratia payments system,  
24 including bringing payments in line with those in  
25 Ireland (very much higher than in the UK), and

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1 back on screen, please, Lawrence, WITN5494001, and if we  
2 go to page 58.

3 So we can see there the date of the report,  
4 23 February 2009. So it's now the last few months of  
5 your time as minister, although you wouldn't have known  
6 that presumably at the time, and Lord Archer's report is  
7 published in February 2009.

8 I just want to read what you say on the next page  
9 at paragraph 3.87 before we then explore some of the  
10 documents. You say this in paragraph 3.87:

11 "I was disappointed and frustrated with the  
12 options provided by Officials in response to  
13 Lord Archer's recommendations. As can be seen in  
14 further detailed exchanges between myself and Officials,  
15 I had hoped to be able to respond more positively to  
16 some of the issues identified in the Inquiry's  
17 recommendations, for example by removing the  
18 inconsistencies in qualification criteria for payments  
19 between the different Trusts."

20 So we will look at some of the detailed exchanges  
21 that you had on this issue. But that's an accurate  
22 description, is it, overall, of how you felt about the  
23 submissions and briefings and suggestions that were  
24 coming to you?

25 **A.** That was my response specifically to the first

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1 incorporating them within the DWP benefits system.

2 "Enabling haemophilia patients to have access to  
3 insurance.

4 "Establishing a 'look back' exercise to identify  
5 any remaining patients who may have been infected, and  
6 may not be aware of this."

7 Now, we'll see how those various recommendations  
8 are addressed in the submissions but I'm going to be  
9 concentrating on the issue relating to the payments  
10 system in terms of detail.

11 Then if we just go over the page, this follows  
12 a heading which is "Initial Reactions to  
13 Recommendations", then we can see "Proposal to establish  
14 a committee". There's a suggestion that there would --  
15 that they don't see the rationale for it being on  
16 a statutory basis.

17 "Free prescription drugs ... will need to be  
18 considered in light of exceptions for other long term  
19 and hereditary conditions.

20 "Secured funding for the Haemophilia Society ..."

21 Needs to be considered, it's said, in light of the  
22 funding of the third sector. Might open the door to  
23 other third sector organisations to ask for equivalent  
24 support.

25 "Review of payments system ..."

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1 It says "need to consider and carefully cost",  
 2 then it says "the financial implications are enormous".  
 3 "Access to insurance:  
 4 "- We will seek the view of the Association of  
 5 British Insurers.  
 6 "Lookback exercise:  
 7 "- There has already been one ... in the 1990s.  
 8 If it were decided to carry out a further search, we  
 9 would propose asking the UK Haemophilia Centre Doctors'  
 10 Organisation to manage it."  
 11 So those were the initial recommendations coming  
 12 to you and that's what you found to be disappointing and  
 13 frustrating; is that right?  
 14 **A.** Yes, I didn't consider those recommendations or options,  
 15 and maybe my expectation was too high. But I did expect  
 16 to be offered some options in order to progress the  
 17 recommendations.  
 18 **Q.** If we go back to the first page, there's handwriting  
 19 towards the top, it's not the very top bit of  
 20 handwriting, which is addressed to you, but it's the bit  
 21 which says, "This Report is poor I think", and then it  
 22 says, "See attached note for further urgent action".  
 23 That's from you.  
 24 And what you've said in your statement is when  
 25 you're saying "This Report is poor", you're not

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1 "My reading of Archer's recommendation are that  
 2 ..."  
 3 Then I'm not going to read those out.  
 4 Next paragraph she says:  
 5 "So on the whole the report looks like something  
 6 we wouldn't want to spend a lot of time on.  
 7 "I would have thought it would be best therefore  
 8 to aim to do only a brief response and get it out as  
 9 quickly as possible (perhaps in about a month). The  
 10 response should basically:  
 11 "- set out our side of the story -- all the steps  
 12 taken to make the blood supply safer as soon as it was  
 13 recognised there was a problem  
 14 "- say we are pleased Archer recognises this (if  
 15 I am right that he doesn't find fault with the Gov  
 16 actions at the time)  
 17 "- set out all the services we provide for  
 18 haemophiliacs and the compensation scheme -- anything  
 19 else positive we can say about what we already doing  
 20 "- politely reject the specific recommendations  
 21 "- obviously it would be great if we could think  
 22 of something to give them and we will need to think  
 23 about that. The most likely I should think is the free  
 24 prescriptions given ..."  
 25 So that view being expressed by Ms Woodeson is

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1 referring to the Archer Report, you're referring to  
 2 a note received from an official. I don't know whether  
 3 it's this note or one of the other notes, but that's  
 4 what your statement tells us.  
 5 **A.** Yes, I believe that is the case, in that I think this  
 6 the first note I received from officials from the  
 7 Archer Inquiry, which has, what -- is reported a year  
 8 after initially thought it would. I expected options.  
 9 **Q.** Then perhaps before we break just one further document,  
 10 which is DHSC5561472.  
 11 This is an email exchange, 25 February 2009. If  
 12 we go to the second page, it's an email from  
 13 Elizabeth Woodeson, 25 February 2009, and then we can  
 14 see it is sent to various officials within the  
 15 Department dealing with blood policy matters. Not,  
 16 I think, to your office, is that right?  
 17 **A.** No, no, I don't think it was to my office. I'm just  
 18 reading it now.  
 19 **Q.** And you've said in your statement that you don't think  
 20 it was copied to your Private Office. And then  
 21 Ms Woodeson says this:  
 22 "Well done for getting a submission up so quickly  
 23 on this. It is frustrating not to be there with you to  
 24 help!"  
 25 Then she says:

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1 essentially not to devote very much further time to  
 2 considering the Archer recommendations. And that -- you  
 3 didn't see this at the time. What, if anything, would  
 4 you have to say about it, looking at it now?  
 5 **A.** I don't recall seeing it. That is her express view.  
 6 That wasn't mine, as the minister. And I pursued  
 7 with -- the team, as you said, will look at it -- every  
 8 possible way we could respond positively, because  
 9 I believed that was the right thing to do.  
 10 So I can't say anything about her email, frankly.  
 11 I can only account for what I was doing, I think.  
 12 **Q.** And we'll pick up that and your own further requests to  
 13 officials to do more work on this issue after the break.  
 14 Sir, I note the time.  
 15 **SIR BRIAN LANGSTAFF:** Yes, well, we'll take a break now  
 16 until 11.50. This is the first break. At this break,  
 17 and indeed at any break, you must remember that you're  
 18 under oath, and what that means is you may not discuss  
 19 what you have said in evidence or what you think you may  
 20 yet say in evidence with anyone, whoever that anyone is,  
 21 but you can talk about anything else you like.  
 22 **A.** The weather. Thank you.  
 23 **SIR BRIAN LANGSTAFF:** 11.50.  
 24 (11.18 am)  
 25 (A short break)

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1 (11.49 am)

2 **MS RICHARDS:** If we could turn, please, to your response  
3 through your Private Office then, to the submission that  
4 we looked at before the break. WITN5494034. This sets  
5 out what you wanted so that you, I think, in turn could  
6 provide information to the Secretary of State:  
7 "Brief history of patients being infected.  
8 "Any payments made to them directly.  
9 "Setting up of Macfarlane Trust -- how it was  
10 decided what finance should be provided?  
11 "Same as above for Eileen Trust.  
12 "Same as above for Skipton.  
13 "Attitude of [Government] of the Day.  
14 "How to respond immediately to request for apology  
15 to victims.  
16 "How to respond immediately to give more resources  
17 to Macfarlane & Eileen Trusts -- How much?  
18 "How to take forward consideration of other  
19 recommendations."  
20 Then you say this:  
21 "It is clearly not acceptable in such tragic and  
22 unique circumstances for DH to claim no liability and no  
23 more money to Trust."  
24 So that was your response at the time, having read  
25 both the Archer Report and the submission that was being

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1 "Proper Report ASAP.  
2 "What's in place [to] never happen again?  
3 "Advice to ministers [at] the time."  
4 Then on the right-hand side, the second entry  
5 down:  
6 "Why has MSPH not been kept informed?"  
7 Then:  
8 "Much clearer how much and why fund."  
9 Then there are some other notes. You say in your  
10 statement that that captures the frustration you felt  
11 and also your desire for better information at this  
12 point in time.  
13 **A.** Yes, this isn't my --  
14 **Q.** No, this is your Private Office.  
15 **A.** This would have been discussion between myself and my  
16 Private Secretary. I presume this is her note.  
17 **Q.** So if we then turn to DHSC5017972, if we go to page 4,  
18 this is an email from your Assistant Private Secretary,  
19 the date's on the previous page, we don't need to go  
20 back to the previous page, but it's 25 February 2009,  
21 and we can see that your Assistant Private Secretary has  
22 essentially drawn together the points that you've set  
23 out in your handwritten note to her, and says this:  
24 "MS(PH) has seen this report and is very concerned  
25 about the contamination of NHS blood and blood products

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1 provided to you?  
2 **A.** Yes, could I just asked you, was this directly my  
3 response to the first report or was it my response to  
4 the -- because there were a number of submissions.  
5 **Q.** Yes.  
6 **A.** I think it was my --  
7 **Q.** If we just pick it up in your statement, if we go to  
8 WITN5494001 and go to page 60. You're setting out there  
9 the text of the initial submission from Rowena Jecock,  
10 which we looked at before the break, and then if we go  
11 to the next page, you then refer in paragraph 3.0 to  
12 some handwritten annotations from your Private Office.  
13 **A.** Oh, yes, yes.  
14 **Q.** Then 3.91, you say:  
15 "I can see from a handwritten file note to my  
16 Private Secretary that I asked for more information ..."  
17 **A.** Yes.  
18 **Q.** So, as I understand it, from your statement and from the  
19 chronology of documents, this is your response to that  
20 initial submission?  
21 **A.** Yes, I accept that. There is some toing and froing  
22 you're perhaps going to explore.  
23 **Q.** Perhaps if we also just look at some handwritten notes  
24 from I think it is your Private Office at WITN5494115,  
25 we can see we've got in the left-hand corner:

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1 during the 1970s and 1980s. She is particularly  
2 concerned about how this issue has been handled.  
3 "The Minister feels that it is clearly not  
4 acceptable in such tragic and unique circumstance for DH  
5 to claim no liability and give no more money to the  
6 Trusts.  
7 "She has asked for the following work to be done  
8 by **9 am tomorrow morning**. She has asked for a list of  
9 the Ministers responsible for blood policy since 1970."  
10 Then there are number of requests for further  
11 information set out, essentially reflecting what we saw  
12 in the handwritten note.  
13 Then if we can just go to page 3, there's then  
14 a follow-up email of the same date from Morven Smith:  
15 "Dear All,  
16 "In addition to my previous email, Could the note  
17 for MS(PH) to send to [Secretary of State] also include  
18 her requesting approval to speak to former Ministers  
19 regarding this issue?"  
20 Now, what was it in particular that led you to  
21 want to speak to former ministers?  
22 **A.** By "former ministers", I was referring to ministers in  
23 previous administrations, ie prior to '97. And in  
24 making that request, I thought at the time that I would  
25 get a better understanding if I knew how they saw it,

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1 the sequence of events.  
 2 As you probably know, the convention is that  
 3 ministers can't ask for policy advice but there was  
 4 a huge amount of information already in the public  
 5 domain, and I thought that might help with my  
 6 understanding of the events.  
 7 **Q.** Now, as it turns out, I don't think you ever did speak  
 8 to former ministers.  
 9 **A.** (The witness shook her head)  
 10 **Q.** It's not entirely clear on -- well, the document trail  
 11 at a slightly later stage, I think, comes to an end. Do  
 12 you have any recollection of --  
 13 **SIR BRIAN LANGSTAFF:** Just a moment, you're agreeing with  
 14 that: you didn't speak to former ministers. You shook  
 15 your hand. Unfortunately, that doesn't go down on the  
 16 transcript.  
 17 **A.** My apologies, Sir Brian.  
 18 **SIR BRIAN LANGSTAFF:** Don't worry about, I'm required to  
 19 pick it up.  
 20 **A.** No, I did not get the opportunity to speak to ministers  
 21 from previous administrations.  
 22 **MS RICHARDS:** Do you have any recollection of why that was  
 23 the case? Did the requisite approval never get provided  
 24 or do you not recall?  
 25 **A.** Um ... I think the documentation shows that no such note

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1 Baroness, that's a reference to the judgment  
 2 I referred to before the break.  
 3 Then paragraph 2 says:  
 4 "You have asked a number of questions in relation  
 5 to the Archer report. We respond to each of these in  
 6 this submission, in the order in which they were set out  
 7 in the commissioning note. In some cases, we have not  
 8 been able to provide a full answer in the time  
 9 available."  
 10 Then if we go towards the bottom of the page,  
 11 paragraph 4 says:  
 12 "You may want to note the following points in  
 13 particular, which we suggest you may wish to discuss  
 14 with [Secretary of State] ...  
 15 "A statement could be drafted, expressing this  
 16 Government's regret at the events that occurred and the  
 17 consequences for those affected. Legal advice is that  
 18 this can be done, given the length of time that has  
 19 passed, and the fact that there has been litigation  
 20 during that period.  
 21 "A number of anomalies exist in the three schemes  
 22 set up to provide financial relief for those infected  
 23 and for their dependants and carers, for example in  
 24 relation to the conditions under which widows [of those]  
 25 infected with hepatitis C become eligible for benefit.

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1 appears to have been produced and, at some point, there  
 2 was a reference to officials doing something -- forgive  
 3 me, I can't remember -- but there was no such note  
 4 produced when I had the documents presented to me for  
 5 preparing for the Inquiry. I didn't see that request.  
 6 My recollection is that it was put to me that I couldn't  
 7 do that.  
 8 **Q.** Now, you received then a further submission on  
 9 26 February in response to your request. It's at  
 10 DHSC5034285. If we look at the first paragraph it says  
 11 this:  
 12 "The report of Lord Archer's independent inquiry,  
 13 published on 23 February, is critical of the speed of  
 14 response of the NHS and Government to the threats of  
 15 contamination of blood and blood products with HIV and  
 16 hepatitis C in the 1970s and 1980s. We do not accept  
 17 all his criticisms, but official documents do show  
 18 problems at various times in the development of UK  
 19 capabilities for manufacture of blood products, and in  
 20 2001, a judgment was made under the Consumer Protection  
 21 Act in favour of 114 claimants who had been infected  
 22 with hepatitis C after receiving an infected blood  
 23 transfusion. In his judgment, Lord Justice Burton  
 24 commented that the UK could have introduced screening or  
 25 surrogate tests for hepatitis C earlier than it did."

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1 Lord Archer has recommended that these be addressed, and  
 2 an intention to review perceived anomalies could be  
 3 announced at an early stage, ahead of the Government's  
 4 substantive response to the report."  
 5 Top of the next page:  
 6 "We are consulting widely across the Department to  
 7 collect the necessary information to enable the  
 8 consideration of all the recommendations in  
 9 Lord Archer's report."  
 10 Then there are a number of sections to this  
 11 briefing, dealing with the range of different issues  
 12 that you'd asked for further information on. I'm not  
 13 going to go through each of them, and your statement  
 14 very helpfully details chronologically all the various  
 15 documents and exchanges that you have seen.  
 16 If we go to page 11, this is in relation to the  
 17 request for an apology to those affected, and it says  
 18 this:  
 19 "MS(PH) has noted that these events are being  
 20 described as a 'health disaster' and has asked for  
 21 advice on whether the Government can acknowledge this  
 22 and apologise to those affected for what has happened  
 23 without an admission of legal liability.  
 24 "Advice from the Department's solicitors in that  
 25 the term 'health disaster' is too strong a term, as if

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1 the available blood products had not been employed,  
2 patients may have died even earlier than they did. They  
3 suggest the term 'a tragedy for those affected' as these  
4 patients suffered appalling health consequences in  
5 circumstances no fault of their own."

6 Now, I've just been asked to explore with you  
7 what's said in that second paragraph that I've read out  
8 there, the advice that the term "health disaster" is too  
9 strong a term and the explanation.

10 First of all, did you feel "health disaster"  
11 was too strong a term to describe what had happened?

12 A. I didn't think it was too strong a term to use in the  
13 normal use of the language, no. I think it was -- that  
14 was my view.

15 Q. Then the explanation for it being too strong a term that  
16 appears to be given, is that if the available blood  
17 products had not been employed, patients may have died  
18 even earlier than they did. Which appears to be  
19 a suggestion that haemophilia would have killed patients  
20 earlier than HIV and AIDS.

21 Do you recall whether you were struck by that or  
22 had any thoughts or concerns in relation to what you  
23 were being told there?

24 A. I think that information was provided to me in other  
25 documents which we haven't referred to today, and

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1 when I do not know what is in [the documents]?"

2 So you were concerned about the withholding of the  
3 documentation?

4 A. I was concerned about vouching for documentation  
5 that I couldn't see. This is a bit of a circular  
6 argument, you referred to it, and that's clearly  
7 a frustration on my part, which is these documents were  
8 before the current administration that I was in. And we  
9 wouldn't necessarily get -- well, we wouldn't get access  
10 to them. So they were being cleared through the  
11 Department. I suppose -- no, let me rephrase that.

12 I was asked to refuse to release something  
13 that I didn't have enough, I felt, information on to  
14 justify that refusal. So I was asking the Department to  
15 give me more information why, they wouldn't tell me the  
16 content -- obviously I've subsequently seen that --

17 Q. Yes.

18 A. -- because it's been released to the Inquiry -- and  
19 asked for a reassessment.

20 Q. And as I understand it, again, I don't want to take time  
21 going through the toing and froing on this particular  
22 issue, but a number of further documents were then  
23 released following your query about the process.

24 A. Yes, I pushed back on that. My approach was, if we were  
25 releasing all the documents, then we should release all

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1 certainly that was a proposition that was put to me,  
2 yes.

3 Q. You're right in thinking there are other documents that  
4 talk about that and talk about the idea of best  
5 available treatment at the time --

6 A. Yes.

7 Q. -- and life expectancy of those with haemophilia.

8 A. Yes.

9 Q. So that was your -- the information being supplied to  
10 you?

11 A. Yes.

12 Q. If we then just go to WITN5494035.

13 This is part of the same document but this has got  
14 handwritten annotations on, I think from you and others.

15 The first is in relation to documents held --  
16 withheld from release, and this was the issue of  
17 documents that had not been released under Freedom of  
18 Information Act legislation, not being provided to  
19 Lord Archer.

20 I'm not going to go through the detail of that  
21 again. There's quite a lot of documentation in relation  
22 to what happened. But it's an area that you pushed back  
23 on, and I think we see, is this right, your attitude at  
24 the top right-hand corner, where you write:

25 "So why am I asked as Minister to refuse release

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1 the documents without -- unless we had exceptional  
2 reasons, obviously, under the Freedom of Information  
3 Act, and I think you'll see at some point I'm -- there's  
4 a referral to the 30-year rule as well.

5 So I was trying to make sure that everything that  
6 could possibly be released into the public domain was.

7 Q. Then if we just go to page 10 of this document, this was  
8 on the issue of options for immediate additional support  
9 to Trusts. There's reference to the Macfarlane and  
10 Eileen Trustees having:

11 "... recently submitted to officials a set of  
12 options for large-scale ... funding for the Trusts,  
13 involving sums in excess of £100m. These have yet to be  
14 assessed in any detail."

15 There's then a reference in the third paragraph to  
16 a review undertaken by Caroline Flint, and that's  
17 already been explored by the Inquiry.

18 And the last paragraph explains that the Minister  
19 of State and Secretary of State, and someone has written  
20 in:

21 "[The then] [Minister of State] and [Secretary of  
22 State]" --

23 A. That's me. That's my handwriting.

24 Q. "... were not convinced of the strength of the case made  
25 by [the] trustees ..."

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1 Then there's a question, I take it from one of  
 2 your officials of your Private Office:  
 3 "Do you want further clarification of how these  
 4 figures were arrived at?"  
 5 And then that's your response:  
 6 "Yes please."  
 7 **A.** That's correct, that's my "Yes please", and I put "the  
 8 then", because without that it could be construed that  
 9 it was the current view, and I didn't know that until  
 10 I got the further information.  
 11 **Q.** Then we saw from the covering minute from Rowena Jecock  
 12 that there had been this draft note prepared for you to  
 13 provide to the Secretary of State, and we have that at  
 14 WITN5494037. So this is a draft prepared by officials  
 15 to be sent by you to Mr Johnson.  
 16 Then if we just look down the bottom of the page,  
 17 I just want to pick up this issue of contacting  
 18 ministers.  
 19 So what's been drafted for you to say is:  
 20 "I recommend therefore that:  
 21 "- We prepare a statement expressing the  
 22 Government's regret in the strongest terms. Subject to  
 23 your agreement, I will open discussions with former  
 24 Ministers in previous administrations on this proposal."  
 25 Now that's been crossed out and, as

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1 helpful for me to understand their perspective. In the  
 2 time, I wasn't seeking any negotiation or agreement with  
 3 them. Yes.  
 4 **Q.** Then in terms of whether there was a separate note  
 5 provided to you explaining officials' concerns about you  
 6 approaching ministers from a previous administration,  
 7 neither the Inquiry nor I think your legal team has been  
 8 able to identify that in any further note.  
 9 **A.** I don't recall it, no.  
 10 **Q.** Now if we then look at DHSC6120809, and we go to the  
 11 second page, this is an email from officials within  
 12 the blood policy team to your Private Office,  
 13 2 March 2009, and it's clear from this that you had held  
 14 a meeting with officials to talk about the Archer Report  
 15 and the response. It says:  
 16 "Thank you for [your] meeting with MS(PH) about  
 17 Lord Archer's" --  
 18 Sorry, I've got that the wrong way round.  
 19 This is an email from your Private Office, from  
 20 Morven Smith, to officials, referring to a meeting on  
 21 that day.  
 22 "Thank you for meeting with MS(PH) about  
 23 Lord Archer's report into the contamination of blood and  
 24 blood products ...  
 25 "I have detailed below the action points that

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1 I understand it, your Private Office has then written  
 2 what we see on the right:  
 3 "I asked the team about the prospect of you asking  
 4 for approval from [Secretary of State] to approach  
 5 ministers from previous administrations to ask about the  
 6 advice they'd been given at the time. The team were  
 7 very uncomfortable about this idea ..."  
 8 Then it's not entirely clear what the rest of that  
 9 says but something about "putting you in a difficult",  
 10 and then one can't read the words.  
 11 In any event, the question to you is:  
 12 "Would you like a separate note explaining their  
 13 concerns?"  
 14 And the answer that's been given by you is "Yes".  
 15 Now, just to understand what's going on here, as  
 16 I understand this, Baroness, the bit that's been crossed  
 17 out has been crossed out because it represented  
 18 a misunderstanding on the part of the Department  
 19 officials of what you were asking for. You weren't  
 20 trying to, as I understand it, negotiate with the former  
 21 ministers the terms of an apology, you wanted to speak  
 22 to former ministers to understand their perspective on  
 23 the decisions that had been taken in the '70s and '80s;  
 24 is that right?  
 25 **A.** That is correct. I wanted to -- I thought it would be

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1 emerged from the meeting. I have also checked with  
 2 [Secretary of State's] office and they have now  
 3 officially received a copy of Lord Archer's Report."  
 4 Then we have a number of "Action Points" set out:  
 5 "Hugh Taylor & David Harper to go through withheld  
 6 and partially withheld documents and give MS(PH) a  
 7 'blow-by-blow' account. They will also explain how  
 8 the 30-year rules applies."  
 9 So that's the issue you referred to a few minutes  
 10 ago about documents.  
 11 "The Blood Team to report back on the following  
 12 questions:  
 13 "- Why did it take DH more than ten years to react  
 14 to concerns ('73 to '85)?  
 15 "- When did we know something was wrong? Why  
 16 didn't we act?  
 17 "- Why did it take England longer than Northern  
 18 Ireland and Scotland?  
 19 "- have Ministers apologised or expressed sorrow  
 20 in the past?  
 21 "- How is the ROI [Republic of Ireland] scheme  
 22 going? Why did they decide to accept liability?  
 23 "- Who claims what for the schemes and what else  
 24 they claim or can claim?"  
 25 Then:

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1 "The Blood Team to report back on other actions:  
 2 "- A timeline and summary analysis of the self  
 3 Sufficiency in Blood Products report.  
 4 "- A time line regarding the securing safety of  
 5 supply.  
 6 "- A reassessment of the argument not to have  
 7 a public inquiry.  
 8 "A draft Written Ministerial Statement as initial  
 9 response to Report.  
 10 "- A real case study (with identifiers removed) to  
 11 show how the funding patients receive from each scheme  
 12 assists them and what might need to be added.  
 13 "- An idea of what money would be reasonable to  
 14 give to [Macfarlane Trust], [Eileen Trust] and Skipton  
 15 Fund. MS(PH) has grave concerns about the long term  
 16 implications of a final settlement figure for these  
 17 schemes."  
 18 Sorry, just pausing there, can you recall what  
 19 those concerns were, what's being referred to there?  
 20 A. A final figure?  
 21 Q. Yes.  
 22 A. You're asking me about a bullet point --  
 23 Q. Where it says "MS(PH) [so you] has grave concerns about  
 24 the long term implications of a final settlement  
 25 figure".

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1 A. I'm -- it would be a general point that final  
 2 settlements may not take account -- be able to take  
 3 account -- I'm not a lawyer -- of future health and  
 4 support requirements. That's not something I understand  
 5 in detail, but how would that be determined to support  
 6 people over their lifetime. Which is what I was trying  
 7 to get to.  
 8 Q. Then:  
 9 "- Review of the three schemes and the anomalies  
 10 with a working plan to address the anomalies in the next  
 11 financial year."  
 12 Then top of the next page:  
 13 "- A report back on how discussions are  
 14 progressing with the schemes regarding financial needs.  
 15 MS(PH) wants to ensure that these patients receive fair  
 16 recompense for their escalating healthcare costs. She  
 17 would like to know how best to support these patients  
 18 who were affected by contaminated blood and blood  
 19 products. Recipients have said they prefer the Skipton  
 20 Fund model of lump sum payments.  
 21 "- To check that the DWP and HMRC are sorted in  
 22 terms of support to these patients.  
 23 "- To check with the British Association of  
 24 Insurers as to these patients' access to insurance.  
 25 "- To review the documents withheld or partially

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1 with held under the commercial section of the FOI  
 2 Act ..."  
 3 Then:  
 4 "Additional points:  
 5 "- MS(PH) will talk to [Secretary of State] about  
 6 this issue tomorrow. She will show him the Chronology  
 7 and the explanation of the withheld and partially  
 8 withheld documents. She will also talk to him about the  
 9 need to express sorrow and the possible additional money  
 10 needed for the three schemes.  
 11 "- MS(PH) believes that a WMS [written ministerial  
 12 statement] will be a good way to respond initially. An  
 13 apology or expression of sorrow is important.  
 14 "- MS(PH) made it clear that as she is expected to  
 15 put on the public record that she is satisfied as to the  
 16 reasons behind the withheld or partially with held  
 17 documents she (and SofS) need to know the exact reasons  
 18 for these documents being withheld.  
 19 "- The Blood Team are taking forward discussions  
 20 around the financing of the three schemes.  
 21 "MS(PH) will meet with David Harper and  
 22 Hugh Taylor to go through the withheld and partially  
 23 withheld documents.  
 24 "- In relation to 'free prescriptions', MS(PH)  
 25 made it clear that we need to wait until the outcome of

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1 Professor Gilmore's review is known."  
 2 So you wanted, it would appear from this, arising  
 3 out of the meeting, rather a lot of further information  
 4 and analysis and work to be undertaken to formulate  
 5 a response to the Archer Report; is that right?  
 6 A. Yes, that's correct.  
 7 Q. In the meantime, you then, along with Alan Johnson, met  
 8 with the Lord Archer on 11 March 2009, and you received  
 9 a briefing in advance of that meeting. I just want to  
 10 go to that document next.  
 11 It's DHSC0041157\_052.  
 12 We can see it's dated 10 March 2009 from  
 13 Rowena Jecock, it's to your Private Office, and then  
 14 your Assistant Private Secretary has written at the top:  
 15 "Dear Dawn,  
 16 "This is the briefing the team have prepared for  
 17 your meeting with SofS and Lord Archer tomorrow."  
 18 Then if we look at paragraph 2, we can see what  
 19 the briefing covers, and there's a number of indexes --  
 20 sorry, annexes referred to.  
 21 Then there's reference at the bottom of the page  
 22 to an answer given by Baroness Thornton in the House of  
 23 Lords.  
 24 Then over the page, we see the heading "Government  
 25 Position":

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1 "8. The position of this and previous Governments  
2 is that this is a tragedy and there is every sympathy  
3 for those infected. However, it is important to  
4 remember the following points ..."

5 Now, I'm not going to read again all of this, but  
6 we can see essentially a number of the assertions that  
7 we've seen in earlier documents here repeated:

8 "- the treatment given to haemophiliacs was the  
9 best available at the time and action was taken in good  
10 faith;

11 "- such treatments markedly increase the life  
12 expectancy (formerly 25 years) and quality of life of  
13 haemophilia patients;

14 "- as soon as technologies (heat treatment and  
15 testing) were available to improve safety, they were  
16 introduced;

17 "- Evidence in relation to hepatitis C emerged  
18 over time, and the very serious long term consequences  
19 of infection were only fully recognised by the  
20 scientific community in the late 1980s ..."

21 Then there is reference to the litigation and the  
22 establishment of the various schemes.

23 Now you say in your statement -- perhaps we can  
24 put that up on the screen, WITN5494001, page 69 --  
25 paragraph 3.110, at the bottom of the page. You say

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1 this -- having referred to the written briefing and the  
2 annex and comments about possible actions, you say this:

3 "I was extremely disappointed that the official's  
4 summary of the Archer Inquiry recommendations, and the  
5 comments provided for response were inadequate. As the  
6 Inquiry will see, the officials recommend no action on  
7 five of the six proposals and on the Archer  
8 recommendation of more financial assistance put reasons  
9 not to respond positively but made no recommendation.  
10 My written annotations share my frustration. None of  
11 the recommendations for action demonstrated any movement  
12 on the part of the officials to find positive responses  
13 where we could to the Archer recommendations. Nor was  
14 there any recognition of the difficulties encountered by  
15 victims because of low income and pension rights because  
16 of their inability to undertake paid employment."

17 I think we, in terms of your handwritten  
18 amendments -- I haven't got the reference for that but,  
19 in any event, you've described there in your statement  
20 your reaction to the briefing that you'd received.

21 Do you have any recollection of what Mr Johnson's  
22 view was at that time?

23 A. No, I don't. I can't recall that.

24 Q. Then you held the meeting with Lord Archer on 11 March.  
25 Do you have any recollection of that meeting?

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1 A. I don't have a detailed -- no, I don't. I've only got  
2 the benefit of the minute.

3 Q. And the record we have of the meeting is not of a formal  
4 minute but an email which summarises the discussions.  
5 So if we just look at that.

6 DHSC5277959.

7 We can see it's an email dated 13 March, bottom of  
8 the page. It refers to the meeting that you and  
9 Mr Johnson had with Lord Archer on 11 March and then  
10 says:

11 "The following points were discussed ..."

12 Then if we go over the page and just pick up just  
13 a handful of these. It says:

14 "[Secretary of State] would need to be convinced  
15 that current financial arrangements were insufficient  
16 before he considered any adjustments to the compensation  
17 system. Lord Archer explained that many patients  
18 suffered financial hardship but MS(PH) said it was  
19 important to distinguish what financial pressures were  
20 a consequence of infection, as opposed to being the  
21 consequence of the illness which had caused the patients  
22 to need transfusion in the first place ie haemophilia."

23 In terms of what's said to be there the Secretary  
24 of State's position, the "would need to be convinced  
25 that current financial arrangements were insufficient"

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1 suggests that he was not, at that stage, minded to make  
2 any significant changes to the financial arrangements.  
3 Do you have any recollection of his perspective?

4 A. I'm afraid I don't have any recollection. You refer to  
5 his statements. I haven't seen that, so I don't know  
6 what he says, with regard to that. And clearly I was of  
7 a view that we needed to have movement there.

8 Q. There's then a bullet point relating to a number of  
9 discussions about other aspects of the recommendations  
10 from the Archer Report. If we just then pick it up at  
11 the bottom half of the page, in bold print it says:

12 "In terms of next steps SoS and MS(PH) would like  
13 to receive advice on the following points:

14 "they would like to look at the eligibility  
15 criteria for those who receive money under the different  
16 schemes including options to rationalise the schemes  
17 (which should incorporate the options already outlined  
18 on how and if to adjust compensation)

19 "what are the options for the department regarding  
20 insurance provision (including perhaps an arrangement  
21 with the insurance industry?)

22 "they would like to look at the funding for the  
23 Haemophilia Society and options to give the Society  
24 a wider remit ..."

25 So there's that request there for advice but

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1 presumably still also the outstanding requests from the  
 2 meeting you'd had with officials, that long list from  
 3 Morven Smith --  
 4 **A.** Yes, that's correct.  
 5 **Q.** -- who still wanted answers on all those points.  
 6 **A.** Yes.  
 7 **Q.** So we get, then, the further advice on the 19 March,  
 8 WITN5494098. This is from Rowena Jecock to Mr Johnson  
 9 and to you, and then your Private Office say:  
 10 "Dawn,  
 11 "Here are the team's recommendations regard Lord  
 12 Archer's recommendations.  
 13 "PS Can you please pay particular attention to the  
 14 Financial Relief Schemes?"  
 15 Then we can see the minute refers to the meeting  
 16 with Lord Archer. Then if we go towards the bottom of  
 17 the page, we've got the heading "Financial relief  
 18 schemes":  
 19 "You asked us to look at the eligibility criteria  
 20 for those who received money under the schemes,  
 21 including options to rationalise the schemes. The  
 22 attached annex provides details. Option 1a) covers  
 23 addressing the anomalies in eligibility criteria  
 24 regarding the Skipton Fund (which would cost in the  
 25 order of [56 million] as a one-off sum). Option 1b)

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1 your witness statement, Baroness. WITN5494001, page 72.  
 2 I think you summarise the position in paragraph 3.115  
 3 and then in paragraph 3.116 we get your observations.  
 4 You say:  
 5 "This submission is endorsed with handwritten  
 6 observations."  
 7 Then four lines down:  
 8 "Morven Smith [your Assistant Permanent Secretary]  
 9 drew my attention to the financial costings for the  
 10 relief schemes. These were the calculations I had  
 11 requested. I circled the figure of [56 million] and  
 12 [100 million] which was higher than I had anticipated."  
 13 Then you refer to your annotations as regards the  
 14 role of the Haemophilia Society.  
 15 Then you say, at the bottom of the page, last two  
 16 lines:  
 17 "At each point I was seeking to push the officials  
 18 to provide a reasonable response rather than  
 19 recommending that no action was necessary or that it was  
 20 too expensive. On the question of financial relief,  
 21 I did not express a view, from memory, I think I wanted  
 22 to give more time to considering what could be done, but  
 23 I knew that given the financial constraints the  
 24 Department was held within a cost of [50 million] or  
 25 [100 million] was not achievable."

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1 covers rationalisation of the MFT and ET and removing  
 2 the discretionary element so that all claimants have the  
 3 same eligibility to relief under the scheme (initial  
 4 estimates are that this would cost circa [100 million]  
 5 as a one-off sum). Options 2 and 3 in the annex concern  
 6 increasing the compensation payable under the scheme,  
 7 should you be minded to pursue this. However it is  
 8 important to note that the financial relief schemes for  
 9 HIV and hepatitis C have been set up on different bases.  
 10 All are UK-wide, and the devolved administrations  
 11 contribute financially to the Skipton Fund ... although  
 12 they did not contribute financially to the two schemes  
 13 which make payments in relation to HIV infection."

14 So that's the issue in relation to financial  
 15 relief. There's no specific comment -- I think,  
 16 handwritten comment -- from you in relation to those,  
 17 but there is a circling of the figures, 56 million and  
 18 100 million, and then the advice continues referring to  
 19 the Haemophilia Society.

20 I'm not going to read through the detail of that  
 21 but is that your handwriting there?

22 **A.** It is my handwriting.

23 **Q.** So you're setting out your disagreement with or comments  
 24 on a range of issues in that regard.

25 If we just pick up your observations on this in

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1 Can you assist us in understanding the reference  
 2 there to the "financial constraints the Department was  
 3 held within"?  
 4 **A.** Yes, all of this debate is taking place post-financial  
 5 crash in 2008, and I can't remember the exact date, but  
 6 there was a budget and public expenditure announcement  
 7 March 2009, and all Government departments were under  
 8 severe pressure and spending limits had been agreed.  
 9 And, for the Department of health, most of its money  
 10 really goes directly to the Health Service. So what it  
 11 has to redirect wouldn't necessarily be that great.

12 So I was mindful myself that I needed to be able  
 13 to justify that expenditure in the circumstances of the  
 14 time, a world turndown, you know, Government debt was  
 15 huge. I'm not going to say about -- no -- was huge.  
 16 And there were long term problems there of committing to  
 17 recurring expenditure, which the financial team did flag  
 18 up to me.

19 **Q.** Then we can see however you then, through Morven Smith  
 20 again, continued to ask for ways of addressing the  
 21 position of financial support. So if we go to  
 22 DHSC5024869, there's an email, bottom half of the page,  
 23 from Morven Smith, it's dated 24 March 2009 and it says:

24 "MS(PH) is looking for a way of giving more  
 25 funding to MFT and ET which is recurrent. However, she

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also wants a new trust document which does away with discretionary payments and brings the MFT and ET in line with the way SF [Skipton Fund] gives money to its applicants. I understood that lump-sum payments would be preferable to the trusts anyway.

"MS(PH) is not keen on the idea of a one off final settlement as it is not possible to have a final settlement."

Then there's reference to experience regarding the Thalidomide Trust. Then this:

"MS(PH) would also like to leave the idea of further funding to SF [Skipton Fund] alone at present but with a caveat that we will review the situation of the [Skipton Fund] in 2014 which is ten years after inception ..."

Can you just help us in understanding what your thinking was there in relation to the Skipton Fund? We see that you wanted to find a way of getting some additional funding for Macfarlane and Eileen, but to leave the arrangements in relation to Skipton unaltered but subject to a review in 2014, why was that?

A. I was clearly under a time pressure here in terms of trying to get an announcement of the Government response. And the question of the Skipton Fund having been set up was a particularly complex one to unpack at

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"Financial relief schemes", setting out what your preferred approach is.

There's a reference in that second paragraph there to:

"In addition, there does appear to be some discrepancy in the level of initial lump-sum payments between the MFT and ET", et cetera.

Then in relation to the eligibility criteria for the Skipton Fund, there's reference to proposals to amending that needing to be agreed by all UK Health Ministers, and so on.

If we then go to the bottom of the next page -- I should say there's a table that sets out "estimated one-off and recurrent cost implications". Then if we pick it up in paragraph 4:

"Finance advise that reaching agreement both within DH and with Treasury and the devolved administrations over any financial implications will be challenging. As announced at the Pre-Budget Report, Treasury will allocate £5 [billion] in additional efficiency savings across Departments in the Budget, in order to reduce public expenditure", and so on.

Then, over the next page, so there's reference at the top that the Treasury will not provide any additional funding. Then 5:

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the same time as the two other funds. So I took the decision that I should put that on one side for now, whilst I set a review for the 10-year point. There was nothing to stop being returned faster than that and I think you'll see that subsequently.

So, by this stage, I am trying to -- because I realised time is of the essence, those infected and affected quite rightly want to know, "Well, what is the Government's response?" And I'm trying to get to that position whilst not closing off further considerations subsequently. So I'm trying to get together a package for the written ministerial statement, which of itself is an incredibly unusual thing to do, given it wasn't a departmental formal inquiry.

Q. We can see that there's then further advice on 31 March 2009 at DHSC0041157\_035. If we go to the second page, please, Lawrence. Paragraph 1 says --

Sorry, I should say it's from Rowena Jecock to you. It says in paragraph 1:

"You requested further advice in relation to two of the recommendations made by Lord Archer."

Then those are set out, the first being lifting the level of ex gratia payments, et cetera, and then the second being about The Haemophilia Society.

Then there is a discussion under the heading

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"You asked whether additional funding for the financial relief schemes could be paid in instalments to ease the burdens on central budgets. However, finance colleagues advise against this ..."

Then the heading "Support for the Haemophilia Society", I'm not going to read but we can see, if we look at the whole page and then the next page, there are a number of handwritten observations on this.

Then if we go to page 8, under the heading "Summary", paragraph 25 says:

"We welcome your views on the above, in particular ..."

Then a number of matters set out including "proposals for increased funding to MFT and ET" and then writing to the Devolved Administrations seeking views on "proposal to amend the eligibility criteria for the Skipton Fund".

Now, you say in your witness statement -- and we'll go back to that -- WITN5494001, page 76, in paragraph 3.126:

"I was unhappy with this submission and, through my locum APS, asked for a further submission to be provided. I was concerned that its focus was too much on pointing out the difficulties in my preferred approach."

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1 Then you've set out the text, which I think we  
2 can, rather than going to the document, we can take it  
3 from your statement, of the communication from your  
4 locum APS. It says:

5 "The Minister's objectives are as follows:

6 "A set of proposals that she can present to  
7 [Secretary of State] as to what we can do to respond to  
8 the Inquiry's recommendations. These proposals will  
9 need to give options of how to approach each  
10 recommendation."

11 Then the next two bullet points deal with matters  
12 relating to the Haemophilia Society. If we go down to  
13 the bottom of the page, it says:

14 "What the Minister would really like are options  
15 on how to respond to the Archer Inquiry in the most  
16 positive way possible. She would like to see  
17 a submission which responds to her steers and sets out  
18 the options she prefers and how they might be achieved  
19 alongside the pros and cons. However, she would also  
20 like to see further options which might also provide  
21 a robust response to Lord Archer's recommendations."

22 Can you just perhaps unpick for us what you were  
23 driving at here?

24 A. It is the job of civil servants to make sure that  
25 ministers, and it's perfectly legitimate, understand the

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1 WITN5494052. We can see from the first paragraph it  
2 sets out Ms Woodeson, who has authored her understanding  
3 that you were keen to respond to Lord Archer's report in  
4 the most positive way possible, and then each of  
5 Lord Archer's recommendations is summarised and there  
6 are various options then discussed in relation to them,  
7 so we've got the issue relating to haemophilia on the  
8 first page.

9 If we go over the page, I'm not going to look at  
10 any particular point in this, but we can see, again, the  
11 various recommendations summarised and then some advice  
12 in relation to each.

13 If we go to the third page, we get to the perhaps  
14 most difficult issue of financial support. So we've got  
15 recommendations 6a, and this Lord Archer's  
16 recommendation that: "

17 "Financial assistance should be increased and take  
18 the form of prescribed periodic payments.

19 "Skipton Fund ... you have already decided that  
20 this should be left alone at present but that we should  
21 make a commitment to review the fund in 2014 ..."

22 Then the reference in paragraph 18 to the  
23 Macfarlane Trust and Eileen Trust.

24 Then there are options: option 1 to give the  
25 recipients of the Macfarlane and Eileen Trust payments

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1 consequences of any decisions they might want to take,  
2 and to highlight those problems so that the Minister is  
3 aware.

4 But I also was trying to find a way to respond to  
5 the Lord Archer Inquiry recommendations, as positively  
6 as I could in the circumstances, financial and  
7 otherwise, that I was in at that point, not as the last  
8 word, but as a way of indicating the Government valued  
9 the Archer Report and understood what was being said to  
10 it. And so there I am putting forward what I think  
11 needs to be looked at.

12 But there may be other options that I hadn't  
13 thought of, and so that last sentence "She would also  
14 like to see further options which might also provide  
15 a robust response" -- "robust" means positive. It may  
16 not be immediate, they might not be immediately able to  
17 respond, but that it would demonstrate a way forward.

18 That is what I was seeking to achieve. But you  
19 can see that I am in quite severe time constraints now  
20 because, from the publication of the Archer Report --  
21 and there's still a lot of work being done behind the  
22 scenes, and quite rightly, people expected -- everybody  
23 expected a response. And I was under Parliamentary  
24 pressure and you can see that.

25 Q. So you got a further set of advice on the 17 April 2009.

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1 of £10,000 per year; and option 2 is to give a payment  
2 of £12,800 per year. It says:

3 "These suggested increases in per annum funding  
4 are relatively small. Finance advise that finding the  
5 additional funding would be difficult given the more  
6 challenging financial climate the Department is facing,  
7 but it should be possible through reprioritisation ..."

8 Then their preference is for option 1, which is  
9 the cheaper option. Then:

10 "6b) Anomalies between and within schemes should  
11 be removed.

12 "We understand that you would like to see  
13 harmonisation of eligibility within the Skipton Fund."

14 Then the most significant anomaly is set out in  
15 paragraph 22, which is that partners and dependants of  
16 those who died before it was set up do not receive any  
17 payments. The pros:

18 "This is by far the most significant anomaly and  
19 correcting it would be welcomed.

20 Cons: It is a very large sum and reaching  
21 agreement with HMT and the DAs would be challenging.  
22 Finance colleagues advise that it is not impossible --  
23 but that you would need to make a strong case to  
24 [Secretary of State]. [Secretary of State] would need  
25 to be convinced as to why this should be funded over and

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1 above other pressing priorities."  
 2 Then if we go to a document from your Private  
 3 Secretary at WITN5494054. Morven Smith is writing to  
 4 you and says:  
 5 "These responses to the recommendations seem much  
 6 more robust and better incorporate your preferences."  
 7 Then the position is summarised by Morven Smith  
 8 and we can see, I think that's your handwriting saying,  
 9 "Agreed".  
 10 If we go over the page, we see option 6a, so that  
 11 was the increase in periodic payments for Macfarlane and  
 12 Eileen Trusts, and you have put "Option 2?" at least  
 13 I think that's what that says. Then if we go over to  
 14 the next page, in relation to recommendation 6b, where  
 15 it says:  
 16 "This is the most difficult recommendation as it  
 17 potentially involves [54 million]."  
 18 I think this is your writing:  
 19 "Are there any other anomalies we could deal  
 20 with?"  
 21 Then, bottom of the page, bottom right-hand  
 22 corner:  
 23 "Just need clarification on 6a Option 2 which  
 24 I think is best. 6b not really straightforward. Let's  
 25 talk about it."

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1 So as I understand that, in relation to the  
 2 Skipton Fund issue, you wanted to have further  
 3 conversations, but it was seen as something that might  
 4 be difficult to achieve. In relation to the increase in  
 5 payments by the Macfarlane and Eileen Trusts, you  
 6 favoured option 2 which was the higher of the two  
 7 suggested increases: taking the payments to 12,800  
 8 per annum.  
 9 A. That's correct.  
 10 Q. Now, if we then just pick it up at WITN5494055, I think.  
 11 A. Could I just say that you'll see my notes on, I think  
 12 it's 6b.  
 13 Q. Yes. Can we just go back to the previous document,  
 14 Lawrence?  
 15 A. It says "Are there any other anomalies" given how  
 16 expensive -- I'm being told how difficult that one  
 17 might -- to correct that one. What I'm looking for is  
 18 I'm looking for movement that -- I didn't consider at  
 19 the time that doing nothing at all was an option, even  
 20 if it was a small bit of progress, not progress that  
 21 might be welcomed or accepted by the infected and those  
 22 affected, but at least I was trying to create movement.  
 23 So that's why that comment is there and I think it  
 24 sort of continues to illustrate that I wanted to take  
 25 the Archer Report and move forward, not draw a line

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1 again.  
 2 Q. Then we can see by 23 April 2009, you are then putting  
 3 options to Mr Johnson, as Secretary of State, and that's  
 4 the document we have on screen. It's from you to the  
 5 Secretary of State, and the second paragraph says:  
 6 "I have been exploring Lord Archer's  
 7 recommendations in detail with officials. I would like  
 8 to respond positively as far as possible, whilst  
 9 recognising that some of the recommendations are simply  
 10 unaffordable, particularly at the present time."  
 11 Then we can see the number of recommendations  
 12 there or suggested responses set out. Again, I'm not  
 13 going to go through the detail of most of them. But if  
 14 we go over the page, and pick up the position in  
 15 relation to the financial payments:  
 16 "That we leave the payments under the Skipton Fund  
 17 for those infected with hepatitis C the same as they are  
 18 now but announce that we will review this in 2014 ...  
 19 "That we change the scheme of payments made by the  
 20 Macfarlane and Eileen Trusts to those infected with HIV  
 21 to remove the discretionary element and give all  
 22 recipients the same amount every year. And that we  
 23 double the current annual amount from £6,400 ... to  
 24 £12,800 ..."  
 25 Third bullet point:

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1 "That we do not rectify any of the anomalies  
 2 within and between the schemes. To rectify the main  
 3 anomaly in the Skipton Fund would cost up to  
 4 £54 [million] and even to harmonise the lump-sum  
 5 payments between the two other Trusts would cost £19  
 6 [million]."  
 7 Then there's a reference to continued discussions  
 8 with the Association of British Insurers, and a further  
 9 look-back exercise.  
 10 In relation to that issue of 6b, it looks like you  
 11 haven't found any other way of dealing with the position  
 12 regarding the Skipton Fund, other than the review in  
 13 2014.  
 14 A. That's correct, yes I hadn't. I do pick that up though,  
 15 post --  
 16 Q. Yes.  
 17 A. -- ministerial -- we'll come to that?  
 18 Q. We'll come to that. It then says:  
 19 "This package of measures will not satisfy  
 20 Lord Archer or his supporters entirely. In particular  
 21 we are likely to face [severe] criticism from the  
 22 hepatitis C community as we will not be making any  
 23 changes to the Skipton Fund."  
 24 Is it right to understand, Baroness, that, really,  
 25 the sole reason why that was not being addressed was

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1 financial; it was the cost of it?

2 **A.** Yes.

3 **Q.** If we go back to the first page, I understand this to be

4 Mr Johnson's endorsement in handwriting at the top:

5 "Agreed. Good outcome if not all that

6 Lord [Archer] would want."

7 So if we then, just in terms of the chronology, go

8 to DHSC0041219\_124, this a "Media Handling Plan". This

9 is dated 18 May, and it's a proposed handling plan to

10 accompany the Government's publication of its response

11 to the Archer Inquiry. I think we can see at the bottom

12 of the page, under the heading "Media Handling", the

13 last paragraph, it says:

14 "Many of the individuals affected by contaminated

15 blood and blood products believe that insufficient

16 action has been taken by successive governments. In

17 responding to the Archer Inquiry, Press Office

18 recommends that you, Dawn Primarolo, agree to accept

19 carefully chosen interviews if necessary. This will

20 help show that this is a serious issue that has been

21 carefully considered."

22 Do you know whether you did do any interviews?

23 **A.** I didn't do any interviews, no.

24 **Q.** Do you know why that was the case?

25 **A.** I think there was one from memory, which was

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1 I didn't intend it to be the last word. So if it was

2 the only thing that was done, then it wouldn't have been

3 enough, no. I think the record shows I then acted to

4 try to bring forward more response.

5 **Q.** In terms of the issue of an apology, what I think was

6 forthcoming was an expression of sympathy, which you've

7 set out the text of in your statement. So if we could

8 go back to that, WITN5494001, and go to page 87.

9 Paragraph 3.140 refers to the written ministerial

10 statement and the Government's full response to the

11 Archer Inquiry. I'm not going to take time going

12 through those.

13 Then paragraph 3.141 refers to the press release

14 and says this:

15 "The press release included the statement from me

16 that:

17 "'I would like to offer my deepest sympathy to all

18 those who suffered in this tragic episode. Sadly, it

19 was not possible to test for these viruses in the 1970s

20 and early '80s and we deeply regret that these events

21 occurred following NHS treatment'."

22 Then the next paragraph looks at steps taken and

23 the third paragraph looks at financial help.

24 Then you say this:

25 "The first paragraph was sincerely meant and was

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1 a face-to-face interview and it was on Newsnight, and

2 I didn't do that interview. I can't quite remember why

3 but, on reflection, with hindsight, it might have been

4 better had I. But I didn't. But that was, as I recall,

5 the one interview. I'm not sure that's -- I would have

6 to see the record to see. Okay.

7 **Q.** Then over the page, under the heading "Risks and

8 Considerations", it refers to the increased payment of

9 12,800, but then anticipates the likely substantial

10 criticism that was expected:

11 "the system for providing financial relief for

12 individuals infected with hepatitis C will not be looked

13 at for another five years;

14 "while payments for those with HIV will rise to

15 £12,800, this falls short of countries, such as the

16 Republic of Ireland, where liability has been admitted

17 and is still a small amount for a lifetime of

18 suffering ..."

19 Do you agree with that characterisation, that

20 although there is an increased sum, it was still a small

21 amount for a lifetime of suffering?

22 **A.** (Pause) I think I have to agree with that, yes. It was

23 the best I could manage at the time. I did my best.

24 But I don't think anybody could look at that, frankly,

25 and think that that should be the last word, and

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1 given following the advice I had received, but it fell

2 short of the fuller kind of apology I had instinctively

3 wanted to give ..."

4 **A.** Yes, that's correct. The advice from the Department,

5 both legal and otherwise, was that as Minister of State

6 that was as far as I could go, and I took that advice

7 because they were the experts.

8 **Q.** Now, there was indeed a negative reaction to the

9 Government's response to the Archer Inquiry. We can see

10 it by way of example from the letter from Lord Archer

11 himself at DHSC0041219\_095, in which Lord Archer wrote

12 to you on 29 May in response to a letter you'd written

13 to him, and then it says this in the third paragraph:

14 "Whilst some of the Government's proposals were,

15 frankly, disappointing, for example the absence of any

16 increase in financial relief for beneficiaries of the

17 Skipton Fund until 2014, the indifference to the

18 limitations in the entitlement of widows, and the

19 suggestion that after five years,

20 The Haemophilia Society 'will be expected to have in

21 place an effective strategy to meet its future funding

22 plans', as though it were a commercial enterprise, some

23 of the proposals are more positive and I would have

24 hoped that they could have been presented in a more

25 positive setting."

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1 Then he refers to a hope that there will be  
 2 further discussions between the various parties and  
 3 a less emotive and confrontational atmosphere.  
 4 There were other responses, in particular,  
 5 I think, from the Haemophilia Society, in strong terms,  
 6 to it.  
 7 You then called a meeting on 21 May. The document  
 8 that refers to this meeting, I'll read out the URN, the  
 9 reference number, but I'm actually going to look at the  
 10 document by reference to your statement.  
 11 So we don't need to put this on screen, Lawrence.  
 12 It's DHSC5585213.  
 13 But it's actually easier to read from your  
 14 statement, so if we go back to the witness statement,  
 15 please, WITN5494001, and go to page 89.  
 16 You say this at the bottom of the page:  
 17 "In some ways, the negative reaction to the  
 18 Government's response to Lord Archer's report was  
 19 helpful because it gave me a lever to try to see if more  
 20 could be done. Accordingly, I called a meeting on  
 21 21 May to discuss what more could be done and how to  
 22 respond to the negative reaction. A note following this  
 23 meeting from my APS shows the sorts of points which  
 24 I had raised and which we were discussing; the note  
 25 included:

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1 case is different to Ireland."  
 2 Now, it looks as though you might be saying two  
 3 different things there, Baroness, and I wondered whether  
 4 you can help. The first seems to be saying, suggesting  
 5 that there should be investigations as to whether the  
 6 UK's position should be closer aligned to Ireland in  
 7 terms of acceptance of liability, and then it seems to  
 8 be suggesting that it should get a message across that  
 9 the position is different. Can you help us with that?  
 10 A. Yes, I think that's the same point. Firstly, we need  
 11 a clearer position than I felt I had on why Ireland had  
 12 apparently taken a different route. And once we had  
 13 achieved that, if you like, clear explanation -- we  
 14 being the Government, the Department -- then explaining  
 15 why the UK was different would flow from that.  
 16 So I was trying to get back to this point of,  
 17 well, what is the difference, between Ireland -- so the  
 18 scheme that the Republic of Ireland agreed, compared to  
 19 the route that the UK Government took?  
 20 Q. And I think you know, you've referred to it in your  
 21 statement, that there was a subsequent successful  
 22 judicial review challenge --  
 23 A. Yes.  
 24 Q. -- which looked at this issue and then the Department's  
 25 understanding of the issue.

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1 "- 'What can we do [regarding] the Skipton Fund?  
 2 Can we announce review?'"  
 3 Does that mean bringing toward the date from 2014  
 4 to earlier?  
 5 A. It does, yes.  
 6 Q. "Can we give more money? We need to know what  
 7 recipient's costs are and how the two payments reflect  
 8 the costs the recipients have. Why did we choose these  
 9 amounts at the time? Do they reflect real costs of  
 10 recipients? What amounts would reflect the real costs?  
 11 Can we look at cases where dependants have suffered  
 12 severely and perhaps give them some funding? Can we  
 13 cost out the 2nd Stage payment group if the money there  
 14 can be increased?"  
 15 Then there's a reference to a proposal for an  
 16 official to speak to The Haemophilia Society.  
 17 The next bullet point deals with a document still  
 18 withheld under Freedom of Information, the document  
 19 regarding Kenneth Clarke.  
 20 Then this bullet point:  
 21 "MS(PH) asked why we haven't accepted liability as  
 22 Ireland have and asked for this to be investigated. She  
 23 said that we need to separate ourselves from the  
 24 comparison with Ireland in order to get a positive  
 25 message across. People need to understand why the UK

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1 A. I think that was after I'd left the --  
 2 Q. That was after you'd left -- (overspeaking) --  
 3 A. -- Department, but yes, I do accept that, yes.  
 4 Q. Then the last two bullet points in italics, on the  
 5 screens:  
 6 "- MS(PH) said that if it transpired that money  
 7 needed to go to the Skipton Fund then we would need to  
 8 revisit this with Finance colleagues.  
 9 "- Judith noted that we have to be mindful that by  
 10 waiting until 2014 to review it might look like we are  
 11 waiting for more recipients to die before reviewing the  
 12 money being given."  
 13 Then there's a reference to trying to cost out --  
 14 A. (Witness nodded)  
 15 Q. -- the position if there was to be a rectification of  
 16 the anomaly between the Skipton Fund and the Macfarlane  
 17 and Eileen recipients. Then this:  
 18 "MS(PH) stated that she was uncomfortable with  
 19 a monetary argument versus a moral argument."  
 20 Can you help us with that?  
 21 A. Yes, I think the -- firstly, it's absolutely clear from  
 22 my statements that the finances were constrained if the  
 23 Department had to find it from its own resources.  
 24 But -- and that should not stop the -- either myself as  
 25 the Minister, assisted by the Department, in trying to

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1 find a way through that. The time constraints between  
2 Lord Archer's report and needing to have a government  
3 response made it more difficult. With more time, would  
4 we be able to find a way through?

5 And of course the question of, for me, the moral  
6 argument was that I wanted to ensure that we did the  
7 right thing for the infected and affected. And that  
8 stood separately from the question of finding the money,  
9 although of course it's much more complex than that.  
10 They cross over all the time.

11 So that -- it's not very clearly stated by me, but  
12 again, this is the day after the written ministerial  
13 statement, the -- I think, we're now at the 20th --

14 **Q.** It's the 21st --

15 **A.** This was the 21st. Was the ministerial statement  
16 the 20th?

17 **Q.** Er ... I'll have to check that. Yes, it was the 20th.

18 **A.** Okay. So what I'm trying to do is move it on. I'm  
19 trying not to leave it where it is. And I suppose this  
20 reflects my continuing desire -- "objective" is a better  
21 word, actually, not "desire" -- my continuing objective  
22 to find the best possible solution within all the  
23 constraints that of course exist for a minister and  
24 a department.

25 I do reflect on that at the end, in my section 5.

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1 a risky strategy.

2 Then if we go to the next page, there are then  
3 options for increasing Skipton Fund payments. Again,  
4 I don't propose to read through the detail of them,  
5 there are a range of options there set out.

6 If we go over to the next page, please, and  
7 paragraph 10 records the issue on which most criticism  
8 is received, namely that families and dependants of  
9 those who died before August 2003 don't benefit.

10 Then paragraph 11:

11 "Any increased funding we were to announce is of  
12 course likely to be criticised as insufficient."

13 Then there are a range of other matters set out.  
14 If we just go two pages further on to the conclusion, at  
15 paragraphs 22 and 23.

16 We see again, in the second sentence, the  
17 assertion that:

18 "It remains the case people were given the  
19 treatment that was considered to be the best available  
20 at the time. However much one would like to increase  
21 the financial assistance offered to them on humanitarian  
22 grounds, we have real concerns about affordability given  
23 the current financial situation. We therefore recommend  
24 holding the line you have already decided and announced  
25 re the Skipton Fund.

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1 It's almost an impossible equation to settle.

2 **Q.** Now, after that meeting on 21 May you received a further  
3 submission, on 1 June. I'm not going to go to that.

4 Your Assistant Private Secretary again asked for more  
5 information, more to be added, particularly in relation  
6 to the situation in Ireland and Skipton Fund options.

7 And the upshot then was a revised submission on  
8 2 June, which is at WITN5494101.

9 So it's Rowena Jecock to you, 2 June 2009. And  
10 paragraph 2, halfway down the page, says:

11 "You have asked us for more detailed information  
12 as to why the situation here is different from Ireland,  
13 together with possible options for handling the  
14 criticisms around the Skipton Fund."

15 There's then a passage setting out why it's said  
16 Ireland is different. And again, we see the assertion  
17 that people were offered the best treatment available at  
18 the time and that as soon as blood screening tests were  
19 available they were implemented, and so on.

20 Then if we go over the page, the position in  
21 relation to Ireland is there set out. I'm not going to  
22 read it aloud.

23 Then in terms of Skipton Fund, the paragraph 6  
24 refers to your concern that there needs to be a review  
25 of the funds now. And then it's said that that's

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1 "23. If however you feel this position is  
2 untenable then we would advise against making any public  
3 announcement about a review for the reasons set out ...  
4 above. It would be preferable for continuing discussing  
5 options for increasing funding internally and seeking  
6 agreement with [Secretary of State] and HMT if you wish  
7 to pursue this ..."

8 Now that's 2 June 2009. As I understand the  
9 position from your statement, Baroness, and from  
10 documents, you never dealt with this is because you then  
11 left office and you moved to a different ministerial  
12 position it; is that right? So this was left for your  
13 successor?

14 **A.** Yes, I think that's the case, yes.

15 **Q.** And you say in your statement -- I don't think we need  
16 to have it up on screen, but it's paragraphs 3.155 to  
17 3.157 -- you say to the best of your recollection you  
18 wouldn't have been able to engage with the substance of  
19 the submission before leaving the Department.

20 **A. (Witness nodded)**

21 **Q.** You'd have been involved in the run-up to the local and  
22 European recollections and, immediately thereafter,  
23 the reshuffle ensued.

24 **A. (Witness nodded)**

25 **Q.** And so you can't be confident you even saw that

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1 submission, is my understanding.  
 2 **A.** I'm afraid I can't be confident, no, that I saw it.  
 3 **MS RICHARDS:** Sir, I note the time. I've got about ten more  
 4 minutes of questions for Baroness Primarolo, so I am in  
 5 your hands, and indeed the witnesses', as to whether  
 6 I complete that now, or whether we --  
 7 **SIR BRIAN LANGSTAFF:** Well, let me ask the Baroness.  
 8 The position is this: that when counsel has  
 9 finished her questions an opportunity is given to those  
 10 who are Core Participants to ask questions of you,  
 11 through their Recognised Legal Representatives, through  
 12 counsel. So she has to field those questions, and  
 13 plainly they wouldn't necessarily have been formulated  
 14 because those who may want to ask you questions -- the  
 15 questions may arise out of what you've been saying this  
 16 morning. That normally takes some time, maybe half an  
 17 hour or so, to field those questions.  
 18 So the option is either we break now until 2.00,  
 19 come back for ten minutes, have a break of about half an  
 20 hour or so, I can't say exactly how long it'll be, but  
 21 it'll be about that length, and then come back for the  
 22 questions from Core Participants. Or, we can go on for  
 23 ten minutes now, during the break, a slightly longer  
 24 break, counsel will field those questions and it will be  
 25 quicker overall. But you may want a break. That's

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1 fine. If you don't, if you're happy to continue, let's  
 2 continue. What would you like to do?  
 3 **A.** I think it would make sense, Sir Brian, to continue with  
 4 this line of questioning, and then break, as you say,  
 5 and wait accordingly for any further questions.  
 6 I am happy -- of course I'm happy to do that, but  
 7 I'll do what is most convenient. I mean, those who are  
 8 sitting here in the Inquiry may prefer a break now, as  
 9 opposed to waiting an hour longer, so I'm in your hands.  
 10 **SIR BRIAN LANGSTAFF:** Let's continue for the ten minutes or  
 11 so. And I see people are nodding, so that's  
 12 confirmation.  
 13 **A.** Okay.  
 14 **MS RICHARDS:** So the issue I just want to explore with you  
 15 finally, Baroness, is to go back to this question of  
 16 a public inquiry. And I've got a handful of matters  
 17 I want to explore and then just look at what you say at  
 18 the end of your statement on this issue.  
 19 You've told us in your evidence, and indeed in  
 20 your written statement, that one of the issues that  
 21 seemed to you most significant in maintaining the line  
 22 that there should be no public inquiry was what you were  
 23 being told about there having been no wrongful practices  
 24 employed and hence the threshold, criteria, whatever  
 25 they might be for a public inquiry, not being

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1 surmounted.  
 2 Now, the point I wanted to explore with you is the  
 3 extent to which that kind of conclusion, that there's no  
 4 wrongful practices, in a case such as this can be  
 5 reached without any engagement with the victims, those  
 6 who have been infected or affected. Because you were  
 7 being told no wrongful practices, you were being told  
 8 best available treatment at the time, but had there been  
 9 engagement with those who had been infected and their  
 10 families, it is likely that the Department would have  
 11 heard things similar to what this Inquiry has heard:  
 12 lack of consent, informed consent, lack of information,  
 13 lack of alternative available treatment options and so  
 14 on.  
 15 So the issue I really want to explore with you is  
 16 whether it was safe and sensible for the Department to  
 17 reach the view that there shouldn't be a public inquiry  
 18 without having sat down and listened to what the  
 19 victims, those who had been infected, might have to say  
 20 about whether they thought there were wrongful  
 21 practices. Do you have any observations on that?  
 22 **A.** Ms Richards, I find it very difficult to talk on behalf  
 23 of the Department. I'm trying to explain what I was  
 24 doing and my objectives. And I, from my own point of  
 25 view, I think with this whole sort of question around

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1 whether evidence should have been given to the  
 2 Archer Inquiry, and ministers gone -- even though we --  
 3 actually, I wasn't ever asked, but -- and it didn't come  
 4 up in correspondence, I found out -- but personally,  
 5 I feel now, with hindsight, which may not be necessarily  
 6 comforting to others, is that if I had gone to the  
 7 Archer Inquiry, to at least explain what I've tried to  
 8 explain here, that might have changed my view on the  
 9 issues. Whether there would have been a public inquiry  
 10 was another thing, because it wasn't down to me.  
 11 Because what you can see, I think I can see, is  
 12 that I'm gradually, over time, getting more information.  
 13 So I do raise, in my paragraph, the section 5, this  
 14 point of the Department at which the criticism is  
 15 levelled supplying the information, and whether there  
 16 needs to be another mechanism.  
 17 What I sought to do is to get all the information  
 18 out there. And it was a huge amount. So the answer to  
 19 your question is it seems a very reasonable proposition,  
 20 but I can't answer whether they -- I don't know whether  
 21 they ever spoke to people who were infected or affected,  
 22 and whether it would have changed their view. Their  
 23 view was exactly as expressed, about time, about  
 24 officials still being -- that had elapsed -- officials  
 25 being in the Department who were directly connected

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with it at the time.

So that is a difficult question for me to answer without total speculation.

**Q.** Can I then just look at one final document before we look at the last section of your statement, one final contemporaneous document from your time in office. It's DHSC6548432.

This is an MP, John Randall MP, writing to you on 19 July 2007 -- and there's obviously been earlier correspondence -- and then he says:

"... I have heard again from the Haemophilia Society and I enclose herewith a copy of the correspondence I have received from Mr Chris James, the Chief Executive. I would very much appreciate your comments on the points he has raised."

Then if we go over the page, there's a letter from the chief executive to Mr Randall, and it says in the second paragraph:

"The Minister's response was a standard one, essentially repeating the line that the Government has held for over two decades. Unfortunately, this response raises more questions than it answers.

"Please could you write back to the Minister to ask the following questions?

"1. Why she is certain that the contaminated

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both the Government and the NHS.

"We have identified seven specific failures."

Then the first is:

"1. The failure to pursue self sufficiency ...

"2. The failure to introduce a surrogate test for 'non A, non B' hepatitis ...

"3. The failure to restrict the use of clotting factor in less urgent cases once the risks of HIV and hepatitis C infection became known. Rather than being a life-saving treatment, clotting factor was continuing to be used as a precaution to prevent bleeds occurring, and to treat people with mild haemophilia.

"4. Delays in introducing HIV screening, both of blood products and donors ...

"5. Delays in introducing the heat treatment of blood products ...

"6. Delays in informing patients of their viruses ...

"7. Delays in introducing hepatitis C screening."

Now, I'm not inviting you to accept that each of those criticisms or suggested failures is correct, but this is being drawn to your attention that there was another side to the story. So whereas the Department is saying no wrongful practices, et cetera, et cetera, others are saying, actually, there are things that went

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blood disaster could not have been prevented when no investigation has been carried out into its cause?

"2. How can the 4,670 people infected with deadly viruses be confident that lessons have been learned when there has been no Government-backed inquiry to discover whether swifter action could have been taken to secure the safety of the blood supply?

"3. Why has the Government only reviewed documents relating to non-A, non-B hepatitis between the periods 1970-1985? This limited remit excludes HIV ... and does not explore the crucial period of 1985 to 1989.

"I enclose a briefing which explains that the Government missed several opportunities to improve the safety of the blood supply. The haemophilia communities is concerned that, unless there is a fuller official public inquiry, the lessons of these past failures will not be learned."

Then if we go to the next page, the attached document is a summary of The Haemophilia Society's submission to the Archer Inquiry, and we can pick it up halfway down the page. Just above the bold print of "We have identified seven specific failures", it says:

"The Haemophilia Society believes that many of these infections were preventable, and has presented ever which shows a catalogue of mistakes and delays by

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wrong, things that should have been done differently.

Do you know whether these issues were investigated or whether you asked for them to be investigated?

**A.** Ms Richards, I have to admit here to a failure on my part, which is that in all the correspondence that I was receiving -- sometimes all the background papers would be included and sometimes they wouldn't. And I didn't always read under -- sounds like I'm making excuses for myself. I will withdraw that. I didn't always read the background because I was entitled to expect that a letter replying would do exactly that on my behalf.

So the point made in the support letters that were with John Randall's letter I don't recall, even when I was prompted by the evidence, that I actually saw that.

Now that might be, as I said, failure on my part, but it's not always possible to read, on correspondence, all the back papers.

But that's, as I said, that's not an excuse.

That's a failure on my part and I accept the proposition that you're putting about those seven points.

But I think I would be entitled to expect the Department to have taken note of that.

**Q.** And it's right to point out that we know that there was a response from you back to Mr Randall.

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1 **A. (Witness nodded)**  
 2 **Q.** But that letter hasn't been found.  
 3 **A. (Witness nodded)**  
 4 **Q.** Then there is a further letter from Chris James of the  
 5 Haemophilia Society to Mr Randall. That's how we know  
 6 there's another letter from you, because it refers to  
 7 a letter from you dated 15 August.  
 8 **A. (Witness nodded)**  
 9 **Q.** And Mr Randall passes that on to you.  
 10 **A. (Witness nodded)**  
 11 **Q.** I'm just going to read the reference rather than go to  
 12 it. It's DHSC654548.  
 13 Then you've said in your statement that there  
 14 should have been a reply from you again to Mr Randall,  
 15 but again that document hasn't been found.  
 16 **A. (Witness nodded)**  
 17 **Q.** Can I then, just finally, take you to some of the  
 18 observations about public inquiries at the end of your  
 19 statement.  
 20 So if we could have Baroness Primarolo's statement  
 21 back up on screen. WITN5494001.  
 22 If we just pick it up at page 109.  
 23 So there's a section of your statement here headed  
 24 "The decision on whether to have a Public Inquiry".  
 25 I'm not going to read through this in its

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1 criticism of the ongoing handling by the current and  
 2 recent Governments, the events were principally historic  
 3 dating back to the 1970s and 1980s and they were  
 4 complex. The allegations of shortcomings in how  
 5 previous Governments had responded were significant.  
 6 But the Department of Health had by this stage published  
 7 its own reports which were not suggestive of wrongdoing  
 8 or failures of the kind that would justify a public  
 9 inquiry. Hence, certainly in terms of the advice I was  
 10 receiving, the tenor was that allegations of wrongdoing  
 11 and serious failures were not borne out by the records  
 12 which the Department had reviewed and reported upon."  
 13 Then you say this:  
 14 "Looking at it now, however, internal Department  
 15 reports were never likely to assuage the concerns of the  
 16 infected and affected. It causes me to reflect on  
 17 whether, when those reports were first commissioned, we  
 18 may have been better off commissioning some kind of  
 19 independent initial review to judge whether a full  
 20 Inquiry was justified."  
 21 Then if we go over to page 113, I just want to  
 22 pick up then the bottom of the page, you were referred  
 23 to what Mr Burnham said in a House of Commons debate in  
 24 January 2015. You say at the bottom:  
 25 "I am a reluctant to go too far down the line of

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1 entirety, I'm just going to pick up, in terms of  
 2 observations really for the future, what you say in  
 3 a handful of these paragraphs.  
 4 So at paragraph 5.14, on the next page, you say  
 5 this at 5.14:  
 6 "The central difficulty which I would identify was  
 7 that the Minister I was caught between arguments which  
 8 were said to justify a public inquiry and my  
 9 Department's rebuttal of those documents, without (as it  
 10 seems to me now) an adequate tool and means to identify  
 11 objectively whether the threshold for calling a public  
 12 inquiry was met."  
 13 Then in paragraph 5.16 you explain in the bottom  
 14 half of paragraph 5.16, picking it up about six lines  
 15 down:  
 16 "But I was there that a significant (but somewhat  
 17 ill-defined) threshold had to be met before agreeing to  
 18 a public inquiry. What I needed to convince me of the  
 19 need for a public inquiry was a basis to conclude that  
 20 there had been some kind of wrongdoing or significant  
 21 failure to act by previous Governments which was of  
 22 a scale requiring the much fuller investigation of  
 23 public inquiry.  
 24 "5.17 However it was hard to assess objectively  
 25 whether the threshold had been met. While there was

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1 giving my opinion on someone else's opinion. That said,  
 2 I do recognise Andy Burnham's concern and to some extent  
 3 I share it. I would not myself express this in terms of  
 4 'resistance' but I do recognise an element of  
 5 institutional inertia. That was something I did  
 6 experience when I tried to press the case for a more  
 7 positive response to Lord Archer's report."  
 8 Then you go on to talk about how you did work with  
 9 people who were good and of the highest calibre, and so  
 10 on. Then you say:  
 11 "Nevertheless, in my experience it can be hard to  
 12 move the Civil Service away from established lines to  
 13 take and a very cautious approach to setting precedents  
 14 that will cause difficulties or significant expenditure.  
 15 But it is also my experience that they are working hard  
 16 in the public interest and that it is a legitimate part  
 17 of their job to warn Ministers of the spending and  
 18 precedent-setting implications of proposed courses of  
 19 action. Added to the complexity is the conventional  
 20 caution about the Civil Service addressing policy issues  
 21 that were before previous administrations."  
 22 Then in paragraph 5.24, you say this:  
 23 "I am not able (and nor do I feel it is my role)  
 24 to offer solutions or recommendations. But reflecting  
 25 on these events, I question whether the whole model

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needs to be reviewed. It was certainly not ideal to be expected to make the judgement on whether to have a public inquiry into historical events as the Minister for the Department said to have been most involved in the past, whose officials had conducted their own internal reports which had not supported the need for an inquiry. In some cases there may be a role for external assessment for an independent review to help decide whether a full public inquiry is commissioned but I recognise that there are difficulties and that this may be seen to delegate a decision for which the responsibility lies with the Government."

I just wanted to read those out and then very briefly just pick out three points to ensure I correctly understood them.

In relation to the question of public inquiry, as I understand this part of your statement, you are recognising the difficulty that may arise if, as a minister looking at this issue, you are dependent only on the information being provided to you by the Department who might be subject to criticism, hence you raise the possibility of having some kind of either independent initial review or a possibility of some form offer external assessment; is that right, that's one of the points that you're seeking to make in this part of

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take. So I think, you know, there is, even though ministers take policy decisions, there is potentially an inertia, "This is closed, why does she require me to reopen it?"

**Q.** The third point that seems to be expressed in these paragraphs is this issue of access to the advice given to previous administrations and we've discussed your wish to try to speak to former ministers and the extent to which you were able to progress that suggestion. But do you think this is a sensible convention, that somehow prevents new ministers from knowing what was said to ministers of a different administration?

**A.** Despite the fact that I was asking to speak to ministers, I think the convention is sensible, because it -- for ministers directly to reach across different administrations, it could potentially be open to some misleading, abuse, whatever, of what was decided at the time, and that is why I took the view that, if you like, some intermediate stage should be taken to protect that convention, but to ensure that all the documents had been properly scrutinised and that the statements could be made.

I don't believe, even now, having seen all of this, and gone through it again, with all to the evidence, that the officials were motivated with the

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your statement?

**A.** Yes. That is correct. With hindsight --

**Q.** Yes.

-- and how it looks, and making sure that everything is public, it seems to me there could be an issue there, yes.

**Q.** The second point was this identification of what, I think, Mr Burnham had talked about, resistance from civil servants. You put it in a slightly different way, you talk about an element of institutional inertia, exemplified by what we've looked at in terms of the exchanges between you and officials in relation to the response to the Archer Inquiry.

**A.** Yes, I think my feeling, with hindsight, is that the officials for all the reasons that they had given, it happened before they were there, there'd been inquiries internally, all the evidence had been put in the public domain that they had, that somehow that was -- the matter had been dealt with. And that's what -- therefore, me wanting to reopen many of the considerations, they have to have one eye on, yes, making sure that I get the information I need, and that it's public, as we had requested.

But, secondly, they are looking now and for the future what are the best decisions for the Department to

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wrong reasons. You know, they believed what they were telling me, and I think somebody else independently -- we might have benefited if it had been considered. But I recognise that calling public inquiries is a very particular and important procedure and that it's important that the Government is held to account and, therefore, I am not sure whether this would cut across it, and that's why I put the caveat in. It's not my role to say what the solutions are. Whether there's another solution to crossing that, maybe there isn't. But that's what I was suggesting there.

**MS RICHARDS:** Thank you.

Sir, I'm sorry I was longer than ten minutes.

Apologies to everyone waiting for their lunch.

**SIR BRIAN LANGSTAFF:** Just a little!

**MS RICHARDS:** I have now finished my questions, subject to suggestions from Core Participants.

**SIR BRIAN LANGSTAFF:** Yes. Well, we'll take a break now until at least 2.30, it gives us the hour for lunch.

I say at least because counsel needs more time for questions which arise. You'll be told if that's the case. So not before 2.30 but otherwise, if there is enough time, 2.30.

**MS RICHARDS:** Thank you, sir.

**SIR BRIAN LANGSTAFF:** So not before 2.30.

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1 (1.29 am)

2 (The Short Adjournment)

3 (2.29 pm)

4 **MS RICHARDS:** Baroness Primarolo, just a handful of further  
5 questions to ask you.

6 The first is this: do you consider that  
7 Civil Service officials were thwarting your attempts to  
8 provide a robust positive response to Lord Archer's  
9 recommendations?

10 **A.** No, I don't think that they had a strategy or were  
11 deliberately thwarting my objectives. I think they had  
12 decided what had happened and they were holding the  
13 line, which led to a disagreement between me and them.  
14 But I don't feel -- and had I felt that there was  
15 cover-up or prevented from access to information, then  
16 I would have acted accordingly. And I think you can see  
17 that in the evidence I've put in, that when I -- there  
18 was an incident with Patience Wilson. I did pursue it  
19 very hard.

20 **Q.** Did you consider that the Secretary of State,  
21 Mr Johnson, was supportive of what you were trying to  
22 achieve?

23 **A.** Yes, I do. I think the Secretary of State did take the  
24 view that we should try and find a way forward, even if  
25 we couldn't deliver everything at that point; so, yes,

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1 structure of the NHS. Should the NHS, in the treatment  
2 it's given, be sure that it is listening to patients and  
3 responding to them? The answer is yes. Should that  
4 information be clear all the way up to the Department of  
5 Health? I think the answer to that is yes.

6 Do I know whether that happened or not, with  
7 regard to the infected and affected, the answer is  
8 I don't, no. I don't know it didn't but I don't know  
9 whether it did.

10 **Q.** Then shortly before we broke, we looked at that phase in  
11 your witness statement about institutional inertia. Do  
12 you have any thoughts on how that could be combatted?

13 **A.** As a general principle, as opposed to this example,  
14 which is highly complex, it requires actually a minister  
15 to assert their view, and I was reflecting over lunch,  
16 had you seen documents and exchanges between myself and  
17 HMRC officials, you would have seen me disagreeing with  
18 them. It's the job of Deputy Ministers to take policy  
19 decisions and to try to deliver those in the round when  
20 taking advice. So I think that is something that all  
21 ministers should be aware of, that they aren't -- that  
22 they need to pursue what their policy objective is.  
23 I can't think of another way to deal with that, and  
24 that's how I tried to deal with it when I was Minister  
25 of Health, but equally when I was a Treasury Minister

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1 he didn't block my attempts at all.

2 **Q.** Are you aware of any occasions when a minister has asked  
3 to, and been permitted to, speak to those from  
4 a previous administration?

5 **A.** Am I aware of any --

6 **Q.** Are you aware of any?

7 **A.** I'm not and I don't think it's ever happened, ever.

8 **Q.** Then I want to go back to an issue I was exploring with  
9 you shortly before lunch and that was the question of  
10 listening to what patients said they thought had gone  
11 wrong.

12 This isn't asking you about what the Department  
13 had or hadn't done in terms of gathering information, so  
14 this a general in-principle question. Do you agree  
15 that, in principle, the Department couldn't properly  
16 conclude that there'd been no wrongdoing in respect of  
17 NHS patients, without listening to what the patients  
18 thought had gone wrong?

19 **A.** Sorry can you repeat that?

20 **Q.** Yes. Do you agree that the Department of Health  
21 couldn't properly reach the decision that there'd been  
22 no wrongdoing, no wrongful practices, in relation to NHS  
23 patients, unless they had first listened to what  
24 patients said they thought had happened?

25 **A.** That's a really difficult question to answer, given the

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1 or, afterwards, in Education. You have to assert  
2 yourself, but you must listen to all the information  
3 that is given to you, which is given in good faith and  
4 taken in good faith.

5 **MS RICHARDS:** Sir, those are the questions I'm proposing to  
6 ask from Core Participants. Mr Moss has nothing.

7 Do you have any questions, sir?

8 **SIR BRIAN LANGSTAFF:** Yes, I do. The first is this, really,  
9 it's about yourself. You came into the job as  
10 a Minister of Health without there being any particular  
11 scientific knowledge or without having any particular  
12 knowledge in health before, except as a constituency MP.  
13 You described to us how at the end of your roughly  
14 two-year stint you got a lot more information than you'd  
15 had when you started. Plainly that had come to you  
16 rather gradually over the period, had it?

17 **A.** Yes. Yes, sir Brian. Yes.

18 **SIR BRIAN LANGSTAFF:** And when you began, it would appear --  
19 but I may have got this wrong, but it would appear that  
20 you happily, or at least were content to adopt the line  
21 which you were briefed about by officials who had been  
22 at the Department for Longer than you had, and at the  
23 end, you were beginning to question some of the lines  
24 that they were giving to you. Is that right?

25 **A.** That's correct, Sir Brian. Can I just -- obviously the

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1 Archer Report had also been published by then, yes.

2 **SIR BRIAN LANGSTAFF:** And you'd read that, and that caused

3 you to have a number of questions.

4 **A.** I can't be absolutely sure, Sir Brian, of the time

5 frame, because I was beginning to ask questions in more

6 detail. The regularity of the subject around the

7 question of the public inquiry came back to me, and each

8 time I would reflect and consider what I needed to know.

9 So there was a combination, I think, of seeing more

10 information gradually, being able to ask more questions

11 and get answers, and to try to build a picture for

12 myself in terms of what was the evidence being

13 produced -- presented to me.

14 **SIR BRIAN LANGSTAFF:** So that picture was a picture which

15 grew with time while you were in the Department?

16 **A.** I think that would be the case, Sir Brian, yes. And

17 when I look at the documentation to remind me -- because

18 I'm relying very heavily on that, that -- I can almost

19 see that myself, as I am pushing back and pushing back.

20 That's my natural disposition, to ask questions. And

21 you're quite right: at the beginning there was a huge

22 brief, I was dealing with -- forgive me, I'm not using

23 this as an excuse -- a huge amount of information,

24 highly complex. The role of a minister is around the

25 dimensions of policy and delivering that policy, and

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1 shorter might not give enough time for a minister to be

2 really effective in delivering change, if that's what

3 they thought was appropriate.

4 There's obviously a tension between spending too

5 long in a post and spending too little time, but had the

6 period gone on beyond the two years in your case, you'd

7 no doubt have continued asking more questions, getting

8 more information and continuing your journey, as I've

9 labelled it. Do you think there's any way in which that

10 process of gathering information, having a journey of

11 discovery for yourself, developing your own picture of

12 what had happened, how that could be accelerated, in the

13 general case.

14 **A.** That's quite a big question, Sir Brian.

15 **SIR BRIAN LANGSTAFF:** It is.

16 **A.** I'm going to do my best to try to answer it. I was ten

17 years a Treasury minister, and it is absolutely true

18 that you need to go through a couple of cycles with, for

19 example, the finance bill before you're familiar

20 yourself, as well as the information you're getting from

21 your civil servants. So I think the point about how

22 long ministers are in post is something that could be

23 reflected on.

24 But I recall that in 1997, when we were appointed

25 as ministers and I went to the Treasury, waiting for me

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1 therefore getting the information necessary.

2 And 10 years in the Treasury, I was -- well, I was

3 going to say I was much better at the end than I was at

4 the beginning but perhaps that's a judgement for other

5 people, not me. But it makes my point, yes.

6 **SIR BRIAN LANGSTAFF:** So the expression "personal journey"

7 may be rather too grand for it but, in a sense, what

8 you've described is a personality journey so far as your

9 knowledge and interest in this particular area is

10 concerned, is it?

11 **A.** Yes, I think so. I was always of the view that the

12 right thing, the just -- I can't quite find words to

13 describe it -- the right thing needs to be done for the

14 infected and affected and there are other examples of

15 different episodes, entirely separate from this, in the

16 Health Service or in government. So I'm, you know,

17 trying to get information, I'm trying to make a decision

18 on the facts as they are presented to me. And, across

19 the board of all the decisions I make, balancing how to

20 progress. And it is challenging, but that is the job of

21 Ministers of State, any Minister, within a ministerial

22 team, reporting back to the Secretary of State.

23 **SIR BRIAN LANGSTAFF:** Now a number of ministers who have

24 passed through Aldwych House have described how they

25 felt, perhaps, that having two years in a post or

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1 was a very large number of green files. Apparently they

2 do one for every political party, depending on who is

3 elected. You're not allowed to see what they did for

4 the other party. It might help, but ... And it would

5 give you basically an update on where everything was

6 but, most importantly, what might be the flashpoints,

7 and then it looks at policies.

8 So should each department for an incoming minister

9 give them a quick resumé of the live issues, as they see

10 it in the department, I think is a moot point. Would it

11 help the minister? But the Whitehall analogy, really,

12 is it's a sort of, "Well, if the minister doesn't

13 succeed, you won't be a minister very long".

14 **SIR BRIAN LANGSTAFF:** Well, leave aside the change of

15 administration from one political persuasion to another

16 but, within the same administration, there is quite

17 often a reshuffle, as we know. A reshuffle is between

18 members who are, at least on paper, in the same

19 political persuasion. Would there be anything to stop

20 a period, a short period, of handover? Does it have to

21 be instant the minister comes in without having any

22 briefing, apart from what the civil servants may be

23 asked to give them, about issues which they may not know

24 are live? Might it be an idea to have a handover of

25 a sort? It would happen in most ordinary employments.

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1 A. It would indeed happen in most ordinary employment. The  
 2 idea of the Civil Service is to give continuity, and  
 3 that they are providing that as the ministers come and  
 4 go. That probably works well in most cases. In this  
 5 case there are question marks, which is a matter for  
 6 you.

7 Whether it would have helped as a new minister,  
 8 even to have been given a summary, which I don't recall  
 9 I had, of the main issues that were on the outgoing  
 10 minister's desk, I think that is worthy of  
 11 consideration, yes, because you are already going to be  
 12 reading lots of stuff, would that then -- otherwise you  
 13 could be in danger of turning back the clock each time.  
 14 Everybody -- you described it as my personal journey,  
 15 but whatever journey it was, it was seeking information,  
 16 and the incoming minister should be confident that  
 17 where -- especially in the same administration, where  
 18 the last minister got to is where they pick up.

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

20 A. Does that help, Sir --

21 **SIR BRIAN LANGSTAFF:** That helps, indeed --

22 A. I've never been asked about the theory of the  
 23 Civil Service before.

24 **SIR BRIAN LANGSTAFF:** No, I wondered if that might be an  
 25 answer or might be your answer. Do you see any downside

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1 in there being a handover? Plainly one of the problems  
 2 of a handover is somebody is leaving their job, because  
 3 they've just been kicked out of their office, if we're  
 4 using a vernacular. They may have been moving on to  
 5 a more senior office themselves. So it may be more  
 6 complex.

7 A. I hesitate to say that the handover should be between  
 8 minister and minister, for the reasons that you've  
 9 clearly identified, Sir Brian, in that some ministers  
 10 are leaving Government whether they wanted to or not.  
 11 All ministers are moving on to other departments,  
 12 normally, which are very busy departments. And  
 13 therefore, if there is to be some sort of handover, as  
 14 you describe it, it should be on the basis, I think, of  
 15 what are the big issues that were sitting on the  
 16 minister's desk as she or he left the department. And  
 17 then it would be up to the Prime Minister whether they  
 18 wanted to continue that or not, and they would be  
 19 accountable for it.

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

21 The other thing which I want to ask you about is  
 22 what you were talking to counsel about just before  
 23 lunch, and it's to go to your witness statement.

24 If we can have that back up, please, WITN5494001  
 25 and go to page 114.

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1 You'd been talking just before this about the  
 2 question of institutional inertia and the question of  
 3 the public inquiry, and you went through the various  
 4 problems there might be in a department itself, subject  
 5 to criticism, calling for a public inquiry into itself.  
 6 It may be left, then, to the minister to decide. But  
 7 the minister I think is -- can you just confirm to me  
 8 that -- in paragraph 5.24, you say this in the third  
 9 sentence:

10 "It was certainly not ideal to be expected to make  
 11 the judgement on whether to have a public inquiry into  
 12 historical events as the Minister for the Department  
 13 said to have been most involved in the past ..."

14 There is -- you're not a lawyer but you know the  
 15 phrase "natural justice"?

16 A. Mm-hm.

17 **SIR BRIAN LANGSTAFF:** In legal terms, part of the two planks  
 18 of natural justice are that nobody should be a judge in  
 19 their own case. And the second, of course, is listening  
 20 to both sides. But that nobody should be a judge in  
 21 their own case, this is a position in which a minister  
 22 is put if they have to decide on having an inquiry,  
 23 because constitutionally they would be responsible for  
 24 their department even though they weren't necessarily  
 25 the minister at the time that the events in question

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1 occurred.

2 A. I can see that point exactly, Sir Brian. It wouldn't  
 3 have been up to me as a Minister of State to have said,  
 4 "Right, we're going to have a public inquiry". I would  
 5 have had to have recommended it on the grounds  
 6 that I could have put together.

7 I didn't think this at the time, so forgive me,  
 8 but do think it with the benefit of hindsight, that --  
 9 how many times I wished I had hindsight at the time --  
 10 is that admitting mistakes is a very hard thing to do,  
 11 and particularly in something as sensitive as  
 12 healthcare, and it's always been a challenge. And if  
 13 enough question marks had been raised over the  
 14 explanation, justification that the Department of Health  
 15 had been given about how it satisfied itself -- so, for  
 16 instance Liz Woodeson said in answer to the  
 17 Patience Wilson episode, I don't know, she had employed  
 18 a huge number of staff over two years to look at every  
 19 single document and I think the other point was -- and  
 20 lawyers had crawled over -- I'm not sure she used that  
 21 word -- had been all through this evidence and this  
 22 question of liability.

23 I just think now, rather than leaving it with  
 24 a minister in the department concerned, even if it had  
 25 been referred to the Cabinet Office to independently

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look at it, a separate consideration, sometimes a public inquiry will be absolutely clear-cut and I know there are many who rightly believe this is an example of that.

But it was complex at the time, and therefore I think the point you make and needs consideration -- is it the 2005 Public Inquiry Act or something -- needs to look at the mechanism. Because ultimately I think it is the Prime Minister who decides. It moves up the chain. But it -- I think a separate independent in some way, saying "You know what, we think there's enough question marks here. We should go for a public inquiry", and that's difficult if it's the department that's being investigated.

**SIR BRIAN LANGSTAFF:** It's not unknown for independent bodies or individuals to recommend to Government what they might or might not do. The public administration is perhaps replete with such bodies that are set up just to do just that, in part to take away from the machinery of Government, the subject at issue of the recommendation, and so that Government itself can then consider whether to accept the recommendation or not, which has to be ultimately its decision, which is after all the Government which will have to fund and bear the consequences of any inquiry, in this case, such as there is.

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I get this wrong, was it Deepcut or -- the inquiry into behaviour. It had an interim -- did it out of sequence -- said "Is there grounds to consider a public inquiry?" And the answer came back yes and so the public inquiry was called.

So I'm not -- I hadn't really focused on exactly the mechanism for today but what I do recognise is the point that you absolutely rightly made, which in the end I felt, which is somebody needs to be checking, if you like, what I'm doing. Am I doing it right, as the Minister? Or needs to be checking that what my officials are saying to the minister is the most up-to-date and current information as to why the Government is pursuing that action.

Whereas I felt that the justifications cascaded down through time, and as the record shows, there were -- judicial review on Ireland for example, or the ruling of the judge in one of the litigations, actually showed something different.

So I don't think I can really help you here, Sir Brian, much more than to say there are ways to do it, and it doesn't -- it could be done on an ad hoc basis. There is a need, therefore it is established for a quick independent assessment of whether there are more question marks now than there were originally.

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So, so far, the reason I'm asking you these questions is that there have been two suggestions made in the course of this Inquiry about what is seen by many in the evidence that they've given me as a problem, which is the question of how do you know when there should be a public inquiry or not? One is to establish some form of criteria. That might be difficult, given the wide range of issues which an inquiry might encompass. It might not be. But that's one possible solution, if a solution is needed.

Another is the one which you're suggesting: some independent third party or body or person. So can I be clear what your suggestion might encompass, would it be something like the "Office of the Independent Adviser on Inquiries", or how would it work?

**A.** I don't know, Sir Brian. For example, it could go to perhaps the Cabinet Office which would have an investigative team that would look at the evidence. The problem is the vast amount of evidence, and so the presumably -- the getting over the line for a public inquiry should not be satisfying completely, that there should be enough doubt that there should be a public inquiry. Or -- and I think I might get this wrong, so -- didn't the Labour Government refer a particular -- before it did go to a full inquiry -- forgive me if

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**SIR BRIAN LANGSTAFF:** And presumably whether those questions marks are such that it might be appropriate to have an inquiry. But there are some issues which the Government may be quite clear don't need any independent assessment, there should be an inquiry.

**A.** Absolutely.

**SIR BRIAN LANGSTAFF:** But there are others perhaps which are --

**A.** Absolutely --

**SIR BRIAN LANGSTAFF:** -- where the circumstances are such that there is a degree of public disquiet, so it seems, about what has happened, and that needs to be answered in some definitive way and it's not satisfactory, necessarily, that the department in the firing line should be asked to supply the answers.

**A.** Indeed. So I wouldn't see this as a regular mechanism. It would be in the circumstances of a continued challenge to the policy with, clearly, questions being raised that are of substance, that don't appear to -- I'm not saying in it's in this case, you asked me, I'm talking in theory now, particularly --

**SIR BRIAN LANGSTAFF:** Well, I'm trying to take it out of this case because it's a general proposition that you're putting --

**A.** It is, and I was very nervous of that, because it's not

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1 my role, to suggest to you what you should do,  
 2 Sir Brian, even though ministers can be bossy. It's  
 3 some -- ex-ministers. It's just that central  
 4 proposition that you put to me, which was I was wholly  
 5 reliant on information from the very department that  
 6 felt it hadn't acted negligently or had a liability, and  
 7 therefore the public inquiry route. I think the  
 8 separate question about finance, whether proper  
 9 payments, proper support was in place for the infected  
 10 and affected doesn't necessarily have to be linked to  
 11 a public inquiry, but they normally are.

12 **SIR BRIAN LANGSTAFF:** Thank you very much.

13 I don't know if there are any more questions that  
 14 arise out of that either from you or Mr Moss?

15 **MS RICHARDS:** No, not from Mr Moss and not from me.

16 **A.** Okay.

17 I hope that's helpful. I'm sorry, that really was  
 18 a theory of Government without any preparation.

19 **SIR BRIAN LANGSTAFF:** Well, you are the person with  
 20 experience of being a minister, which is why you are  
 21 here, and you raised the issue, which that's why I asked  
 22 you.

23 **A.** Yes, I would go for a quick review by Cabinet Office, or  
 24 independent when necessary.

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

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1 **SIR BRIAN LANGSTAFF:** So Skipton Fund, missing medical  
 2 records on Monday, hearing from those infected and  
 3 affected in a panel.

4 **MS RICHARDS:** Yes.

5 **SIR BRIAN LANGSTAFF:** Very well. 10.00, Monday.

6 (3.02 pm)

7 (The hearing adjourned until 10.00 am on Monday)

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1 **MS RICHARDS:** Baroness Primarolo, is there anything further  
 2 you wanted to add?

3 **A.** No, I think we covered absolutely everything. I hope  
 4 it's been of some assistance.

5 **SIR BRIAN LANGSTAFF:** Well, it has. I'd like to thank you  
 6 very much for the way in which you've assisted us.  
 7 You've been very careful to give your answers  
 8 circumscribed to the questions and experience which you  
 9 had, and, rightly or wrongly, refrained from being too  
 10 general about it. So thank you for that evidence, and  
 11 for telling us or describing what I labelled your  
 12 personal journey in the office, leaving it rather  
 13 hanging, when the brief came in and you hadn't got  
 14 a chance to deal with it, in June of 2009. But there we  
 15 are.

16 **A.** Yes, I regret that, but ...

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

18 **A.** Thank you.

19 **MS RICHARDS:** So that obviously concludes matters for today.  
 20 On Monday, we begin five days of evidence, hearing again  
 21 from those infected and affected. On Monday we'll be  
 22 hearing from seven witnesses and the focus of the  
 23 evidence on Monday is the experiences of the Skipton  
 24 Fund for those infected and affected with missing  
 25 medical records.

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