Wednesday, 29 June 2022

(10.00 am)

SIR BRIAN LANGSTAFF: Good morning, Lord Horam.

In a moment or two, Ms Richards will ask you the questions. First, Mary will invite you to take the oath. Let me explain that you're talking not just to those you see in front of you and to your left, but also to an audience which will be watching on YouTube or live stream, it will be numbered in three figures, and they are the larger audience, perhaps, that you will be addressing.

Mary.

LORD JOHN RHODES HORAM (sworn)

Questioned by MS RICHARDS

MS RICHARDS: Lord Horam, good morning.

A. Good morning.

Q. I'm just going to start with an overview of your political career.

A. Right.

Q. You began as an MP in 1970, and you were, at that stage, an MP for the Labour Party?

A. Correct.

Q. You remained an MP until 1983, but from 1981 to 1983 you sat as a member of the SDP?

A. Correct.

Q. You didn't gain re-election in the 1983 election, and you then, however, joined the Conservative Party in 1987, and you were elected as a conservative MP in 1992?

A. That's correct.

Q. You stepped down as an MP in 2010?

A. Mm-hmm.

Q. You were created a life peer and you remain an active member of the House of Lords; is that right?

A. That's correct, yes.

Q. Now, in terms of Governmental roles, you were a Parliamentary Under-Secretary of State in the Department of Transport between 1976 and 1979?

A. That's correct.

Q. You were about a Parliamentary Under-Secretary of State in the Office of Public Service and Science, which was part of the Office of the Duchy of Lancaster, for a few months in 1995?

A. That's right, yes.

Q. Then, and this is obviously the reason why you're giving evidence today, you were a Parliamentary Under-Secretary of State in the Department of Health from 29 November 1995 to the beginning of May 1997?

A. That's correct.

Q. So my questions will focus upon those 17 months at the

Department of Health.

During the time you were at the Department of Health, John Major was Prime Minister?

A. Right, yes.

Q. Stephen Dorrell was the Secretary of State for Health?

A. That's right.

Q. I think the Minister of State for Health was Gerald Malone?

A. He was.

Q. You had an equivalent in the House of Lords who was Julia Cumberlege?

A. That's right.

Q. Your predecessor in the particular role that you undertook had been Tom Sackville?

A. That's right.

Q. Now, before we look at your time at the Department of Health, there were a couple of errors in your witness statement that I'm just going to correct. They're very minor errors and, just for the sake of the record, if we can have up on screen, please, Lawrence, WITN5294001. If we go to page 21, the paragraph at the bottom of the page, paragraph 2.27, the reference in the last line to a minute of 6 January should be a reference to a minute of 12 January?

A. Yes.

Q. Then if we turn to page 45, paragraph 2.81, at the bottom of the page, the sentence at the very end of the page ends "as they".

A. Yes.

Q. Then at the top of the next page reads "the UK" --

A. Yes.

Q. -- and there were some words missing, I'll just read out those words for the record. So after "as they", the words should be inserted:

"... had been subject to litigation and been found liable, which had not occurred in", and then we pick up the sentence "the UK".

So those were, I think, two minor errors in the statement. There is a handful of documentary references, additional documentary references, but I'm not going to trouble you with them. To the extent that we need to look at the documents, I'll do that as we go along.

A. Yes.

Q. So, in terms of the role of the Parliamentary Under-Secretary of State in the Department of Health, how, in general terms, would you describe your role there?

A. Well, I had three -- 31 different aspects to the Department of Health to cover, which is quite a lot.

I suppose my role was to deal with Parliament quite a lot. I had to take a bill through in the Community Health Councils, for example, and to act as the first port of call for dealing with correspondence from Members of Parliament, and all that detailed work responding to the situation as I found it.

Q. As I understand your statement, you didn't, when you took up your post, receive any specific briefing or handover, rather you were briefed by civil servants on relevant issues as and when they arose?

A. That's right, because I wasn't part of -- my appointment wasn't part of a general reshuffle, so there was no opportunity for people to come and brief me or brief everybody on their new roles. I simply was put in there and had to find my way as I went along.

Q. Just to get a flavour of the areas of responsibility that were allocated to you, so to speak, some of them are set out in your witness statement?

A. Yes.

Q. So WITN5294001, again, please, Lawrence, page 8 --

A. Yes.

Q. -- and it's paragraph 1.14. You said you had 31 areas of responsibility.

A. Yes.

Q. They included acute services, National Blood Services, Private Finance Initiative, capital investment, Department of Health management, waiting lists, Community Health Councils, family planning and NHS Estates?

A. Mm.

Q. In practice, your statement tells us that the Private Finance Initiative work, and Community Health Council work occupied the majority of your time, or a significant part of your time?

A. Well, they were big items. I wouldn't say the majority of time, but they were big items. When you're doing a bill, for example, the reform of the Community Health Councils that's very important because Community Health Councils are the ordinary person's first point of contact with their local Health Service, so you want to get that right.

There was a major change going on here and that -- when you are taking something through Parliament, you, as it were, go into a tunnel. You spend two or three days every week in Parliament, discussing -- work working on this bill, answering all of the questions, and I was the only person on the bill, there was nobody else on the bill, I was the only person from the Department of Health, so you're sort

of consumed by this for a period, you're almost outside your normal work, you had to almost put that on one side and concentrate on that.

Then the PFI, the Private Finance Initiative, was a difficult responsibility because it was quite clear that we were at the end of a Parliament, there was only sort of another year and a half to go maximum, and we were trying to set up new hospitals funded in a different way, a way which has been used for other -- in other sectors, but not in health. And that meant a lot of time dealing with City people through were involved in possibly financing these hospitals. So both those were big tranches of work in addition to the others 29.

SIR BRIAN LANGSTAFF: I wonder, Lord Horam, if I can just ask you to do one thing. You're so keen to tell us what you have to say that your words are coming out very, very quickly.

A. Right.

SIR BRIAN LANGSTAFF: We do have --

A. Slow down?

SIR BRIAN LANGSTAFF: -- somebody -- yes, please.

A. Okay.

MS RICHARDS: Now, in terms of the responsibility for the National Blood Services, that responsibility brought

with it the issue of any provision of assistance or support to those infected from blood or blood products.

A. Correct.

Q. Obviously we'll pick that issue up in some detail.

You also had ministerial responsibility for the look-back exercise, although that was already under way by the time you took up your post.

A. Yes.

Q. In terms of HIV, AIDS and hepatitis more generally, the policy responsibility for that, as I understand it, rested with Baroness Cumberlege; is that correct?

A. That's right, yes.

Q. Then the responsibility for issues relating to blood internationally rested with a different parliamentary under-secretary, John Bowis?

A. Correct.

Q. Do you know why that was?

A. No, I don't.

Q. And --

A. Obviously that division of responsibilities pre-dates my appointment.

Q. You took over responsibility for BSC and CJD from Baroness Cumberlege in January 1996. Do you recall why that happened?

A. No, I don't. I -- no, I don't, frankly.
Q. Now, you were in post for around 17 months --
A. Mm-hmm.
Q. -- and we've seen from other evidence the Inquiry has heard that there was quite a significant turnover of junior ministers in the Department of Health. Was that something which, looking at it now, you think an advantage or a disadvantage?
A. A disadvantage. Definitely a disadvantage. I mean, my own feeling, after looking back with hindsight, is that you need about 18 months to really get into the feeling of a department, what the issues are, to get -- to hit your stride, as it were. After that you can be productive.

I think that a minimum -- really a minimum should be three years in a department before you can actually make any effect on policy and so forth. And I only had 17 months.
Q. Now, given the breadth of your areas of responsibility, and the fact that there was no formal training and you yourself didn't have, I think, any medical or scientific background, would it be fair to say that you would be heavily reliant upon the information and advice supplied to you by officials within the Department of Health?

A. Yes, you would be right about that.
Q. Did you have, as far as you can recall, any particular knowledge of HIV or AIDS or hepatitis C when you took up the post?
A. No particular knowledge, no, apart from one family friend who'd had a road accident and therefore had a blood transfusion and had contracted hepatitis C, and I was aware of the effect on her. Secondly, a constituent, a young man, and I think that was -- I saw him fairly regularly with his mother, and therefore was aware of the devastating effect it had on him.
Q. You observe in your statement, as well, that you had some other sources of information, you had the Haemophilia Society, and we'll look at some of the interactions there, you'd have letters from MPs?
A. Yes.
Q. Constituents?
A. Yes, all of that. I thought you mentioned sort of personal ones rather than sort of official ones. Officially I had, of course, lots of correspondence from people. And of course, as I say, parliamentary secretaries dealt with the correspondence and therefore I would deal with any correspondence surrounding this.

Q. In your statement you say, and it's paragraph 1.22, I think -- yes. So it's page 9, please, Lawrence; bottom of the page.

You say at the bottom:

"Any new, or significant changes of, Departmental policy would be agreed by the Secretary of State for Health."

And then you say:

"There were regular Ministerial meetings."

How regular were the meetings?
A. Very regular. Stephen Dorrell had a very good practice, I think, of having what he called "breakfast meetings", where he and all the ministers would meet up. Sometimes with the top civil servants, sometimes not, sometimes with the parliamentary private secretary, who was an MP but not a minister -- I remember Gyles Brendreth was the rather amusing PPS in our case -- and he would have regular breakfast meetings, probably three times a week, at which we'd discuss, informally, political and departmental matters without any let or hindrance. Anyone could say anything.
Q. Were those types of meetings minuted?
A. No. At least I don't think so.
Q. In general terms, how easy was it for you coming in as

a relatively junior -- as a junior minister, relatively junior MP in terms of the length of time you'd been with the Conservative Party; how easy was it for you to raise matters or express disagreement with either the Minister of State or the Secretary of State?
A. Not difficult really. I think it wasn't a problem with the Minister of State because the Minister of State wasn't really part of the chain of command, if you like. He was a deputy to the Secretary of State, he would deputise for him on occasions when the Secretary couldn't handle it for any reason. But the -- really the line of command was Secretary of State -- for my issues was Secretary of State and then me.

And, therefore, I could talk to Stephen, who I knew well, at our breakfast meetings or otherwise, and raise issues with him in whatever way I felt. Obviously, he was much more experienced than me in parliamentary terms and in conservative political terms but it wasn't difficult to talk to him. He was a very open man.
Q. Then again, just at a very general level, do you recall whether you had any interactions or dealings, either on an *ad hoc* basis or on a regular basis with

what's been termed the territorial departments; in other words, Welsh Office, Northern Ireland, Scotland?

A. No. No. I don't recall that at all. I don't think I did, frankly.

Q. So I'm going to now pick up the chronology of your involvement with the question of whether there should be some form of financial support or compensation for those infected with hepatitis C?

A. Mm.

Q. Just to give a couple of -- or a date before we look at some of the documents, you took up your post at the end of November 1995. Earlier that year, March 1995, the Haemophilia Society had launched a campaign which included a call for financial support.

A. Mm-hmm.

Q. So that's just to set the background.

Then if we look at a couple of documents that pre-date your arrival by a few days. The first is DHSC0042937_057, please. So this is a briefing for the Prime Minister, 21 November 1995, so just over a week before you take up your post, and it's really just to get a sense of what the pre-existing policy or line was at that point in time. If we have the heading "Compensation?", please, Lawrence, in the paragraphs below that. We can see there what's said

is:

"What the hon member is asking for is compensation for patients where, tragic though their circumstances are, no fault and no negligence on the part of the NHS has been proved.

"The House will understand the significance and implications of such a move. The principle involved is not one which can or should be lightly breached.

"My [right honourable friend Secretary of State] for Health has reiterated the policy of his predecessors, most recently in evidence to the Health Select Committee (July 1995), but he does not believe 'no-fault compensation' is a sensible use of NHS resources."

So that is the policy of the Department of Health, the policy of the Government, at the time that you took up your post?

A. That's correct.

Q. Now, within, I think, only one or two days of you taking up your post, The Haemophilia Society's interim report on hepatitis C and its impact was published.

If we go to DHSC0004498_141, we have a message here, the date at the top of the page is 30 November 1995, so it's your second day in office, and it's a message from Mr Pudlo in the Department of

Health to a Mr Billinge in the Department of Health, but it's copied -- sorry if we just go up the page, sorry, Lawrence -- it's copied to, amongst others, Marguerite Weatherseed and she was in your Private Office, I think?

A. That's right.

Q. Then if we go to the bottom half of the page, we can see the subject is "Hep C -- Haemophilia Society Campaign for Compensation":

"This is to alert you to the publication on Monday, 4 December of a report by The Haemophilia Society on the impact on its members who have been infected with Hepatitis C (through blood products). You will be aware that the Society are campaigning for compensation for such members similar to that provided for people infected with HIV through blood/blood products.

"The report, based on a survey carried out by the Society looks at health, welfare and financial implication (eg loss of work) resulting from the infections. It will no doubt be used as evidence to support the contention that members are suffering hardship through no fault of their own and should be compensated. John Marshall MP has a reachable oral on Tuesday and he will be armed with a copy. It is

likely that the press will run stories the same day. I am trying to get hold of an advance copy. The line to take should remain ..."

Then this is what's set out as the line to take:

"'The Government has great sympathy for those infected with Hepatitis C as a result of NHS treatment. But as no fault nor negligence on the part of the NHS has been proved there are no plans to make special payments.'"

Then if we then pick it up with your own involvement, the next day, DHSC0042937_071, this is again from Mr Pudlo to your Private Office, 1 December 1995, it refers in the heading to John Marshall and the anticipated oral question. It says:

"At yesterday's briefing meeting for the above oral PS(H) ..."

That's you, I think, Lord Horam?

A. Yes.

Q. "... asked for a note on the expected Haemophilia Society Report on the Impact of Hep C. This has now been sent to [the Secretary of State] and I am simultaneously faxing an advance copy."

Then we'll look in a moment at the note. But it would appear that one of the very first issues that

you faced when you took up your post was this issue of hepatitis C and financial support?

A. That's correct.

Q. Do you remember whether this was something that you knew about at all before, from any earlier Parliamentary debates or conversations, or whether this was something that was completely new to you as a topic?

A. Well, it wasn't completely new to me because I remember I told you the two personal examples from my own life, I was aware of it. It wasn't completely new but it was very new from a departmental point of view and I really had no awareness of the problem until having to deal with it.

Q. We can see there that there is reference to there having been, the previous day, 30 November, a briefing meeting for the oral question. What was the normal process when there was going to be a question that you might need to answer in Parliament?

A. I would meet up with one of the civil servants who would run through the suggestions they had about possible answers to the question, and there was a briefing on the background information that was needed to respond to the question.

Q. Now, the note that Mr Pudlo refers to in this minute

is at DHSC0042937_072. You also refer to this in your witness statement, Lord Horam, at paragraph 2.16, in case you need to check that. But I'm just going to look at the note for now.

So we can see in the first paragraph it's dealing with the Haemophilia Society's report, and it says:

"The report claims that some 3,100 haemophiliacs have been infected with Hep C as a result of treatment with contaminated blood products. The fact of infection is not at issue and if anything the true figure may be slightly higher. The number of infected members included in the survey is not given, but is reasonable to suppose that the published evidence is emotively and selectively used to support the Society's conclusions. Over 18 separate individuals are quoted -- some several times. Overall the effects described of Hep C on people's lives is not in dispute."

Then the next paragraph says this:

"The sample is not sufficiently large nor the methodology sufficiently scientific to allow valid conclusions that a representative to be drawn. For example the sample is unrepresentative in that well in excess of 20% are suffering from liver damage --

whereas both the report and officials accept that a proportion of only 10-20% would be expected."

Just pausing there, Lord Horam --

A. Mm.

Q. -- do you know whether the Department, during the time this issue was under consideration, ever considered commissioning its own assessment of the scale of the problem? We see the criticism here of --

A. Yes.

Q. -- the sample and the methodology --

A. Yes.

Q. -- but did the Department actually commission any scientific research of its own on this particular issue?

A. I'm not aware of it doing so.

Q. Then if we just carry with the paragraph:

"Some of the criticism seem to be of failings of clinical management by doctors, dentists and others rather than of the Government to provide compensation. There are occasional inaccuracies of fact eg the suggestion in Section 1 (second page) states that clotting factor concentrates were thought to be safe at the time they were used but haemophilia patients nonetheless became infected with 2 life threatening viruses which is true of HIV in earlier years."

Then this:

"This is untrue for Hep C from the early '70s onwards because it was appreciated that Haemophilia patients were at risk and indeed some were becoming jaundiced following treatment. It was an accepted side-effect at that time taking into account the benefit."

Now, this obviously is not -- these are not your words, Lord Horam, this is a note being prepared for you by officials. But the phrase "it was an accepted side effect at that time, taking into account the benefit", doesn't tell us who that was accepted by, Government --

A. No, no.

Q. -- doctors, NHS or, critically, patients?

A. No, that's perfectly fair.

Q. We'll look and see what's said at later stages about what patients knew, but was it your impression, if you can recall -- or looking at this what you think you might have thought -- that what was being said was that this was a risk that patients knowingly took?

A. No, I don't have any recollection of that.

Q. Then over the page, we can see the line to take under the heading "General" is about welcoming the report:

"... as a contribution to of our understanding of

the effect that Hepatitis C has on sufferers and their families."

Then in terms of the recommendations -- if we just look at the whole of the page, first of all, please, Lawrence -- we can see there are four headings there, "Financial Help", "Public Education", "Treatment Care" and "Further Research". I'm only going to be asking you, Lord Horam, for present purposes at least, about the financial help and we can see there the line to take that's being given to you is:

"I have enormous sympathy for those inadvertently infected. We have no plans to provide compensation. These patients received the best treatment that was available at the time and we do not accept that there was negligence."

Now, I am going to come back at a later stage, Lord Horam, to this idea of the best available treatment. But I think it's right to say that you were repeatedly told in the documents prepared for you that that was the case, that patients received the best available treatment at the time, were you not?

A. That is right.

Q. The interim report itself on which Mr Pudlo was here commenting is at HSOC0002726_002, and I'm just going

to look at a little of it, Lord Horam, just to -- so that we can see the kind of information that The Haemophilia Society was providing to the Department. So if we go to the second page, "Purpose of the Report", the first paragraph explains that the purpose of the study is:

"... to examine the needs of people with haemophilia and hepatitis C, their partners and families, and to review existing support services."

Then the third paragraph explains that:

"[The] interim report focuses on what the Government can do to help alleviate some of the financial and social consequences faced by those infected and their families. A report on the complete research will be produced early in 1996."

Then if we go to the next page we have the "Executive Summary". If we just look at the bullet points:

"More than 3,000 people with haemophilia have been infected with HCV as a result of their treatment with contaminated blood products.

"All face the possibility of cirrhosis, liver cancer and liver failure. At least 50 people have died from liver failure between 1988 and 1994, fourteen are known to have died in 1994.

"Among those not yet seriously ill the damaging impact on their lives is already apparent.

"There are fears of infecting partners, not being able to support dependants and the risks of having a child.

"Income has fallen as the ability to work is restricted.

"Children's education has been disrupted.

"Stress and anxiety has pushed some individuals and families to breaking point.

"Additional expenses are incurred.

"Life insurance premiums have become prohibitive.

"The Government is asked to take immediate action and provide funding for", and then the first bullet point is "Financial support to individuals".

Then if we go over the page we can see the heading "Background to the Research", I don't propose to read through all of that, but the third paragraph explains:

"It is known that hepatitis C, as well as causing chronic liver disease in approximately 80% of those infected can also progress in between 10-20% of those with the chronic condition to cirrhosis of the liver, it can also cause cancer of the liver and

death. This progression can take 20-40 years. Over 50 people with haemophilia are known to have died from liver failure between 1988 and 1994, and 14 in 1994 alone."

Then we can see the next page, it's headed "Health problems facing people with haemophilia and hepatitis C". I'm not going to read through all of it, but if we go to the bottom of the page we can see it says:

"Among people with chronic hepatitis C there were reports of ..."

Then there is a range of serious and debilitating conditions or consequences there set out.

Then if we go on to page 7, please, Lawrence, you'll see, Lord Horam, there is a section on "The Social and Financial Implications for People Infected with Hepatitis C", beginning "Stress and Anxiety".

And if we just go -- just bottom half of the page, please.

So under that last quote from "Mrs F, aged 52", it says that.

"People reported that they are suffering uncertainties and worries about their health and their future, which leads to stress and anxiety. The prognosis for any individual with chronic hepatitis C

is generally not known but for the group as a whole it is known that 10-20% will develop serious liver damage and some will develop cancer of the liver. This uncertainty and fear for the future adds to the stress of individuals who are concerned not just for the future of their own health but also how to cater for the future of their dependants. Many have young children."

Then if we just go on to the next page, please, it's the fifth paragraph beginning:

"The lack of public knowledge and awareness about haemophilia generally and HCV in particular can lead to social ostracism, as people feel that there is no-one to talk to who will understand their fears."

Then there is a description, for example, of problems in getting dental treatment and so on.

Now, I'm not going to get through the rest of the report but there are sections of impact on family life, employment, education, loss of earnings and so on.

A. Mm.

Q. We know from some documents we'll look at in a few minutes that you were keen to read the report properly and understand it, because you said so in Parliament.

Do you recall what your thoughts were or your

reaction was when you did have the opportunity to sit down and read through the report properly?

A. Well, this was the interim report.

Q. Yes.

A. Which was to be followed by the full research report, which I don't think was produced until February.

Q. That's right.

A. Right. Obviously, when I had the opportunity to read this, I mean one is struck by the awful consequences of the condition. And I also knew from my constituent the difficulties he faced. So I just had total sympathy for the people involved.

Q. If we just look at page 16 of this report we'll see the recommendations that were made by The Haemophilia Society.

So, under the heading "Financial help to Individuals", the recommendations were twofold:

"A hardship fund should be set up by the Government immediately to help those who are already ill. These people have suffered major reductions in their income through their illness, but are also experiencing increased costs such as more prescriptions charges, transport charges and food costs. The fund should also provide financial support for the dependants of those who have already died as

a result of HCV."

Then the second recommendation:

"An across the board payment to all those infected who are suffering from the uncertainty of not knowing whether HCV will have a severe or even fatal impact on their lives."

A. Yes.

Q. Now, that was, I think, published on 4 December 1995 but an advance copy had been sent to the Department of Health, I think on 1 December.

There was then, if we go to your witness statement --

A. Mm-hmm.

Q. So WITN5294001, page 17, please.

We can see set out in paragraph 2.17 of your statement a parliamentary answer you gave on 5 December 1995. And if we pick it up in the italicised section, the fourth paragraph, you congratulate the Haemophilia Society for its review and Mr Marshall for what you describe as his "relentless questioning over many years, which has already [received] quite staggering results".

Then you say:

"[You] have not yet read the full review, but [you] shall do so as a matter of priority and ...

obviously take its conclusions most carefully into account."

Then you are asked whether there would be an early and sympathetic decision to bring some hope to the families, and you say:

"... I assure the [honourable] Gentleman that the problem will always receive sympathy from me."

So that's 5 December. I'm not going to go to the underlying documents in relation to that. What I want to pick up is a debate in Parliament then on 13 December. You refer to this in the next paragraph of your witness statement. We'll go to the original documents.

But before we look at the parliamentary text, if we just look at DHSC0006774_066.

Now, this is a draft of a text for you to speak to in Parliament, as I understand it; is that right?

A. That's right, yes.

Q. Again, is that a normal part of the process, that the officials within the Department will provide a draft for you to speak to in Parliament?

A. Yes.

Q. Now, I'm not going to go through the line by line, because of more interest is what you actually said in Parliament.

A. Mm.
Q. And that is at HSOC0002072.
So we can see from the date at the top of the page this is 13 December 1995. So I think you've now been in post for two weeks.
A. Yes.
Q. And we can see that an MP, George Mudie, is giving a speech. Now, I'm not going to read through what he says in this first page. He talks about people being infected with hepatitis C as a result of treatment with contaminated blood products.
If we go to the second page, please, Lawrence, I want to pick it up halfway down the left-hand column, when Mr Mudie asks what can be done:
"What can be done? Those four words represent the point at which -- unfortunately -- the Government and those concerned have in the past parted company. It is agreed that all I have spoken about until I uttered the four words 'what can be done' is very sad and deserving of sympathy. Yet, when the matter was debated briefly in the other place ..."
That's parliamentary terms for the House of Lords, I think, Lord Horam; is that right?
A. That is correct, yes.
Q. "... what followed was prevarication and an

unwillingness to make any real contribution to ease the plight of those infected.
"To be fair and to balance the picture, the Government were sympathetic and supportive of haemophiliacs who received contaminated blood and became infected with HIV. It is beyond argument that that disease is more severe than hepatitis C, but the similarities between them are too great to be ignored.
"The circumstances under which individuals became infected with a second disease are exactly the same in each case. The test to prevent HIV being passed on stopped the hepatitis C virus being passed on. Both illnesses can be -- and are -- debilitating. All those who suffer face the worry of passing the disease to a loved one or to an unborn child. All face difficulties in education and employment. All face the impossibility of gaining life insurance, unless it is offered at a totally prohibitive cost."
Then Mr Mudie sets out, and we see a reference to this family in a number of different parliamentary reports, I won't read it out, but three brothers, two infected with HIV, who received some financial assistance, a third, infected with hepatitis C -- contracted hepatitis C, died, received nothing.
Top of the next page, please. So right-hand

column, if we pick it up in the second paragraph:
"When we debated the subject before, the then Minister talked in global sums and mentioned a figure of £6 billion, representing the cost of a total no-fault compensation scheme. That is not what we are asking for. We ask simply that a relatively discrete small group of people should receive some assistance as a mark of the finance hardship and of the physical and emotional pain that they're suffering.
"Of course someone in the Treasury, or even in the Department of Health will say that that would create a precedent. However, the argument about precedent is the argument of administrative convenience; it is not the argument of compassion or of Christmas -- you and I, Mr Deputy Speaker, have just come from the Christmas carol service. The precedent was created when the Macfarlane Trust was set up; the Government rightly decided to make ex gratia payments to haemophiliacs infected with HIV, and then to non-haemophiliacs infected with that virus. The Prime Minister took a major part in both those decisions, so I hope the report of our debate will be sent to him so that he can act upon it."
Then just a little further down the page-- no, sorry, the previous page still. Sorry, I've got hard

copies, two copies of the same page. No, that's fine.
So we then get a response from you --
A. Mm-hmm.
Q. -- and if we -- I'm sorry.
Can we go back to the previous page because I've skipped over something.
So it continues with Mr Mudie's contribution. What I should have made clear is what I just read from was Mr John Marshall's contribution. We see that at the bottom of the page. We can go to the next page. My apologies, Lawrence.
So if we can go to the next page.
So I'm not going to read through the rest of what Mr Marshall says, but we then see your response, Lord Horam.
A. Mm.
Q. I think we can pick it up at the bottom of the page, last paragraph, where it says:
"I have just come to the Department of Health, and there is a great deal to read. I would like to read the Haemophilia Society's report thoroughly, but I've not yet had the opportunity to do so. I shall make that a very high priority, but I want to read the report and not merely a brief. I am aware that the report graphically describes the problems experienced

by some sufferers who find that they now have to contend with the effects of hepatitis C infection on top of the effects of haemophilia."

You then in the next paragraph say this, and again I'm going to read it now and come back to it later. You say this:

"The great benefits to patients of medical procedures rarely come without some risk, and I would like to put the matter into that context. It is important to remember that it is not always possible at the time treatment is given to fully appreciate the risk or to avoid suspected or known risks. In the case of each individual patient, a balance must be struck between the benefit to be gained versus any possible risk. The patients we are now discussing received the best treatment available in the light of medical knowledge at the time. I do not think that either the hon Gentleman or my hon Friend will dispute that.

"The factor 8 concentrate -- the cause of the infection -- has brought great benefits to patients with haemophilia. Previously, only about 5 per cent of patients with severe haemophilia reached the age of 40, whereas by 1980 -- as a result of factor 8 concentrate and drugs -- the life expectancy was very

close to that of normal males."

Then you go on to set out what were said to be a number of other advantages of the Factor VIII concentrate.

Now, would it be right to understand, Lord Horam, that that kind of information, in particular about what is said to be the impact on life expectancy, would have been supplied to you by officials within the Department?

A. Yes, it was.

Q. The inference, I think, that is being set out in the first part of that paragraph is to say that this dramatic change in life expectancy was attributable to Factor VIII concentrates. That's what you were saying?

A. That is what was being said.

Q. The Inquiry knows that there is some evidence to suggest that a treatment called cryoprecipitate, which was available before Factor VIII concentrates became more widely available, may have made a major contribution to improved life expectancy. Do you recall whether cryoprecipitate was something that was ever raised with you by your officials?

A. No, it was not.

Q. Then if we just go to the next paragraph, please, in

your speech. You say:

"Most haemophilia patients infected with hepatitis C were so infected before the blood products were treated to destroy viruses in 1985, and well before tests for hepatitis C became available. Before then, the only way to safeguard blood was to limit those from whom blood was taken by a system of self-deferral. This excluded, amongst others, those known to be suffering from hepatitis, or any other liver disease, and drug misusers."

Now, would it be fair to assume, Lord Horam, that that information, about the system for safeguarding blood, would be based upon what officials had told you, rather than your own independent knowledge?

A. Yes, that's correct.

Q. Do you recall whether officials ever talked to you, at this point at least, about how blood products used for the treatment of haemophilia had come from, to a large extent, products collected in the -- blood collected in the United States?

A. That was an issue that I was aware of. Whether officials brought it to my attention, I can't recall.

Q. Do you recall whether anyone ever talked to you about how blood had been taken, to some extent at least in

the States and in the United Kingdom, from prisons?

A. I was aware of that. I think it was general knowledge. But I don't know whether the officials specifically brought it to my attention.

Q. You refer here to the system of self-deferral, so the idea of trying to exclude those who might be at high risk. Did officials ever talk to you about whether there were -- the adequacy of that system, how well it worked or didn't work in practice?

A. No, I don't recall that being brought up with me.

Q. You then set out some figures. I'm not going to read through those. But if we, I think, then go to the next page -- no, the next column, sorry, same page.

We can see there, the third paragraph, you refer there to The Haemophilia Society's report again. Then Mr Marshall intervened in the debate and said:

"Does my hon Friend agree that, if a relatively small proportion of sufferers will develop cirrhosis of the liver and die prematurely, the cost of helping them will be correspondingly small?"

So Mr Marshall I think here is suggesting, or this is how you understood it, Lord Horam, that you could have a more limited financial support scheme that provided financial support to those who developed cirrhosis of the liver. That was how you understood

it?
A. That is indeed how I understood it.
Q. And you said this in response:
"Yes. That is a valuable point, which my hon Friend makes for the first time, The Haemophilia Society -- understandably, as it has not completed its study -- has not made full and costed proposals. We have never received such a suggestion to study, and I would be interested to hear details of the relatively modest and restricted proposal which my hon Friend has made during the debate."
Then you set out a number of other matters, including some issues that had been raised about treatment with alpha interferon.
If we go to the next page, please, and we look -- so it's the left-hand column, the last paragraph, you said this at the end of your speech:
"All that I have heard in today's debate suggests that I should read the Haemophilia Society's report extremely closely, and I promise the House that I shall look at the matter afresh in the light of what I said in the report. We have also heard from my hon Friend a sensible suggestion for a more modest and restricted compensation scheme than has been hitherto mentioned. For those reasons, I shall leave the

matter at this stage, although I give my full sympathy to those who have the disease."
So, Lord Horam, is it right to understand that you were promising or indicating that you would look at two matters. First, you'd look at the whole matter afresh in light of The Haemophilia Society's report, and, secondly, you wanted to think about the more -- the narrower proposal that Mr Marshall had put forward?
A. Yes, you state that totally accurately.
Q. And I think I'm right in saying that those promises you gave were effectively -- they were a deviation from the script, in a sense. That was not what officials had primed you to say?
A. As regards the first one, reading the report extremely closely, I think I would have said that anyway. I don't know whether -- I can't recall whether I would have been briefed to that effect by --
Q. That may be right. It's more the -- it's the use of the words "I shall look at the matter afresh".
A. Ah.
Q. Was this your initiative, if I can put it a different way?
A. Well, they were my words, and so I take responsibility for those. I don't know whether they were the words

of the civil servants in their briefing or not.
Q. We can look and see what the response was, I think, perhaps, to what you said, and pick it up in that way.
So then we have your speech on 13 December 1995, your words to Parliament.
If we just, again taking things in a strictly chronological order, go to DHSC0004060_002.
Now, this is a letter sent from you the following day, 14 December 1995, to an MP who had written on behalf of a constituent.
And if we can see, I think probably just in the -- it's the second through to the fourth paragraph, you say in this letter:
"My predecessor explained the Government's position on those infected with hepatitis C in the Adjournment Debate on 11 July ... We have great sympathy with those patients who may have become infected with hepatitis C through blood transfusions or blood products. However, in the absence of negligence we have no plans to make special payments."
The next paragraph then, again, talks about patients receiving the best treatment available in light of medical knowledge at the time.
Then the next one says:
"The Government has never accepted the case for

a no fault scheme of compensation for medical accidents. It is unfair to others and still requires proof of causation which is often difficult to establish. Every individual case where a medical accident has occurred is a personal tragedy for both the individual concerned and their family. If the NHS is proved negligent in a Court, it accepts its liability to pay damages."
And so on, and so the letter continues.
What you say about this in your statement, Lord Horam, and perhaps you want -- if you would want to turn that up, WITN5294001, and we can go to page 19, I think. Yes, paragraph 2.20, page 19.
What you say is this, and you refer to the letter, and then you say in the third line:
"As the Inquiry will be aware, responses such as this would be drafted by officials at first instance and the draft sent to me for approval. This letter would undoubtedly have reflected the Department's established position at the time against a Hepatitis C payments scheme. For example, the reply stated that we had no plans to make special payments and argued that the most effective use of resources was to seek to improve the understanding, management and treatment of the condition. As I address below, I wanted to

soften this standard line in correspondence."

We'll come on to the softening of the standard line.

But, essentially, although this letter was sent out the day after you'd said in Parliament you would look at matters afresh, it had been drafted, no doubt, before then --

A. Correct, that's correct.

Q. -- and it reflected --

A. The prevailing line --

Q. -- the existing policy?

A. -- absolutely right.

Q. So if we can then pick up on the response within Government to what you said in Parliament, and I think we can start at DHSC0042937_036.

This is from a Mr Grice in HM Treasury to Mr Dobson in the Department of Health, it's dated 18 December 1995, and it says this:

"I was a little concerned to see Mr Horam's remarks in the debate on haemophiliacs on 13 December ..."

That's what we've just looked at:

"The Government has a firm and agreed policy on such issues. Consistent with that policy, and for the avoidance of doubt, I should indicate that the

Treasury would be strongly opposed to what Mr Horam termed 'the relatively modest and restricted proposal' made by Mr John Marshall MP."

Now, you tell us in your statement, Lord Horam -- I don't think we need to put it on screen, but it's paragraph 2.21 -- that it's highly unlikely that you would have seen this letter at the time?

A. That's correct.

Q. Would it be right to understand that you saw it for the first time when it was provided to you for the purposes of making your statement?

A. Yes.

Q. Having seen it for the first time, what's your reaction to seeing the Treasury write in these terms to another senior official within the Department?

A. Concern. I mean, I think, in a sense, one could say the Treasury was doing its job. The Treasury is looking after the Government -- after the taxpayers it has to look at all this and, it probably felt that I'd said something which was not consistent with existing policy, and they were just stating to their colleagues in the Department of Health that this was the case.

Q. Does it surprise you that this wasn't drawn to your attention at the time by officials within the

Department of Health?

A. Yes.

Q. Now, if we pick it up then -- so we see that's the Treasury response. We can then get a sense of the internal Department of Health response from DHSC0004498_051. You refer to this in paragraph 2.22 of your statement, but I think the document is probably more helpful to look at.

So it's from Ann Towner to Mr Pudlo. This is also sent to Ms Weatherseed, so sent to your Private Office 20 December 1995. It says this:

"Correspondence on Compensation for Haemophiliacs Infected with Hepatitis C."

Now, that's a reference to the kind of letters --

A. Yes.

Q. -- that MPs would write raising their concerns or constituents' concerns?

A. That's correct.

Q. You say this:

"You [and that, I think, may be Ms Weatherseed but, in any event, it doesn't matter] rang to advise that PS(H) [that's you, Lord Horam] would like the words 'at present' inserted in the statement that 'we have no plans to make special payments' in our replies

to correspondence on compensation for haemophiliacs infected with hepatitis C."

Then there is, I think, a reference to a particular letter where it's suggested that you'd already made such an amendment.

Then paragraph 2 says:

"In answering recent parliamentary questions and in adjournment debates PS(H) has said that he wishes to study the Haemophilia Society's interim report of its impact study carefully before coming to any conclusions about its implications. He has also indicated a willingness to study any new proposals (eg for schemes limited to those who develop chronic illness). However we fear that if we were to qualify the existing line in correspondence as suggested, it would be taken as indicating a weakening of the Government's position and imply that compensation is being considered, and further continued pressure would lead to concessions.

"In view of the above, PS(H) may wish to discuss the proposed additional wording with SoS."

That's the Secretary of State.

Now, it might be thought that last sentence has an air of you being sent off to the headmaster's study. Is that a fair way of reading it, do you

think?
A. I wouldn't put it in quite those terms but it was a sort of warning, if you like.
Q. A gentle rap across the knuckles?
A. You could put it like that if you wanted to, but a warning that I really ought -- if I'm going to go down this path, I really ought to discuss it with my colleague, the Secretary of State.
Q. We can see, I think, there is an accurate account in the first part of the paragraph 2 of what you'd said in the recent debates --
A. Yes.
Q. -- you wanted to study the report, you wanted to consider any new proposals. I think -- is this right -- it's clear that the Departmental officials don't share your enthusiasm for looking at the matter?
A. That's right. That is correct.
Q. Then we can see if we go to DHSC0004498_188, this is a communication to the Permanent Secretary. Would the Permanent Secretary at that point have been Graham Hart, do you know?
A. Yes.
Q. If the Secretary of State is the headmaster, I'm not quite sure what that makes the Permanent Secretary but, in any event, it might be said there is an air of

you being reported to the Permanent Secretary here. So the date is still 20 December 1995, there is a reference towards the bottom of what we see on the screen:

"Thank you for copying your minute to me. I have copied it on to the Permanent Secretary (and Miss Edwards) -- see the attached note."

Then if we go down to the bottom of the page, and this is not, I think, something that you saw at the time -- again your statement sets that out -- but it says this:

"The Permanent Secretary may be wish to be aware of the attached minute. I mentioned to him the other day that PS(H) was clearly not happy with the firm line Ministers have taken up to now on compensation for haemophiliacs infected with hepatitis C. It is quite clear that he is trying to change the line, little by little. He has had plenty of briefing (written and oral) on the subject, but his sympathy for those concerned is clearly uppermost in his mind. Cost comes second -- hence his readiness to consider proposals for a scheme limited to those who have actually developed chronic illness, rather than extending to all who had been infected. Secretary of State met a group of haemophiliacs (led by

Roy Hattersley) yesterday, and made no concessions."

So if we just go back to the bottom of that previous page, and we just look at the text, those last 10 lines or so. Thank you, Lawrence.

Now, I think in your statement you suggest you weren't necessarily trying to change the line, you wanted to explore the position, however, with an open mind; is that a fair summary?
A. Yes.
Q. The reference there to "cost coming second", was it your understanding, whether at the time or from looking at the fuller range of documents you've seen for the purposes of your statement, that from the Department's perspective, as well as the Treasury's, cost came first?
A. I don't think it's a question of cost coming first, it's just that there was clearly a big cost, and the Department had always taken the line that when it came to allocating money, treatment and healthcare was the first consideration and compensation the second consideration.
Q. Well, were you at this point, or indeed at any point, made aware that in the previous -- well, in the same calendar year but earlier in 1995, Gerald Malone had voiced a similar view and, in the words of

Baroness Bottomley yesterday, had overspoken or got a bit carried away, and again was -- I think as my colleague, Mr Hill, put it -- put back in his box. Were you aware at the time of Mr Malone having raised this issue a number of months previously?
A. No, I wasn't, no.
Q. Then we can see at DHSC0004498_045, this is 21 December 1995, and it's from Mrs Weatherseed in your Private Office to the Departmental officials. It refers to the first of the 20 December documents we looked at, Ms Towner's minute, rather than the minute to the Permanent Secretary and it says that you:

"PS(H) has seen Ann Towner's note of 20 December. Basically, he very much accepts the Department's stance on this issue, but does not want to give the impressions that he is deaf to the concerns of the haemophiliac community. He said at the recent adjournment debate that he wanted to read the Haemophilia Society's report carefully, and would like to reflect that sort of attitude in the standard reply.

"However, he has noted your concerns about the wording he suggested and has asked whether you can propose an alternative form of words which would convey this."

Now, can I just explore with you that first paragraph, where what's said is that -- you very much accept the Department's stance but you don't want to "give the impression" of being "deaf to the concerns of the haemophiliac community".

Now, it might be said that wording is a bit ambiguous.

A. Mm.

Q. Was it that you wanted to give the impression that you were listening or was it that you genuinely wanted to consider the concerns of the community?

A. I wanted to consider the alternatives, that's why I commissioned the Department to look at the various alternative options.

Q. If we pick up your observation on this in your witness statement at WITN5294001, page 21, paragraph 2.25, and it's just below the italicised extract from the document we've looked at. You say:

"This minute reflects that while I was very sympathetic to those infected with Hepatitis C through contaminated blood, I was fully aware of the concerns of the Department about cost and precedent. I was, however, fighting to avoid being pinned down to this until I read into the subject more widely and had a chance to consider whether there were any other

options."

So that reflects your thinking at the time?

A. Indeed, yes.

Q. Now, if we then -- I don't think we need to put it up on screen but I'll just read a reference into the transcript, it's HSOC0014333. On 21 December you wrote to the Reverend Tanner, explaining that you wanted to consider the report and you suggested a possible meeting in the New Year. You deal with that in your witness statement, paragraph 2.26, and explain that was essentially a holding reply. So I don't think we need to take time looking at that.

But if we go to now early 1996, DHSC0003883_123. This is from your Private Office to Mr Guinness within the Department of Health, and you say this -- or she says this on your behalf, in the first paragraph:

"... PS(H) has been giving further thought to the issue of awarding compensation to haemophiliacs who contracted hepatitis C before routine screening of blood products was introduced. He is well aware of our current position on this issue and the reasons for this. However, against a background of mounting political pressure, he would like to explore the options for offering compensation, if only to assure himself that we have done all that is feasible."

The reference there to "mounting political pressure", is that essentially a reference to the views that were being expressed, I think by MPs -- not just in opposition but a number of different MPs -- on this issue?

A. Yes.

Q. Do you recall whether there were any other sources of pressure at that time. I suppose there was The Haemophilia Society's campaign itself?

A. Well, there was The Haemophilia Society's campaign.

Q. Then Ms Weatherseed says:

"I would be grateful if you could prepare a submission for PS(H) setting out costed options for compensation (which could vary, for example, according to factors such as age, the existence of dependants, hardship factors, limited to those who have actually developed Hep C). This should include an assessment of how far any of these options are likely to be acceptable to the Haemophilia Society.

"This should also provide advice on the likely availability of funds and the implications any change in policy might have in terms of triggering off demands from other areas, both from people (whether haemophiliacs or not) who were infected by blood, rather than blood products, and more generally (for

example, if blood or blood products are shown in future to have transmitted as yet unrecognised infectious agent)."

So you essentially asked officials to go away and work up a set of options for you to consider?

A. That's right.

Q. Then if we could look at a document that I think is just a handful of days earlier than the one we just looked at, DHSC0042937_032.

This is 8 January 1995, but it's obvious from the context, and I think your statement also make this point, that it should have been -- it's January 1996 that's being referred to here. So I think that's just a typo, early in a New Year of not having changed the date.

A. Yes.

Q. It's from Mr Guinness to Dr Rejman, and it says this:

"I had a meeting with the Permanent Secretary on Friday.

"He was pleased to note that PS(H) had now agreed a draft with which we were happy [that's the wording of the standard letter and we'll look at that in due course] and that the Secretary of State had recently written in firm terms to the Prime Minister on a constituency case.

"His view ..."

I read this, Lord Horam, as referring to the Permanent Secretary:

"His view is that, if pressure continues, we shall eventually be forced to concede. It would be nice to do so in an orderly manner, but, in practice, the Treasury would be unlikely to budge until such time as the political situation became so untenable that the Prime Minister decreed that something had to be done. For the time being, therefore, we should continue to hold the line firmly.

"No specific action was requested, but it would probably be wise to undertake some contingency work on the sort of scheme favoured by John Marshall so that we can move quickly if necessary."

Now, again, there is no indication that you would have seen this minute at the time?

A. No, I didn't.

Q. Would it be right to understand, again, that you saw this for the first time for the purposes of preparing your statement to the Inquiry?

A. That would be correct.

Q. Were you surprised to learn that the Permanent Secretary's view was that the Department or the Government would eventually be forced to concede?

A. Well, I think -- I think the underlying problem is reflected in the Government's attitude, and I think that -- I mean, there is clearly a difficulty here, in that the case has been conceded for people suffering from HIV and, therefore, by extension, should it be taken on by people suffering from hepatitis C.

And I think that it's not really just -- I don't think it's really just matter of the politics or the political situation; I think there was an underlying tension, if you like, between what the real problem was and what the Government's position had been for some time.

Clearly, the Treasury would have a role in all of this, and I think it's probably unfair to say it was just the politics of the matter; I think that there was a real problem here which the Government was trying to address, and there will be varying degrees of pressure, which The Haemophilia Society quite sensibly was trying to mount to produce a change because it believed there should be one.

And I think if it's perfectly proper for a Government to say, "Well, there is a difficulty here, let's -- we are where we are, let's see how it pans out. We know it's going to be difficult to change the line because the Treasury will have views

A. Yes.

Q. Does it concern you that that's not information that was shared with you at the time?

A. Yes.

Q. I'm conscious --

A. I don't know, just to add to that, it's rather strange thing to have said in the context that we're talking about because, as far as I could see, the line had been maintained for quite a long time by various ministers. It would be odd for him to suddenly say -- even for the Permanent Secretary to say to another civil servant that we shall eventually be forced to concede. I mean that, I suppose, is his sort of judgement, which I'm rather surprised at, given the total context.

Q. The tipping point that appears to be envisaged by the Permanent Secretary, assuming this to be an accurate representation of his views, is political pressure or an untenable political situation. Does that reflect the way in which decisions were taken within Government at that time, that rather than looking at what might be said to be the case for supporting people in desperate circumstances, what's going to drive the Government to change its position eventually is an untenable political situation?

as well as us, but we'd better wait to see how it pans out". Remembering -- I think this is 8 January, and we hadn't yet seen the final report from the Haemophilia Society.

So I think there will be an extent to which the Government, any sensible Government, would want to wait to see what impact that had.

Q. Looking at it now, you would have wished to have been informed of the Permanent Secretary's views, presumably, because it would potentially impact upon your own thinking?

A. Yes, I agree, I would have liked to have been informed because that was something I wasn't fare of. I mean, from my point of view the position of the Government, that is to say the Department of Health and the Treasury, is quite clear, had been so for a long time, and I had been, in effect, as you pointed out, rather warned off from trying to attempt to say "Are there other options, more modest options which we can look at?"

Q. Of course, if the Department or the Government waits until it's eventually forced by mounting political pressure to concede, almost inevitably there will have been individuals who will have died in that intervening period?

A. Absolutely, yes.
MS RICHARDS: Sir, I note the time, perhaps we could take our break and pick up the chronology afterwards.
SIR BRIAN LANGSTAFF: Yes, well, we'll do that.
Now, Lord Horam, you're giving evidence under oath. What you must not do is talk to anyone about the evidence you have given, or any evidence which you anticipate you may yet be asked to give, but you can talk about anything else you like.
We'll take a break now until 11.50. 11.50.
MS RICHARDS: Thank you, Sir Brian.
(11.17 am)
(A short break)
(11.50 am)
SIR BRIAN LANGSTAFF: Yes?
MS RICHARDS: Lord Horam, we saw before the break that you had wanted to soften the wording in the standard line or standard response that was sent out to MPs. You'd wanted to add the words "at present" --
A. Mm-hmm.
Q. -- and you'd met with a degree of resistance on the part of the Departmental officials.
A. Yes.
Q. I think the wording that was ultimately alighted upon we can see from DHSC0004498_025.

So this is a sample letter, this one is to an MP dated 8 January 1996, and you say in the third paragraph that you want to take time to read The Haemophilia Society's report in detail. You set out your belief that it graphically describes the problems experienced by some sufferers and how that will supplement what you'd heard about the plight of those infected during debates, from correspondence and at meetings.
You then, in the last paragraph, refer to, again, the standard line to take, "best treatment available in light of medical knowledge", and so on. Then over the page, you say this:
"We are always ready to listen to further evidence but I have to say that on the basis of these facts we have no plans to make payment to such patients. This position is consistent with Government's overall policy of not accepting the case for a no fault scheme of compensation for medical accidents."
So that, I think, was the slightly amended line, a readiness to listen, but on the basis of current facts, no plans; is that right?
A. Well, the addition was, "we are always ready to listen to further evidence".

Q. Yes.
A. I think that was the point want I wanted inserted, because, as you can see, I was trying to see whether there was any more modest proposals that could be entertained, alongside the overall position, which the Government had adopted.
Q. Now, again, around the same time, this is in January 1996, there is a further departmental minute I just wanted to explore with you, DHSC0042937_035.
It's from Ms Towner to Mr Guinness and Ms Marsden, copied to Mr Pudlo, Dr Rejman, dated 19 January 1996, so it's not copied to your Private Office, and I don't think there is anything to suggest that you saw or would have seen this at the time. We can see Ms Towner says this:
"You asked for information which might help you in responding to Treasury's letter of 18 December, after they read the *Hansard* report of the debate on 13 December."
That is that letter from Mr Grice to Mr Dobson that we looked at this morning.
A. Yes.
Q. "The new PS(H) John Horam wishes to appear is sympathetic ..."
A. That's "as".

Q. "As" I think it probably is, yes:
"... wishes to appear [as] sympathetic to the situation of haemophiliacs who contracted Hepatitis C and open to receiving and considering any information put forward. However no commitment to making any such payments has been made. Officials fully understand the financial and precedent implications or introducing even some form of limited 'compensation scheme' and will continue to make these clear to Minister as opportunity arises, as they did when briefing for the debate in question.
"Treasury may find it reassuring to hear of the outcome when PS(H) recently want to amend a private office reply on the subject to insert 'at present' in the phrase 'we have no plans to make payments'. Officials explained their concern that this might lead to expectation of a change in policy. PS(H) said he understood this, and subsequently accepted a revised draft reply (copy attached) which emphasised the sympathy and readiness to study facts arguments but left the original wording to having no plans to make payments intact. Perm Sec was advised of officials' concerns, and has since confirmed that he is content with the approach accepted by PS(H)."
Then this:

"Officials will of course continue to keep a watch on relevant correspondence etc. And of course PS(H) cannot alter the Department's policy without the agreement of SoS who -- recent correspondence suggests -- retains a firm line."

So this is a communication, it would appear, designed to try and reassure the Treasury --

A. A mm.

Q. -- that the Department's keeping a watch on you, and the Departmental officials, at least, are keen to maintain the existing policy; is that a fair reading of this, in your view?

A. Yes, that's a fair reading of it.

Q. But, of course, you didn't see this at time?

A. No.

Q. Now, we saw before the break you'd asked -- Ms Weatherseed had asked on your behalf -- Departmental officials to put together a paper setting out options. We can see, if we look at DHSC0002550_064, Mr Guinness wrote to Mr Pudlo on 19 January setting out a broad structure for the paper. So the plan was that it would set out options -- and we'll look at those when we look at the actual paper itself -- a section on the Haemophilia Society:

"Note the differing views of society and more radical members.

"Funding.

"Note Treasury line time of HIV scheme and far tighter position now in relation to drawing on the Reserve. Stress that any payments would have to come from less money being available for patient care."

Then:

"Slippery Slope.

"Needs to mention Hepatitis G, CJD, and the rest.

"Somewhere ...

"Mention that Mr Scofield's submission and subsequent papers are available for perusal if PS(H) wishes."

That, I think, is a reference to some documentation put together when the issue had been raised earlier in 1995.

So that's the proposed structure of the paper.

A. Yes, I would not have seen that.

Q. No, you wouldn't have seen that.

There is then some minutes going back and forth between officials with a draft, comments from Dr Metters, comments from the Permanent Secretary, I'm not going to take time going through those. You've

set out the references in your statement, Lord Horam.

So we'll go to the paper itself that was sent to you, it's SCGV000166_015, and you'll see this is a minute dated 9 February 1996 from Mr Guinness to your Private Office, Mrs Weatherseed, then if we look at the text:

"Purpose of submission.

"This submission responds to PS(H)'s request, as set out in your minute of 12 January, for a submission on options for compensating haemophiliacs who contracted hepatitis C ... before routine screening of blood products was introduced."

Then there is a summary, I don't think I need to read that because we'll look at the paper itself. If we go over the page, then we can see there is a heading "Options", and it sets out, again, what the submission looked at.

So if we pick it up on the next page, we can see the main content of the paper, there is a heading "Natural History of HCV", I'm not going to read that out.

A. Sure.

Q. Bottom of the page, there is a heading "Number of Haemophiliacs Infected with HCV", and there is a record of there being general agreement that about

1,300 haemophiliacs were infected.

Then if we go over the page, we see the first of three options set out. So the first is a scheme based on the lump sum elements of the HIV scheme, and paragraph 8 records what those payments were, and paragraph 9, towards the bottom of the page, sets out what the average payment under the HIV scheme had been, £60,000.

So this option, as I understand it, Lord Horam, is costed on the basis of assuming a similar figure, and then you get the costs set out there, it would be 180 million if paid to all infected; 90 million if limited to those with chronic hepatitis; 36 million on the John Marshall model, limited to those with cirrhosis. That's a simple calculation based upon multiplying 60,000 by reference to the numbers that might fall within each of those cohorts.

If we go over the page, paragraph 10 explains what the figures exclude. So they exclude any extension to infected spouses or children or administration costs.

Paragraph 11 deals with the question of payments to the estates of those who had died.

Paragraph 12 says different stages of the disease are difficult to define precisely.

Paragraph 13 explains there could be variants on this option. For example, paid 20,000 on evidence of infection, with higher sums if chronic disease was confirmed.

Paragraph 14 explains the costs would be heavily front loaded if based on infection, but spread over a period of many years if based on chronic disease.

Then paragraph 15:

"A scheme of this kind would be:-

"- simple, but expensive and untargeted if based on infection alone.

"- less simple (some would say impossible to operate), but somewhat better targeted, if it took account of the various stages of the disease."

So that's the first option you were presented with in any event, a scheme based on lump sum elements of the HIV scheme.

If we go over to the next page, we can see the second option was a scheme based on the discretionary elements of the HIV scheme, and paragraph 16 explains that the Macfarlane and Eileen Trusts made payments to those suffering particular hardship. Some details of those payments are then set out. I don't propose to read through that.

If we go to the bottom of the page, paragraph 19

says:

"Equity would suggest that payments to people infected with HCV should be on the same basis as payments to people infected with HIV. Payments at these levels [those of the modest sum set out above, the modest monthly sums] would be most unlikely to be acceptable on their own, (many would get £70 a month) and would therefore be additional to any lump sum scheme."

Then the next page, please, paragraph 20 discusses some of the difficulties in costing this idea, because detailed knowledge of age, profile and financial circumstances of potential recipients would be needed.

"A rule of thumb would suggest that a scheme for haemophiliacs infected with HCV would cost around £6 million a year, but the true figure is likely to be a bit higher ..."

A suggestion is made of £7 million per year.

There is then a discussion about how total costs would depend on how long people lived:

"People infected with hepatitis C are likely to survive on average considerably longer than those with HIV. An average of 20 years might be assumed, giving a cost ... of around £140 million."

Then it's explained that some of these costs will be met from the interest earned by the Trust, so it would not all fall to the public purse.

"An alternative approach might be to involve the insurance industry ..."

Then paragraph 21:

"A scheme of this kind would enable needs to be targeted more precisely, but would have the disadvantages associated with means testing, as well as being expensive to administer. It would have to stay in place for many years, unless off-loaded to the insurance industry."

So that's your second option.

Then the third option, "A Scheme Based on the Irish scheme", and this refers to a recent announcement by Irish ministers of extending an existing scheme covering those who had contracted HCV from Anti D to other individuals who had become infected.

Then some details are there set out how it's, administered by a tribunal, the approach of the tribunal. Paragraph 23 explains that:

"So far there have been no awards as the Tribunal has yet to be established.

Paragraph 24 in the absence of hard information

it's very difficult to assess what sort of payments might arise under such a scheme."

So those are the three options that were set out in the paper for you.

If we go over the page, there is a section on the possible reaction of the Haemophilia Society. I'm not going to read that aloud. But if we go towards the bottom of the page, there is then a section "People Infected through Blood Transfusion". And the paper said:

"PS(H) will have noted that neither the existing HIV scheme in this country, nor the HCV scheme in the Irish Republic is confined to haemophiliacs. In the view of officials, it would be impossible to confine any scheme to haemophiliacs -- the pressure to extend it to people infected through blood transfusion would be irresistible. If anything their case is stronger because some were infected after test were known to exist.

"30. An exercise is currently under way to trace people who were infected with HCV through blood transfusion and who are still alive."

That's the look-back:

"This is expected to identify about 3000 people. At the very least, therefore, we should allow double

the costs quoted above ..."

Then the range of figures, depending upon which of the options is under consideration, are then set out.

Paragraph 31 sets out what might be some difficulties in administering a scheme for people infected through blood transfusion, essentially because of the need to establish the causal link.

We've then got a heading "Unquantifiable Future Claims", and this then gets to some of the policy concerns of the department.

Paragraph 32:

"The opening of the door to future claims for no-fault compensation has previously been a matter of great concern to Ministers. There are a number of aspects to this."

And the first point that's made is that hepatitis C can be transmitted not only through blood and blood products but through any transplanted tissue.

The second then is the possibility of other viruses and infectious agents being transmitted by blood or tissue. And reference is made to hepatitis G, a new strain of hepatitis virus just having been identified.

Then if we go over the page, paragraph 35, it says:

"Third, potentially, the whole question of compensation for medical accidents is opened up. Haemophiliacs received the best possible treatment ..."

Again, I'll pick up on that in a little while:

"... treatment which prolonged their life. If they are to be compensated, who else should be?"

And then there are suggestions of other cohorts of patients and it's said no treatment is entirely free of risk.

Paragraph 36 then refers to litigation against the Department and the Medical Research Council in respect of patients treated with human growth hormone.

Then "Finance", paragraph 37:

"The Treasury will not make additional available money to the Department. Any costs will therefore have to come from the resources already available for patient care.

"38. The question of who should pay for people infected in Scotland, Wales and Northern Ireland will need further consideration. This Department bore and continues to bear the full cost of the original HIV scheme (apart from the initial 20,000 ex gratia

payments which were paid for by the Treasury)."

Just in relation to paragraph 37, Lord Horam, we obviously saw the Treasury's opposition expressed in that letter from Mr Grice to Mr Dobson that we looked at this morning, but were you aware of any formal approach being made to the Treasury, setting out what might be the arguments for providing some form of financial support scheme to hepatitis C?

A. No, I was not.

Q. Do you know why no formal approach was made to the Treasury?

A. No.

Q. We then get the heading "Policy on No-Fault Compensation Schemes".

Paragraph 39 restates the broad opposition to no-fault compensation. And then paragraph 40 sets out what is said to be the arguments against no-fault compensation. The first is why should compensation for victims of medical accidents differ from systems for people harmed in another way. The other talks about the feelings of victims of negligence.

Then over the page, paragraph 41 sets out some other reasons for opposing no-fault compensation: difficulties of proof of causation, unfairness, cost,

accountability, amounts payable.

Then the summary, in paragraph 42:

"In short, any compensation for HCV positive haemophiliacs would be a departure from the policy previously stated by the Secretary of State that payments should not be made when treatment given has been in accordance with the best knowledge and practice of the day."

So, again, the assertion is repeated about best treatment, treatment in accordance with best knowledge and practice of the day.

There is then a reference to the submissions from the previous year.

Then over the page we can see the conclusion, paragraph 45, which I think in fairness I should read:

"- A scheme, which would be contrary to general Government policy on no-fault compensation, could not be confined to haemophiliacs.

"- The options considered here for compensation for infections with hepatitis C would cost in the order of £72 million to £360 million, with regular payments costing perhaps an additional £280 million over the years (though not all this latter cost would come from the public purse).

"- Early indications are that only the most

expensive scheme would be acceptable to the Haemophilia Society, but we shall know more when our own proposals are received.

"- A scheme based on infection alone would be heavily front loaded.

"- There would be incalculable repercussions for the future. The newly discovered hepatitis G virus alone could multiply the cost of compensating people infected through blood transfusion by 10 (giving a range of £400 million to £2,000 million for the lump sum options).

"- The costs of this and future schemes would reduce the amount of money available for patient care."

Now, I think what you say in your witness statement about this -- and it's WITN5294001, page 25, paragraph 2.34 -- you've set out the conclusion that I've just read, and then you observe, underneath that:

"It is fair to say, therefore, that officials were giving me strong warnings about the costs and implications of introducing a Hepatitis payment scheme."

Now, I'll come back to some of the concerns that underpinned the conclusions in the paper, Lord Horam, once we've finished going through the contemporaneous

documents. But that's the submission you received in February 1996.

Now, I don't know whether you can help us with this, Lord Horam. The sums there discussed are obviously not small, but, in the great scheme of Government spending, they're also not vast. Do you have any recollection of, leaving aside what the source of the funding might be, what your reaction was or your thinking was when you saw the different costings?

A. Well, I don't have any recollection of what I thought at the time, but I think one -- in detail. But one element which puzzled me, and it comes out in my later request for further analysis of the John Marshall suggestion, was this had been precipitated -- this paper had been precipitated by John Marshall's question and my answer to it in the adjournment debate in December. And if you recall, that was for a much more modest scheme, related to people who had cirrhosis of the liver. I don't exactly recall what my response to this paper was, but it does seem to me, with hindsight, that this was overkill. I mean, they were really restating the entire Government position both as regards costs and precedent to me, which I was well aware of, and what they were not doing was

addressing my point, which was: is there a more modest way forward? That may be -- if I can just continue?

Q. Yes, of course.

A. That may well be because, as sometimes happens in a Department, there is a misunderstanding of what I wanted. It may be the civil servants had thought that I wanted to go through all of the options that were available, like the Irish option, and an option based on HIV payments, and so forth, and really what I was looking for, was there some more modest scheme. Because I understood the implications of the whole shooting match of alternatives and didn't really need that. I wanted something more specific. And that's when I asked for further information about the John Marshall approach.

Q. We've seen with earlier witnesses, Lord Horam, how, in terms of the provision of financial support of one kind or another, there are various incremental elements to it --

A. Yes.

Q. -- so there was the initial small payment in 1987 to The Haemophilia Society. There was then a further payment in 1989 to the Macfarlane Trust. There was then the settlement of the HIV Haemophilia Litigation. There was then the extension of the scheme to those

infected with HIV through blood transfusion.

I don't want to put words into your mouth, but was it, do you think, part of your thinking that it was better to get something, albeit something modest that wouldn't meet the full extent of concerns or the full plight of those infected, better to get something than nothing if possible?

A. Yes, that's what I was trying to explore: was there a more modest scheme, as John Marshall had suggested, which might meet some of the concerns? I mean, John Marshall was a man that I knew very well, he was a good Member of Parliament, he'd taken up this issue over a long period of time, I respected his concerns. He was a model MP from that point of view, doing exactly what an MP should do, and I felt I had a duty to respond to him in kind and therefore examine this possibility. I was therefore, in retrospect -- I can't say what my feelings were at the time, we're talking about 25 years ago, but in retrospect puzzled by the extent of this document which I received, which didn't include any discussion of his proposals, but went through the whole gamut of big proposals.

Q. Now, again, just taking things chronologically, The Haemophilia Society's final report was sent to ministers, I think, on 20 February 1996, or

thereabouts. The reference is HSOC0002726_001.

Now I'm not going to go through this report, because if we go to the next page and just look at the contents, this further report essentially doesn't repeat what was set out in the interim report; the interim report had been focused on the financial compensation or financial assistance recommendation and the reasons for it.

This final report looked at, largely, a range of other issues, important issues, but didn't say anything new on the issue of financial support.

A. Right.

Q. So that's the reason why I'm not going to take you through it now.

But if we go just to DHSC0004469_007, we can just pick up the Department's line to take on the report. So this is Mr Guinness, 20 February 1996. It's copied to a number of people, and we can see that it's copied to the Secretary of State's private office, the Minister of State's private office and to your private office. We see there the reference to Ms Weatherseed.

Then we've got heading "Line to Take". In relation to the financial support, the line to take is from the first bullet point, and it's the pre-existing

line:

"The Government has great sympathy for those infected with hepatitis C as a result of NHS treatment. But these patients received the best treatment available in the light of medical knowledge at the time. No fault negligence on the part of the NHS has been proved, and we have no plans to make special payments."

And then there is more detail there set out. I think perhaps for present purposes we can just look briefly at page 3. Paragraph 7, I think, probably picks up, in its last sentence, upon what you'd said in that adjournment debate:

"Ministers have said in debates in Parliament that they have great sympathy with those who have contracted Hepatitis C through blood or blood products, but that as no fault nor negligence on the part of the NHS has been proved, they have no plans to make special payments. They have also said that they are willing to consider suggestions for a limited scheme to help those affected, but have given no undertaking to accept any such proposals."

And that, I think, is what you were just referring to, Lord Horam.

Then if we go to the very bottom of the page we

can see paragraph 9 records that you've agreed to meet officials of the Haemophilia Society on 6 March to discuss the report. I think, in fact, the meeting takes place a little later in March, but that's where matters stand as at that point.

And then DHSC0003883_101, this is a minute dated 28 February 1996 from your private office to Mr Guinness. If we look at the text of the minute, we can see paragraph 1 thanks Mr Guinness for the submission, and then paragraphs 2 and 3 set out what you want more information about:

"2. As I explained during our telephone conversation yesterday, PS(H) wants to consider these options carefully. He is meetings the Haemophilia Society on 6 March and would like to hear their suggestions before he starts to form any firm views. He will almost certainly want a meeting with you after that to discuss how to take this forward.

"3. In the meantime, PS(H) would like to explore further the financial implications of John Marshall MP's suggestion that we should restrict payments to those who develop cirrhosis. Mr Marshall claims that the annual cost of such a scheme would not be excessive, since cases would develop over the years, rather than all at once."

Then paragraph 4 sets out Ms Weatherseed asking on your behalf for some more costings, even -- we see in the last sentence, "even a rough estimate".

A. Mm. Well, at that point, of course, we were getting more towards the sort of thing that I had in mind. Aware of the cost and the precedent arguments for the whole Government position over the years, I was nonetheless trying to see if there was any compromise, however small, to help people, along the lines of John Marshall. That may not have been the right way forward but it was the way that he'd suggested and I was very happy to look into it.

Q. Then we can see the next day, DHSC0003883_100, there is a minute from the Permanent Secretary or on behalf of the Permanent Secretary, to your office.

So if we look at the text:

"The Permanent Secretary has seen your minute of 28 February to Mr Guinness and will be interested to see his reply.

"2. He appreciates that it may be possible to devise schemes which cover only restricted groups and are thus more affordable. He does however point out that any move to pay compensation to a restricted group of Hepatitis C sufferers (eg haemophiliacs) is likely to lead to irresistible pressure to extend it

to a much wider group. There is no obvious basis or distinguishing between people infected via blood products and those infected by blood transfusion, for example; and the Government was quite unable to sustain the same distinction in the case of HIV/AIDS sufferers. The unfortunate truth is that this is a very slippery slope. Our present stance is uncomfortable, but any movement, however slight, is likely to start something we won't be able to stop.

"3. He, therefore recommends extreme caution in dealing with Mr Marshall's proposal."

So a warning shot across the bows from the Permanent Secretary to you?

A. Did I see this?

Q. It's addressed to Ms Weatherseed, so, yes, certainly your office saw it.

A. Oh, right. Mm.

Q. And in fact, I think, yes, you did see it.

A. I did see?

Q. Because if we look at DHSC0003883_099, Ms Weatherseed sends back a response on your behalf and it says that you've seen the minute, you've noted the points made, and you'll certainly bear them in mind.

A. Yes, I think that was a calming note to him, that I'll bear his points in mind. It didn't mean I accepted

them.

Q. Then we can see then the subsequent information you were provided with by Mr Guinness is at SCGV0000166_005. If we go to the second page.

So this is a minute from Mr Guinness to Ms Weatherseed, 11 March 1996, again copied to the great and the good, the Secretary of State's office, the Permanent Secretary and Deputy Chief Medical Officer, amongst others.

Then if we look at the text, paragraph 1 records Mr Guinness saying that Ms Weatherseed had asked him to explore further the financial implications of John Marshall MP's suggestion.

Paragraph 2 says:

"In order to be precise, we would need to know ..."

Then it sets out a number of factors that you'd need to know, including number of people who will be diagnosed as having cirrhosis, when they were infected, how long it will take each of them to develop cirrhosis, et cetera.

The next page, at paragraph 3, says:

"Needless to say, much of this information is not available but we can make a reasonable stab at producing an expenditure profile."

Then there are some attempts to set out a profile in terms of numbers who might be eligible in relation to haemophiliacs, at paragraphs 4 and 5.

Then the next heading is "Blood Transfusion Recipients", and Mr Guinness says:

"We have had to make rather more heroic assumptions about blood transfusion recipients. We know that HCV got into the blood supply in the 1960s, and that its prevalence amongst donors increased ... until 1991 ..."

Et cetera.

And paragraph 7:

"The number of transfusion recipients ever infected with hepatitis C in the UK is unknown."

Then if we go over the page, at the top, the estimate is:

"... an estimate of 40,000 blood transfusion recipients ever infected ... (The figure may be compared with the 3,000 still alive we expect to trace through the lookback exercise ...)."

Then paragraph 8 then talks about how many of those recipients would have died within a year of transfusion, many are elderly and won't live long enough to develop cirrhosis if it takes 20 years to develop, and therefore some assumptions are made in

relation to that.

There is then a heading of "Diagnosis of Cirrhosis". I'm not going to read that out, but it sets out the approach that Mr Guinness has taken to how to ascertain that.

"Administrative Arrangements", it explains that in relation to haemophiliacs you can assume that the infections was acquired from blood products.

But over the page, paragraph 13, it says it may be more problematic -- more complicated dealing with claims from people who believe they were infected through blood transfusion.

And paragraph 14 says there'd need to be essentially an appeal provision in the scheme.

Then we get the results, the table:

"Putting all this together, and mindful of all the uncertainties, our best estimate, excluding administrative costs, for a scheme based on cirrhosis, is as follows ..."

Then we get the figures: the haemophiliacs payable now, 21 million; blood transfusion recipients, 20 million; total, 41.

Then figures payable each year looking into the future, and the figures there obviously are much more modest: a total of 4 million until 2005; 2 million in

2006 to 2011.

And then there is a "rough guess at administrative costs" at the bottom of the page:

"... around £300,000 in dealing with the initial surge of claims ..."

And then 30,000 tailing down to 20,000 a year, looking forward.

Then, again, for the sake of completeness I should just go over the page. It says we've only looked at hepatitis C; hepatitis G has just been identified.

So that's the response you received to your request for further information.

A. Mm-hmm.

Q. Well, obviously we'll trace through the further documents, but do you have any recollection now of what your thoughts were when you saw these proposals?

A. Well, obviously they were much more possible than the other options they'd put forward. They were in the realms of realism, and they were still large amounts of money, obviously, from the Department's point of view, but at least they were focusing on one particular way forward, which may be less costly.

The only problem with it was really that it would not have properly have satisfied The

Haemophilia Society. That was the difficulty with them, which I really wasn't aware of until this paper came my way.

Q. Now, you then had a meeting with the Haemophilia Society on 26 March 1996, and we can just, I think, look at a handful of documents in relation to that. There is a Haemophilia Society briefing for the meeting, HSOC0014417. If we look at paragraph 3, which is about halfway down the page, we can see this is The Haemophilia Society's stance:

"Financial recompense.

"We believe there is a clear moral case for financial recompense. The Government should respond in a way similar to the HIV settlement.

"We note that some individuals are taking legal action against the [Department] of Health.

"We note that the Irish Government has already made a settlement to those with haemophilia infected with HCV.

"We note that over 260 MPs from all parties have signed the EDM supporting the Society's Campaign.

"We believe it is now time for the Government to respond positively."

So that's, in a nutshell, the Society's stance.

A. Mm.

Q. You obviously received an internal briefly, a Departmental briefing for this meeting. The briefing comprises several separate documents I'm not going to go through all of them. I'll just read the first reference, we don't need to put it up on screen, Lawrence.

So there is a covering minute of 20March from Ms Towner, DHSC0002533_002, and she says she's attaching a briefing under various heads. I think the only document that we need to look at from the different elements -- perhaps the only two documents. So, first of all, a general line to take. That's DHSC0002533_004. So the heading is "Handling and Line to Take -- General". I think we need only look at paragraphs 5, 6 and 7:

"PS(H) is aware that the Society will focus on the issue of compensation. From informal contacts, it is known that the Society will have had difficulty in identifying a scheme that will be both affordable and satisfy all their members (who tend to model their hopes on the HIV scheme). They also recognise that any scheme is likely to have consequences for non-haemophiliacs but they can reasonably argue that this is not their [option]."

SIR BRIAN LANGSTAFF: "... not their problem".

MS RICHARDS: "... not their problem", sorry:

"The Society are not aware that PS(H) is currently looking at options prepared by officials. They have interpreted what they see as a softening of Ministers' position as placing a responsibility on them to come up with definite proposals however it is unlikely, for the reasons in 5 above that they will be in a position to present anything beyond the rather vague terms contained in their letter to the [Secretary of State].

"In the circumstances PS(H) will wish to listen and offer to consider carefully any proposals."

So the line, or the recommendation to you from officials essentially was to listen --

A. Yes.

Q. -- and commit to nothing.

A. That's correct.

Q. Then --

A. And indeed I was in listening mode still.

Q. Then the other part of the briefing which is relevant to this issue is at DHSC0002533_007. So this is headed "Policy and Compensation", and then we have the heading, "Line to take", so again it's the pre-existing policy line:

"[They] received the best treatment available in

the light of medical knowledge at the time. No fault or negligence on the part of the NHS has been proved, and we have no plans to make special payments."

That's paragraph 1.2. Then paragraph 1.4:

"However, if the Society has specific proposals to put forward, as said in the House we would be prepared to look at these."

Then we have the background, I don't think I need to read all of that, but if we just look at paragraph 1.6, picking it up in the third line, it says:

"They [and that's a reference to the Society] accept that no negligence was involved in infecting their members but are likely to argue that there is no real difference between the HIV cases who received compensation and the HCV cases who did not and that natural justice demands equal treatment."

Then, in square brackets there is this:

"[Secretary of State], in evidence to the Health Committee, whilst rejecting the argument for compensation accepted that the HIV position was illogical -- the Society have so far not used this."

I'm going to come on to that, Lord Horam, but I will just flag it up as it's set out there.

A. Yes.

Q. Then paragraph 1.8, bottom of the page:

"At PS(H)'s request, officials have submitted a range of costed options. The Society are not aware of this. That submission emphasises that, although the Society's interest is limited to its own group, in practice it would be difficult to confine any settlement to haemophiliacs."

So that's the line to take, the briefing for the meeting.

Now, we don't, I think, have any minutes of the meeting. You think -- your statement says that ordinarily minutes would be taken of a meeting of that kind.

A. Yes, they would.

Q. Do you have now any recollection of the meeting itself?

A. No.

Q. Now, if we then just pick matters up at DHSC0042289_176. This is a further minute, 4 April 1996, from Mr Pudlo to Ms Weatherseed in your private office, and if we look at the first paragraph we can see there have been further discussions with The Haemophilia Society the previous day, with Mr Barker of the Haemophilia Society.

Then, if we go over the page, I'm not going to

read it out, but what's set out is what's said to be what the Society had asked for. Paragraph 4 refers to "as an alternative" and then it says "mentioned at the meeting with PS(H)". So there is one clue at least to what was discussed at the meeting:

"... the Society are attracted by the Irish scheme ..."

Then paragraph 5 says:

"The Society will be expecting a response to their proposals in due course. They recognise this may take some time for Ministers to consider, given the sums involved. They have offered further talks if Ministers think this would be useful. However it is likely that eventually, they will deem failure to announce an intention to establish a scheme as an indication that one is not being contemplated."

Then the last paragraph asks if there is any further work you'd like officials to undertake. I don't think there is any specific further work that the document suggests you requested, Lord Horam?

A. That's correct.

Q. Now, it would appear that at some point over the following weeks you essentially came to the view that there wouldn't be a scheme, and I'm going to pick that up, if I may, by looking at WITN5294010.

So this is now 29 May 1996, and it's Mr Pudlo to Mrs Weatherseed, paragraph 1:

"Since PS(H)'s meeting with the Haemophilia Society on 26 March, the Society have been expecting a response to their proposals for a compensation scheme ..."

Then paragraph 2:

"We agreed that I should submit a draft letter for PS(H) to consider once the PM had reaffirmed the Government's opposition to a settlement in his letter to John Marshall ... and this is now attached."

We've explored the Prime Minister's involvement in his evidence on Monday, Lord Horam. The draft letter -- it's not the final letter that was sent, but the draft letter is at WITN5294011, and the draft says, in the third paragraph:

"As I have made clear in the House on a number of occasions I am very touched by the plight of those people and the circumstances in which they became infected. However, having weighed all the factors involved I have concluded that in allocating money provided for health care I cannot justify taking resources away from treating patients in order to provide payments to people who received the best possible treatment available at the time."

Now, the letter that was finally sent was sent at the beginning of October, rather than at the end of May --

A. That's right.

Q. -- but it would seem -- and we'll see when we look at that final letter -- whatever the precise point in time at which you decided not to press the matter further, there certainly came a point in time at which a decision was taken that there wouldn't be any scheme, modest or otherwise?

A. There came a point in time when there was not going to be a compensation scheme as such. I don't think I ever ruled out something more modest. I was still struggling to get something on that.

Q. Well, let's just -- we'll follow through the documents, I think, for the sake of completeness. So we can see at DHSC0041255_073, I'm not going to, I think, read this in any great detail, but this is 12 June 1996, and it refers in the heading to a meeting with John Marshall, 25 June.

We can see -- we don't need to go to the documents, but Mr Marshall had had a meeting with the Secretary of State on 24 April and he was then due to have a meeting with you on 25 June.

A. Yes.

Q. Paragraph 2 explains that you're "familiar with the issues and the above material is provided largely for reference purposes".

If we go over -- so the rest of that page sets out Mr Marshall's suggested scheme.

If we go over the page, the suggestion in paragraph 3 at the top of the page is that you could point to a number of problems with this model. I'm not going to read them aloud, they're essentially a repetition of points that we've seen in earlier documents.

Paragraph 4 suggests that:

"Mr Marshall may also seek to make comparison with other settlements", and those are then set out.

Then next page, paragraph 4:

"In the absence of a response to their own proposals (costed at £147 [million] in year one), the Haemophilia Society are known to have concluded that Ministers consider this too expensive but that they remain interested in the prospect of an 'affordable' settlement. The Society are looking at ways of reducing their claims but are torn between the principle that something is better than nothing and the risk of alienating some of their members. They recognise that a modest settlement may actually be

counterproductive if it is seen by some as inadequate to the point of insult.

"The current line is that Ministers are willing to consider suggestions but have given no undertaking to introduce a payment scheme. Such a position is unlikely to be tenable indefinitely and the Haemophilia Society are known to be seeking indications of the basis on which Ministers would be prepared to settle. Mr Marshall is sympathetic to the problem of any settlement that impinges on NHS expenditure and is likely to explore alternative sources of funding."

Then you had a meeting with Mr Marshall, and we have the note, that's DHSC0041255_072. Again, I'm not going to read it out in its entirety. 25 June, the people present, you, John Marshall MP, another MP, Sir Geoffrey Johnson-Smith, and then from your private office Marguerite Weatherseed.

If we go to the bottom of the page, you're recorded as stressing that:

"... it would be very difficult to justify payments of this magnitude with so many competing demands on the health service; this was money which might otherwise be spent on patient care. Mr Marshall acknowledged this point and explained that he was keen

to explore alternative sources of finance. For instance, he wondered whether the costs might be met through the Government's contingency reserves, as had been the case with HIV. Mr Horam pointed out that this was a matter for Treasury, but thought it was extremely unlikely to receive support."

Now, your pessimism about the Treasury may well have been well founded, Lord Horam, but I think it's right that at no point did you, yourself, ask the Treasury to be approached to --

A. No, that's correct, I didn't. At least I don't remember that I did.

Q. No, and there is not documentation that suggests you did.

A. No, no.

Q. What would have been, if you can answer this, the route to approaching the Treasury? Is it something that would have been done by you as Parliamentary Under-Secretary or would it have had to be done with the support of the Secretary of State?

A. I think it would probably have had to be done with the support of the Secretary of State.

Q. Then if we go over the page on this document, we just pick it up on the last paragraph:

"Mr Horam warned Mr Marshall and Sir Geoffrey

that they should not be over optimistic. However, the Haemophilia Society's demands were under consideration, and he was particularly keen to examine their demands and progress in areas such as support, public education and research which, he felt, were more productive areas for expenditure."

So is it right to understand from this that the message you were giving to Mr Marshall and his parliamentary colleague was that the Haemophilia Society's proposed scheme in relation to financial support was unlikely to go further?

A. That's correct, yes.

Q. You hadn't ruled out a more modest scheme but you weren't offering much hope?

A. No, I didn't really attach any hope or lack of hope to a more modest scheme, I was simply trying to preserve the option, if you like, for something more modest.

Q. I omitted, in going through the documents, to flag up that, in the meantime, not long before your meeting with Mr Marshall, the Reverend Tanner, the chair of The Haemophilia Society had written to you, and that's at HSOC0014319.

It's not a letter that says anything different from what The Haemophilia Society had said before. But it's, essentially, I think, chasing for

a response.

A. Yes, yes.

Q. In the second paragraph, he says he'd like to "re-emphasise the seriousness of the problem". He talks about the numbers who were dying, he refers to the research report and the financial, social and economic problems that those infected and their families faced.

Then in the third paragraph he says that:

"... we believe that the Government should take immediate action to help address this tragic situation. We therefore call on the Government to set up a £20 [million] Trust Fund to meet the financial needs of those who are suffering and their dependants. In addition, we shall press for a £10,000 ex gratia payment ..."

So that's the Reverend Tanner to you in June 1996. What I think, as I understand the documents, then happens is -- it can be picked up from DHSC0041255_070. So it's 9 July, it's from Mrs Weatherseed to Paul Pudlo, paragraph 1 refers to there having been a meeting the previous day:

"... we discussed the need to reply to The Haemophilia Society's latest request for a scheme to compensate haemophiliacs ...

"PS(H) has now decided that he would like to write to the Haemophilia Society on ... 19 July. Could you provide a suitable draft letter which:

"stresses that we have considered their demands very carefully;

"explains our decision not to provide compensation;

"reiterates our view that funds would be best spent on providing better care etc;

"states that we shall look favourably on any future application for [section] 64 funding ...

"PS(H) has also asked that the letter should discuss the alternative options for funding suggested by John Marshall MP (National Lottery, Government contingency funds and settlements from drug companies). I am not sure whether these points have ever been raised by the Haemophilia Society itself."

Now, it would appear clear from paragraph 2, Lord Horam, is this right, that in terms of a more extensive compensation or financial support scheme, the decision was not -- by this time the decision was not to go with that, was not to do what The Haemophilia Society was asking?

A. Yes.

Q. Paragraph 3 suggests that the Marshall proposal, if

I can put it that way, might still be under some form of consideration, but it doesn't tell us, I think, exactly what your thinking was on that issue?

A. No, it doesn't, you're quite right. In my own mind, and this -- we may come on to this later, in an adjournment debate which John Marshall had in December of this year, when he proposed some further scheme, in my own mind, this was still a live issue.

Q. Well, we will certainly come on to that debate in December 1996.

Now, so we can see, in any event, in July Mrs Weatherseed is asking Mr Pudlo to provide a draft letter for you to consider for the Haemophilia Society.

The response that Mrs Weatherseed receives is WITN5294012, and it's a response which asks if you can wait a little longer, essentially, because on 19 July the Department will hear the outcome of a negligence action against the Medical Research Council the Department of Health on CJD and human growth hormone. Mr Pudlo -- in fact, Mr Brown says this:

"If we lose, there may possibly be implications for other groups."

Then we'll come on to the outcome of that litigation and what you were told about it. But did

you have any direct involvement in the course of that litigation, Lord Horam, that you can recall, the human growth hormone litigation?

A. I don't think so, no.

Q. So if we then pick it up at DHSC0006348_055.

Now, this is Mr Guinness to Mrs Weatherseed, 29 July 1996, and we can see from the first paragraph that Mrs Weatherseed has asked about the implications of the judgment in relation to CJD and human growth hormone, and whether that might affect the terms of the reply to The Haemophilia Society. What Mr Guinness says is this:

"I have only seen Mr Roberts' summary, and our expert on the history of the hepatitis C issue is ... on annual leave, but my judgement is that, in a narrow sense, there are no problems. The cases are very different in one way, in that with hepatitis, it was known by all (including the patients) that infection was being transmitted, though it was not necessarily thought to have long-term consequences -- the problem was that there was no reliable test available to screen the blood."

Now, that's an assertion by a Departmental official that all patients knew that the treatment they were receiving was infecting them with hepatitis.

Did it occur to you to question how a Departmental official could state that with such confidence?

A. No, it didn't and it puzzles me that he could know that.

Q. Then we can see, paragraph 2, there is caution about responding to The Haemophilia Society:

"... I do wonder about the wisdom of writing to the Haemophilia Society until media interest in the CJD case has died down. Although the fact that we have been found negligent in one case does not mean that we should suddenly change our policy and decide to pay compensation when no negligence has been demonstrated (nor, indeed, alleged by the Haemophilia Society itself, as distinct from a number of potential individual litigants who are currently seeking Counsel's opinion), a clear statement to the Haemophilia Society at this stage that we are not prepared to pay financial compensation might be presented as the Government having forced one set of unfortunate people to endure the uncertainties of legal action now doing the same again."

So you were essentially advised to hold off --

A. Yes.

Q. -- sending a reply?

A. This is one of a series of notices, or memos, to me,

in effect saying, "Please hold off", for one reason or another, which is why we eventually got to October before I finally replied.

Q. Yes.

And there is just one further document in which I think you were given a little more information about the CJD case. It's sent under cover of a minute dated 11 September 1996. We don't need to look at that document itself. I'll just read the reference for the transcript. DHSC0041255_064.

That simply shows that Christine Corrigan in the Department wrote to Ms Weatherseed on 11 September, providing what was described as a round-up of the current situation.

The round-up itself is at WITN5294013.

I just wanted to pick up the heading "CJD judgement":

"The judgement found the Department negligent primarily on the grounds that neither treating physicians nor recipients of human growth hormone ... treatment were made aware of the risk of contamination at the earliest opportunity and that action to reappraise the HGH programme was not taken as urgently as it should have been once that risk was known.

"The impact of that judgment on the Hep C/blood

products issue has been fully considered. The case in respect of Hep C is very different in that the risk of infection via blood products was known to all concerned -- including the patients."

So there's the repetition of that statement:

"The problem was that there was no reliable test available to screen the blood. The Department is satisfied that action to introduce screening of blood for Hep C was taken as quickly as possible once a reliable test had been identified."

Now, did the outcome of the CJD judgment, in which the Department had been found to be negligent both in terms of the information provided to doctors and patients, and in terms of a lack of urgency in responding to risk, did that cause you to question whether the advice you were being given about the Department's position as regards hepatitis C, whether you should be perhaps probing more to test the robustness or correctness of what was being said?

A. Not on this point. Not on this point, about whether people knew or did not know.

Q. Looking at it now, looking back now, do you think perhaps you should have done, and asked a little more about why the Department was so -- having been found negligent in one respect, was able to state so

confidently what the position was in relation to hepatitis C and patients' knowledge of that?

A. I couldn't really -- it's not an issue I raised at the time and it hasn't occurred to me in hindsight, to be honest. I can't really answer that question.

Q. The assertion we see in that last sentence in the second paragraph:

"The Department is satisfied that action to introduce screening of blood for Hep C was taken as quickly as possible once a reliable test had been identified."

Now, that's talking about events that pre-dated your time in office by a number of years --

A. Yes.

Q. -- but the Inquiry is aware that, as well as the issue of a test specifically for hepatitis C, there was consideration from time to time of something called surrogate testing. There is no mention of that, I think, in any of the documents that we've seen that were provided to you. Do you have any recollection of the concept of surrogate testing ever having been explained to you?

A. No, I don't.

SIR BRIAN LANGSTAFF: To be fair, I think, Ms Richards, it is hinted at here without using the word "surrogate".

The problem was, as said, "there was no reliable test available to screen the blood". And then "as quickly as possible once a reliable test had been identified". But no further description of what "reliability" consisted of.

MS RICHARDS: No. And whether the author of this note had in mind the specific introduction of screening for hepatitis C and what might be said to be the significance of a period of time between '89 and '91, or whether the author also had in mind issues relating to surrogate testing in the '80s is impossible to say.

SIR BRIAN LANGSTAFF: Yes.

But one thing which he might also have had in mind, which you were asked about, I think, by Ms Richards -- this was as I understood the question, I think you understood it rather differently -- was that there are two points which are made in the first paragraph. One is knowledge, and the other is not taking action as urgently as it should have been once the risk was known.

Knowledge, you were told on the assertion of the Department that everyone knew, and you didn't question that?

A. No.

SIR BRIAN LANGSTAFF: But what about action that might

have been taken but wasn't?

A. Well, I can't -- there is nothing I have to say on that. I mean, it was before my time, essentially, wasn't it?

SIR BRIAN LANGSTAFF: So you just accepted that --

A. I just accepted it, yes.

SIR BRIAN LANGSTAFF: -- that's what the view was?

A. Yes, I had no alternative but to accept it, really.

SIR BRIAN LANGSTAFF: And you didn't ask, well, what action might there have been, since everyone -- since you now know, at least, very clearly, that everyone is supposed to have known what action there might have been to reduce the risk that they might have contracted hepatitis from having the product?

A. Well, are we talking about it as a question of urgency?

SIR BRIAN LANGSTAFF: Well, it's action, I think --

A. Yes.

SIR BRIAN LANGSTAFF: -- amongst which there may be -- it's urgent action. What is the urgent action? That's a matter of conjecture.

A. Yes.

SIR BRIAN LANGSTAFF: But it might be thought that if a serious risk is identified, that some action, at least, ought to be considered, even if it isn't taken,

and if it's capable of being taken perhaps it should be.

But that's the proposition, I think, that lay behind your question; am I right, Ms Richards?

MS RICHARDS: Yes.

A. That's taking me really beyond my knowledge or competence. I mean, I simply accepted what the Department was saying on that, I think. I didn't question it, certainly.

SIR BRIAN LANGSTAFF: Thank you.

MS RICHARDS: Sir, I note the time.

SIR BRIAN LANGSTAFF: Yes.

MS RICHARDS: What I want to look at next is Lord Horam's letter to the Reverend Tanner, and there are a number of questions that will follow from that which will take longer, I think, than a few minutes. So if we could break for lunch and then come back at 2.

SIR BRIAN LANGSTAFF: Yes. Well, we'll do that.

Would it be of assistance, do you think, to allow a slightly longer lunch hour so that those who may have questions in formulation, given what Lord Horam has said thus far, are in a position to suggest them to you?

MS RICHARDS: I don't think, so, sir, because I suspect those listening might then anticipate what I'm going

to already ask. So I think if we resume at 2, I've got another half an hour or so of questions.

SIR BRIAN LANGSTAFF: Very well.

MS RICHARDS: Then we can take our break for Core Participants to suggest anything.

SIR BRIAN LANGSTAFF: Let me just explain to Lord Horam.

There are Core Participants in the Inquiry who are represented by legal representatives, they are entitled to ask counsel to put forward questions to you. Plainly they need an opportunity to do that, and the opportunity comes, naturally, after the conclusion of the questions that counsel has asked. Then they know exactly what she's asked and may know what else there might be to ask that they want answered.

So there will be a break after your next bit of evidence, counsel anticipates about half an hour, for it to be somewhere around there --

A. Yes.

SIR BRIAN LANGSTAFF: -- and so we'll have -- break for lunch now for an hour, come back at 2 o'clock, it will be about half an hour or so then, and then a further break.

A. Fine.

MS RICHARDS: Thank you, sir.

SIR BRIAN LANGSTAFF: 2 o'clock.

(1.01 pm)

(Luncheon adjournment)

(1.59 pm)

SIR BRIAN LANGSTAFF: Yes.

MS RICHARDS: Lord Horam, we're going to look now at your letter of 1 October 1996 to the Reverend Tanner.

Lawrence, could we have HSOC0023572, please.

So the letter is dated 1 October 1996, and if we pick it up in the second paragraph:

"I am sorry that it's taken so long for me to respond formally, but I am sure you will appreciate that I needed to consider very carefully your proposals and their implications before deciding whether it would be right to alter our position on the question of compensation.

"After much thought, I have concluded that it would not be appropriate to offer financial compensation to haemophiliacs who have been infected with Hepatitis C. I will explain my reasons for this, but I should first stress that I shall continue to listen to the arguments and look at other ways in which we can provide help.

"I hope that I have already made very clear my deep sympathy all those affected by this inadvertent tragedy. I have been very touched by the real

problems that they clearly face and I am committed to doing what I can to help. In considering whether compensation is the right way to do this, two points have been apparent.

"Firstly, we do not accept there has been negligence on the part of the NHS. Tragic though it is that the very treatment designed to help those patients infected should have caused them harm, there can be no question that they received the best treatment available at the time. That treatment was essential for their survival. As you know, we take a view that compensation is only appropriate where there has been negligence.

"If we were to provide compensation on the basis of non-negligent harm, this would very quickly develop into a general no-fault compensation scheme, which would be both unworkable and unfair. This is a point that was considered in relation to the settlement for HIV cases. On that occasion we were convinced by the very special nature of the disease and by arguments that it would not lead to further similar claims for compensation."

Over the page:

"Second, all the proposals for compensation (and you will be aware that I have considered a wide range

of options) involve the expenditure of substantial sums of public money. I have a duty to consider the effect of such a sizeable sum on other health service expenditure. That duty has led me to conclude that funds that are available to the NHS, from whatever source, are best used in a direct patient care.

"You will also be aware that suggestions have been made for funding compensation from sources other than the NHS budget and I have given these careful consideration. Although theoretically possible, funding through the commercial sector or the National Lottery are not matters in which it would be appropriate for me to seek to exert influence. The first would be a matter for any companies involved and the second for the independent National Lotteries Board."

Then you go on to deal with a range of other matters which have been raised by The Haemophilia Society, including research into hepatitis C, issues about availability of treatment, such as Alpha Interferon, and so on, and I'm not proposing to read those out.

If we can go back to the first page then, Lord Horam, and just unpick some of the reasoning that was put forward.

The fourth paragraph, where you talk about your deep sympathy for all those affected, you used the phrase "by this inadvertent tragedy". Now, "inadvertent" might be said to suggest that this was unavoidable, it was bad luck, that it was nobody's fault. Do you recall reflecting on the use of the word "inadvertent" or what you meant by saying it was an "inadvertent tragedy"?

A. Well, it was a tragedy, which was not meant to happen but did.

Q. If we then pick it up in the next paragraph, you say there what I think are probably two separate things. First of all, you don't accept that there has been negligence on the part of the NHS. "Negligence" is a legal term of art, as it were, and I'm not proposing to ask you specifically in relation to that. But you go on to say this -- and it's reflected in all of the documents that have been provided to you by officials -- you go on to say:

"... no question that they received the best treatment available at the time."

Now, that's obviously what officials had said to you, as we've seen.

A. Mm.

Q. Would you expect there to have been a proper

evidential basis for that assertion; in other words, that your officials would have investigated the matter and had some factual basis for asserting that everyone was treated with the best treatment available at the time?

A. Yes.

Q. Did you ever question whether that could be stated so confidently or what the basis for it was?

A. No, I didn't. I trusted their judgement.

Q. It might be said that the positive assertion that not only was there not negligence but that it was the best treatment available, treatment essential for survival, was painting a very rosy picture a very idyllic picture.

If -- and there is a hypothetical, because this isn't something officials ever said to you, but if your officials had said to you -- had given you a more warts-and-all picture, for example saying, "We don't know what patients were told about the risks at the time", or, "There are question marks over whether screening or testing could have been introduced more quickly", or, "There are question marks over whether the procedures for excluding high-risk blood donors were effective", if those kind of more nuanced -- the potential concerns had been drawn to your attention,

what do you think you might have -- would have done in response? Would you have wanted to know more at least?

A. Yes, I would want more information: what were the facts?

Q. Presumably, if there had been this rather more nuanced picture, it might have given you a more solid foundation for pushing back against the Departmental and Treasury resistance?

A. Indeed, indeed. I mean, it was a bit black and white, wasn't it?

Q. Yes. Looking back now, Lord Horam, with the benefit of having seen not just the material that was given to you by officials at the time but some of what was going on behind the scenes, looking back, was it, in your view, appropriate for the Department to be making blanket statements that thousands of individuals treated by different doctors at different hospitals at different times were all given the best treatment?

A. Well, it's a big statement, isn't it?

Q. Yes.

A. Perhaps too big a statement. But I'm not in a position to judge that, I wasn't in a position to judge that.

Q. So you would, essentially, as a junior minister, have

taken it on trust?

A. Exactly.

Q. But you would have expected that, at some stage, officials would have done the work to assure themselves that what they were telling you was correct?

A. Yes.

Q. You don't know whether that happened?

A. No.

Q. If we just go back to the top of the next page. The issue, at the top of the page is about expenditure of substantial sums of public money, and you say there, you concluded that:

"... funds that are available to the NHS, from whatever source, are best used in direct patient care."

Now, you don't expressly here deal with the possibility of the Treasury being approached to allow access to the contingency reserve?

A. No, I don't.

Q. Do you know why that isn't expressly dealt with here? Was that something still under consideration or do you not know?

A. I don't think it was, I don't think it was ever a possibility. I was not aware of it being

a possibility.
Q. When you say "not aware of it being a possibility", do you mean that you don't think the Treasury would have responded favourably if approached, or you didn't know that you could approach the Treasury?
A. I don't think that they would have responded favourably, given that there were obviously going to be many calls on the contingency funds.
Q. Now, obviously, if we go back to the previous page, bottom paragraph, what is set out there is the concern about the slippery slope, that's not phrase you use there, but the risk that there would become a general no-fault compensation scheme.

Why was that such a concern, in the sense, why was the Department so convinced, it would appear in what they were saying to you at least, that this might lead to a general no-fault compensation scheme?
A. Because of the logic of going step-by-step: from going from HIV to hep C, hep C to other conditions, like medicines, like surgical procedures, radiological procedures. You could see if no negligence had occurred but compensation was made, there is a whole variety of health procedures that could be brought into play.
SIR BRIAN LANGSTAFF: But your question said "might", the

letter says "would develop". So it's rather more bullish upon the possibility of what a lawyer might call the a floodgates argument coming into effect than the question, and your answer, I think, answered the "might ".
A. Yes.
SIR BRIAN LANGSTAFF: Because you said it could lead to this, it could lead to that. What do you say about the assertion that it would develop?
A. Well, I agree, that's more problematic, isn't it? I mean, that is speculation. With hindsight, that's probably not been borne out.
SIR BRIAN LANGSTAFF: Yes, no. Well, I've likened it to the floodgates argument --
A. Yes.
SIR BRIAN LANGSTAFF: -- amongst lawyers, and a judge sitting in court quite often hears floodgates arguments as an argument for not accepting a particular case that's been put forward. But sometimes they succeed. But that is probably, and the lawyers here can submit to me if they think I've got this wrong, but in general floodgates arguments are a last refuge of a desperate defendant, and don't quite so often succeed. Sometimes, as I say, they do, but it's not by any means a generality. But there we

are.
A. With hindsight, that would have been better phrased as "might well very quickly develop", rather than "would".
SIR BRIAN LANGSTAFF: Yes.
MS RICHARDS: And I think you say in your statement, Lord Horam, that perhaps in hindsight that assessment was too pessimistic.
A. Yes.
Q. It's right to note, I think, that the settlement of the HIV claims had not led to a general no-fault compensation scheme.
A. No, it hadn't.
Q. It might be said that the Department's focus was very much on trying to distinguish HIV from hepatitis C and say there were special features of HIV, rather than focusing on what they had in common. Would that be a fair comment?
A. Yes.
Q. And the line could, could it not, have been held at, saying, well, this is a scheme -- because of the scale of the tragedy, a scheme where the relevant cohort are those infected through blood and blood products?
A. Yes.
Q. The consequences of HIV, obviously, were horrific, but

the Department knew, you, your colleagues knew, that hepatitis C could also be fatal, could it not?
A. Most definitely.
Q. And looking at it again now, would you say that the risk of dying of hepatocellular cancer might have been sufficient to make hepatitis C, too, a special case?
A. I don't know about -- your point on cancer, I'm not sure --
Q. Well, hepatitis C, as we saw from the Haemophilia Society report, would lead to -- sorry, could lead to --
A. Oh, I see.
Q. -- chronic liver disease, cirrhosis and cancer.
A. Yes.
Q. Let me put it this way, Lord Horam: if the Department had been more open to the idea of the provision of financial support to those with hepatitis C, there were ways in which it could be said that this is a special case, too?
A. I take your point.
Q. Can I then just pick up a handful of further documents with you, not very many more. Not long after you -- no, actually, let's pick up Reverend Tanner's response first of all, to your letter.

HSOC0014299, please, Lawrence.

So this was the Reverend Tanner, 3 October 1996, to you, and in the second paragraph he says this:

"While I acknowledge the work that is being undertaken by various agencies to improve understanding of HCV and identify effective treatment, I am deeply disappointed by your response to our request for financial help for people with haemophilia infected with Hepatitis C.

"The Haemophilia Society has never suggested that there has been negligence on the part of the NHS. We asked you to make an ex gratia payment to people with haemophilia who have been infected with HCV through contaminated blood products and to establish a trust fund to meet their financial needs and those of their dependants. We consider this the minimum required to alleviate immediate needs.

"Neither is the Haemophilia Society seeking compensation. We asked for a compassionate approach to the strong moral arguments involved. We do not accept that such an approach would set a precedent for no-fault compensation."

Then the letter goes on to talk about the differences and similarities between HIV and hepatitis C, and to suggest the position -- the example, again, given of the brothers, the position to

be morally indefensible.

But what role did compassion, or the moral case for resistance, play in the Department's thinking at the time, if any?

A. Well, I think that their moral case -- the moral case was: this is money spent. Whatever you -- however you describe it, whether it's an ex gratia payment or compensation, it's money spent. How is this money best spent; on treatment and patient care or on compensation? I would say that's the moral element in the Government's position.

Q. And compassion?

A. Same thing.

Q. I think you had said in terms back in the December of the previous year in the parliamentary debates that, having heard what Mr Marshall and others had to say, and having great sympathy, you wanted to look at things in more detail, and we've seen how you sought to do that over the months that followed.

In the options that were mapped out for you by officials, to what extent was a moral case for assistance given any weight by your officials?

A. Not a lot, is the answer to that, I think.

Q. And would it be fair to say, based --

A. Other than what I've stated, that the money can be

only spent once, and it had to be spent on patient care --

Q. Yes, yes. And you're absolutely right that there are references to: if it comes out of the health budget it has potential implications for direct patient care. You're right that that point emerges in the contemporaneous documentation.

But the primary focus, I would suggest to you, from the documentation we've looked at from the Department, might be said to be twofold: the consequences for Government, and the fiscal implications; would that be fair?

A. Yes, the precedent issue, the slippery slope --

Q. Yes.

A. -- issue, and the financial consequences.

Q. But can I then just ask you to look at HSOC0008602. This is the transcript of a documentary for which I think you were interviewed.

A. Mm-hmm.

Q. Just to put it, I think, in a fair context, what you say in your statement, and I'll just read this out, I don't think we need to put it on screen, but in paragraph 2.69 of your statement:

"I was asked to appear on a World in Action documentary broadcast on 7 October 1996 to set out the

Government's position in relation to treatment for Hepatitis C sufferers. This was my first appearance on a television broadcast as a Health Minister. I was allowed a very short amount of time to answer a small number of questions put to me as part of the wider broadcast."

So that was how it came about.

If we go, please, Lawrence, to page 6. I want to pick it up in the bottom half of the page. You've got the heading "Comm", it says:

"A single dose of factor eight is made by concentrating the clotting agent from thousands of blood donations. In 1975 WIA [that's World in Action] first exposed how American down and outs were contaminating Britain's blood products."

That's a reference to a 1975 documentary by World in Action. Then what we see under the heading "Archive Comm" is an extract from that 1975 documentary which talks about money -- blood being sold, "bought from men who need money ... down on the skid rows of America's big cities", and it talks about paid donors carrying 6 to 13 times the risk of having hepatitis as volunteer donors, and they can pass it on.

If we then go to the bottom of the next page,

please. We can pick up at the very bottom of the page, again under the heading "Comm", and this is now the 1996 documentary again:

"Many similarities have been drawn between HIV and hepatitis C. They are both transmitted in blood and blood products like factor 8. In 1990 the full effects of hepatitis C were not yet known, but HIV positive haemophiliacs were dying of AIDS at the rate of one a week. Public opinion forced the government to set-up a multimillion pound compensation fund."

Then if we just go down the page a little the documentary then shows John Major in the House in December 1990 making that announcement. Then we get to the heart of the issue in 1996:

"The compensation only covered HIV victims infected before 1985. After that all factor 8 was heat treated reducing the risk of viral contamination. Now the 3,000 haemophiliacs who were infected with Hepatitis C from the same contaminated blood products want compensation too. Today the government turned them down."

This is where we then get some of your answers:

"At the end of the day [and this is you] I have to say it is better to spend money on health care, direct patient care for haemophiliacs, for

haemophiliacs with hepatitis C, or indeed anybody else who is ill rather than compensation."

That, I think, probably reflects the point you made a few moments ago, Lord Horam. Then if we go back to the page, please. There is then an intervention of an individual who was infected with hepatitis C. Then what's said is this:

"I think that documentary [that's the 1975 documentary] should be shown again and all the government should be made to watch it and see exactly where those blood products came from."

Just pausing there, did you ever watch the 1975 documentary, Lord Horam, do you know, whether before or after this programme?

A. I can't recall.

Q. Then someone says:

"They should give exactly the same as they did for the haemophiliacs with HIV. Exactly the same.

"All the haemophiliacs contracted hepatitis C as a result of receiving factor 8 through the NHS."

Then you say:

"Yes but ..."

Then if we go over the page, I'm not sure what the reference to 30,000 is. But then we see the slightly longer answer from you:

"Yes. Remember they are alive first of all, I mean they've had the gift of life from the blood products they received, and in addition some of have indeed got hepatitis C. But first of all they are alive and secondly the onset of hepatitis C, while very severe, in the case of probably one in five, undoubtedly, indeed leading to cirrhosis of the liver and death, in many others it not so severe. So let's look at it in perspective."

That reference to having the "gift of life" from blood products suggests that your understanding was that the factor concentrates had been life-saving for the patients who received it. Was that your understanding at the time, do you think?

A. Yes.

Q. That understanding is something you would have gleaned from officials, rather than your own separate knowledge?

A. Yes, indeed.

Q. So would it be right then to -- I think you told us previously you weren't aware, for example, of an alternative treatment, cryoprecipitate?

A. No, I wasn't.

Q. Do you remember officials ever telling you that there were not just severe haemophiliacs who might sometimes

have a life-threatening bleed -- I emphasise "sometimes" but not invariably -- but there were also moderate and mild haemophiliacs who could potentially be treated in different ways. Were those kind of matters ever drawn to your attention, as far as you can recall?

A. No, they weren't.

Q. Then we can see it continues towards the bottom of the page that:

"The Haemophilia Society will continue to fight for compensation. They're now joined by another group of people also infected with Hepatitis C -- patients who've been given contaminated blood transfusions."

But I don't think there is anything particular further in your answers that I need to explore with you.

Can we then pick up the Parliamentary debate at the end of 1996, which you referred to earlier, Lord Horam. This is at DHSC0041255_130.

So this is 11 December 1996, so it's almost exactly a year on from the debate that we looked at this morning. We can see it starts with a speech from Mr Marshall, and if we look at the right-hand column, the third paragraph onwards, we can see Mr Marshall identifying possible areas of fault, so he says:

"The origin of the problem goes back to the 1970s, when there was a failure to screen imported blood products. My view is that that demonstrated negligence on the part of the Department of Health. It was known at that time that, in the United States, blood donors were paid for giving blood. Those who feel so hard up that they give pints of blood for money include drug addicts and others whose blood may well be infected. The Department of Health must have known of those risks."

Then if we skip over the next paragraph and go to the one after:

"So we are discussing the issue in the 1990s because there was some negligence and complacency in the 1970s."

Then if we go to the next paragraph, please, Lawrence, and this is all from Mr Marshall's speech:

"The justification for giving assistance to haemophiliacs with HIV was that they faced a suspended sentence of death. Indeed, many died fairly quickly a full-blown acquired immune deficiency syndrome. Others have lingered on, and, such are the advances in medical science, some may do so for many years to come. All who have lived have done so not knowing how long they would live. Many found it difficult to get

a job, and certainly difficult to get a mortgage. Of course, in the case of hepatitis C, there is difference, but it is only of degree.

"Some of those infected with hepatitis C have already died. Others will die prematurely. There has been no official estimate."

Then he goes on to deal with lack of an estimate on the part of the Department of Health or what's said to be a lack of an estimate and his own estimate.

Then if we go to the bottom of the page, Mr Marshall talks about the hardships suffered by those with hepatitis C. I don't think need to read that out.

If we go to the next page, and we pick it up in the left-hand column, fourth paragraph down, so having referred again to the case of the three brothers, Mr Marshall says:

"One would need the intellectual casuistry of a Treasury mandarin to justify such an action. To say that one death is worthy of compensation, but that another is worth nothing at all is heartless and intellectually barren. It is not only grieving relatives who find the differential unacceptable and immoral -- more than 270 Members of Parliament have signed Early Day Motion 4, asking for compensation to

be paid. The vast bulk of decent people find the differential unacceptable."

Then if we go further down that column, please. In the second paragraph on the screen, Mr Marshall says this:

"When my [honourable] Friend the Minister was asked earlier this year whether he would provide help, he argued that the Department of Health budget should be used for patient care. Everyone accepts that the Secretary of State and his Ministers should try to protect the Department of Health budget ... but the argument that help should be denied because the health budget must be protected is intellectually threadbare and immoral.

"We all know that when the Macfarlane Trust was set up, for which measure our right [honourable] Friend the Leader of the House was responsible, no one said that the money would have to come out of the Department of Health's budget. There is a thing called the contingency fund that can be used to bail out Departments in such circumstances ..."

Then reference is made to the use of the contingency fund previously.

Then if we go to the same page, please, Lawrence, but the top of the right-hand column --

thank you. Second paragraph, Mr Marshall says:

"Thereafter, we have to look to the future. There will be merit in setting up an inquiry to hear what outside experts say about the number of people who will die and the extent of the hardship created", and so on.

So a passionate speech by Mr Marshall --

A. Indeed.

Q. -- echoed just further down by Alf Morris. And he says this in the second paragraph, third line:

"The achievement of elementary justice for some very needful people is at the heart of our campaign, which, as the hon Member said, is now supported by more than 270 Members of Parliament of all parties. Our campaign is also about the morality. The Government accepted their moral responsibility in the case of HIV infection in the course of national health service treatment. They now have the same responsibility in the hepatitis C cases."

And he asserts:

"It is morally wrong to deny the victims of this appalling further tragedy in the haemophilia community the modest help they seek."

So those are the speeches to which you then responded, Lord Horam.

We can see that -- just further down the same column, where you observe:

"It is almost exactly a year since we had a similar debate on this subject."

Again, I'm not going to read all of it but if we can go to the next page. You repeat -- and we see it, for example, in the third paragraph, on the left-hand side -- you repeat the information that we've seen set out in the Departmental documents and the letter to the Reverend Tanner, so the "best treatment available in the light of medical knowledge available at the time". And I think you say the same later in the speech.

What I just want to do, finally, in this is if we look on the same page, Lawrence, bottom of the right-hand column. This is, I think, setting out your position, the Department's position, in terms of financial support as at December '96. You say:

"The Haemophilia Society subsequently wrote to me in June asking for the Government to set up a trust fund ..."

And so on:

"I took time to consider these proposals carefully before replying to the Haemophilia Society in October. Most hon Members will by now be aware

that I did not accept the society's proposals for payments for those infected with hepatitis C, but I stressed that I remained open to further arguments. I also outlined the support that we are giving to work with those infected, and to research in the area."

Then third paragraph, you reject the suggestion that there has been negligence. You repeat the concern about the development of a general no-fault compensation scheme.

And in the next paragraph you say:

"We are not convinced that hepatitis C falls into the same special category."

And then if I can just read the paragraph beginning "Secondly":

"Secondly, as my hon Friend said, all of the proposals for payment schemes involve the expenditure of substantial sums of public money. I have considered a wide range of options for such schemes -- I really have done that -- including the possibility of a scheme limited to those who go on to develop cirrhosis only. But they all have significant costs. As a Health Minister, I have a duty to consider the effect of such a sizeable sum on other health service expenditure. That duty has led me to conclude that funds available to the NHS from whatever source, are

best used in direct patient care."

So that is you, is it not, on the record also saying that the Marshall scheme, the more modest proposal, is also rejected?

A. Yes.

Q. And is it right to understand that was essentially for the same reasons as the reasons set out in your letter to the Reverend Tanner?

A. Yes.

SIR BRIAN LANGSTAFF: Before you leave this, can I just come back to what is said at the top of this column? Thank you.

It's in the second substantive paragraph down on that page, it's:

"First, we do not accept ..."

If you can highlight that, please.

"First, we do not accept ..."

Down to the word "negligence", the whole paragraph, please. The whole paragraph, please. Thank you.

Can we make that any larger, or not?

Thank you.

It's this, that after the best treatment, which counsel has already asked you about, available at time, we see, four lines up from the bottom:

"That treatment was essential for their survival."

Now she's dealt with that. But then there are these words:

"There was no alternative."

So that was the information that you were given by your civil servants, that there was no alternative, but that they should be given Factor VIII?

A. That's correct.

SIR BRIAN LANGSTAFF: Thank you.

MS RICHARDS: The final point I wanted to pick up, Lord Horam, about this parliamentary speech is -- it's the bottom of the left-hand column and the top of the right, so if we just pick it up at the bottom of the left-hand, it's the last paragraph:

"It has been suggested -- it was reiterated today by my hon Friend -- that there should be funding compensation sources other than from the national health service budget. Naturally, I am sympathetic to that suggestion. Given that knowledge of how the Government work, hon and right hon Members who have spoken in this debate will understand that those matters are not within the compass of my duties as Health Minister, and they must look to other Ministers to put their case, particularly as regards the

contingency fund ..."

And then you refer to the National Lottery. And for reasons I don't need to explore with you, because they're perhaps obvious, the position is that's a matter to pursue through the national lottery if anyone wants to.

But it's the suggestion that it would be for "other Ministers to put [a] case ... as regards [to] the contingency fund". Do you know what you meant by that?

A. I think probably I got that wrong, to be honest, I think it was really my responsibility, in retrospect. With hindsight, I probably got that wrong. It was probably my responsibility to do that if I was convinced there was a case for the contingency fund. And I don't really know why I said "other Ministers", to be honest.

Q. And either yours or yours to persuade Mr Dorrell, and for Mr Dorrell to put the case?

A. Yes, exactly, yes.

Q. Now, we've seen -- we can take that down, thank you, Lawrence.

We've seen what was being said by the Treasury in communications with the Department, we've seen the views of the Permanent Secretary, the resistance, it

might be said, of civil servants within the Department. Do you recall any discussions on this issue with the Secretary of State himself, Mr Dorrell?

A. No, I don't, but I would have been surprised if we didn't have discussions, given that I -- I think I mentioned we probably had three meetings a week, the so-called "breakfast meetings" -- that this has not come up. I mean, really, given that it was a big issue and there were real problems in addressing it, it would greatly surprise me if we hadn't discussed it at some stage but I have no evidence to that effect.

Q. I'm just going to ask you to look at one document. It pre-dates your time as minister, Lord Horam, so you'll recall in a couple of documents that we've looked there is reference to the Secretary of State having given evidence to a health select committee in July of 1995, and I just want to look at an extract of that with you and then just explore a point with you.

So it's DHSC0042937_094.

And we can see the second paragraph -- actually, I'm sorry, Lawrence, let's just put the first paragraph up, otherwise it doesn't make sense.

So this is, I think, potentially Mr Marshall again, and he asks some questions about matters I don't need to trouble with you with, about the

organisation of the Blood Service and purchase of blood bags, and then this question:

"Would you like to comment on your views as to whether those who suffer a premature death through contaminated blood products, or contaminated blood should be compensated?"

Then Mr Dorrell says:

"May I deal with the last question first? My first exchange as a Health Minister some years ago with Mr Marshall was on this subject in an earlier case. I believe that it remains true now as I asserted then that there is a choice to be made about whether the Health Service uses its resources to compensate those who have suffered but through no fault of the Health Service where there has been a breakdown but without fault, whether that is a higher priority than the treatment of today and tomorrow's patients. I said then and I still believe it very strongly to be true that any patient who undertakes a course of medicine must accept that there is a risk attached to modern medicine and in cases where a patient is damaged but without any fault. I do not believe that it is a sensible use of NHS resources to provide compensation in those cases. Of course that is in no sense to undermine the quite proper

obligation that rests when things go wrong through somebody's negligence. Where there is no fault, I am not in favour of compensation as a principle."

Then if we go to the next page, bottom half of the page, someone, it may be Mr Marshall again, I don't know, I don't think it matters, says:

"Can I back to the first part of the answer? Would you not agree that there is something illogical when those who have suffered an early death through HIV are compensated but sometimes within the same family another haemophiliac suffered an early death through cirrhosis of the liver, through hepatitis C, and has received no compensation at the all. Do you not think that is worthy of re-examination, particularly as there are so few people involved?"

Then this was Mr Dorrell's answer:

"I cannot deny that there is an illogicality there because the haemophiliac who contracted AIDS as a result of blood transfusion was provided with compensation in contravention of the principle which I enunciated to the Committee. We can only give the guarantee that there will be no illogicality if we extend the same form of compensation more generally that we have done and I am not in favour of doing that for the reason I gave to the committee."

Two matters arising out of that, Lord Horam, and recognising, as I do, that this pre-dates by a few months your arrival, but it's still Mr Dorrell who is Secretary of State when you're there. Mr Dorrell appears to accept that there was no particularly good reason for -- or to accept at least there is an illogicality in treating differently the HIV sufferer from the hepatitis C sufferer. Do you recall whether that potential illogicality was something that was ever discussed with him by you?

A. No, I don't recall that, to be honest.

Q. Then, secondly, it might be inferred from what he is saying here that he thought that the Government had already gone too far in providing what he calls compensation to those who had contracted AIDS. Was that something -- a view that you ever recall him raising with you or discussing with you?

A. No.

Q. Do you recall whether this issue -- the issue that we've been exploring today -- was something that was ever raised by you with Baroness Cumberlege?

A. No.

Q. No, as in you don't recall it or --

A. I don't recall it.

Q. We can take that down, thank you, Lawrence.

Can I then just really put a couple of general propositions to you for your comment, Lord Horam.

It might be said that the Government, in considering the issue in the way that we've explored today, focused on attempts to hold the line, avoid the slippery slope and maintain that distinction between HIV and hepatitis C, to the extent that it lost sight of the desperate circumstances of those whose lives had been devastated by infection; do you have any comment on that?

A. I don't think it lost sight of the desperate circumstances of those who had been infected, or their relatives and friends, I don't think it lost sight of that. But I think that it was concerned about the slippery slope. That was uppermost in it's mind. There is a tension between the two, I agree, but I think the slippery slope argument was uppermost in its mind.

Q. Final area of questioning, Lord Horam, was just about the possibility of there being some form of inquiry or investigations, that there was a passing reference to it, I think, in that last parliamentary debate we looked at from Mr Marshall, suggesting at least an inquiry investigating the circumstances of those affected, not necessarily suggesting a more

far-reaching inquiry.

Your evidence in your statement, as I understand it, is that you don't remember anyone raising with you the possibility of having some form of formal inquiry or investigation into what have gone wrong, what might have led to the infection of so many people?

A. No apart from this mention in his speech, no, no-one mentioned that to me.

Q. Would it be right to understand that it's not something that occurred to you proactively to raise?

A. No, that's correct, it wasn't. I mean, I was more concerned, all throughout this period, to see if there was some, as I say, more modest proposal that was acceptable. Given that we were -- I was tied, as it were, to the overall position of the Government on this, I was looking to see if there was some compromise, however small, which could give some hope to people that there was a way forward.

MS RICHARDS: Sir, those are the questions I'm currently proposing to ask Lord Horam, a little longer, I'm afraid, than the half an hour I said before lunch.

Could we take a 30-minute break now and that, I think, should be enough for Core Participants and legal representatives to suggest any further questions.

SIR BRIAN LANGSTAFF: Yes, well, if I say not before 3.15, then that gives the opportunity, should it be longer, for Lord Horam to be told --

MS RICHARDS: Yes.

SIR BRIAN LANGSTAFF: -- in his room and for others to be informed. So not before 3.15.

MS RICHARDS: Thank you, sir.

(2.46 pm)

(A short break)

(3.14 pm)

MS RICHARDS: Lord Horam, there is just a handful of additional matters. The first is really by way of just flagging up something else you said in your statement, following your appearance on the World in Action programme and it's really just to draw attention to a different paragraph in your statement from the one I identified earlier.

WITN5294001, page 53, and it's paragraph 2.101. You said this in your statement:

"My comments on that programme, made in response to questioning on a television broadcast, without adequate context may appear, in retrospect, rather blunt. I was not allowed time to set out my thoughts more extensively, rather as I would do in the House or in a letter. I think my position, and the

Department's, was phrased better when I said the following to the House on 11 December 1996 ..."

Then you've set out two passages from your speech on 11 December. I'm just going to read the first, which I didn't read when I was going through the passages earlier. You said:

"Health Ministers have had the opportunity twice this year to meet with my [honourable] Friend to discuss these issues. The discussions which I have had with [honourable] Friend and with representatives of the Haemophilia Society have brought home to me very clearly the plight of those who find themselves infected with hepatitis C, in addition to suffering haemophilia. Nobody could fail to sympathise with the distress of people who, already suffering with one disorder, have found that the treatment for that disorder has given them another."

So does that reflect your own views at the time?

A. Yes.

Q. We can take that down, thank you.

Now, can I then ask for a different document to go on screen, WITN5294013. We looked at this earlier, and it's just as a reminder. This was the note that was provided to your office at your request, and we looked at the first two paragraphs under the heading

"CJD judgment", and if we can just zoom in on those again. It's picking up the second paragraph that reference which I have already asked you about, about hepatitis C being very different in that:

"... the risk of infection via blood products was known to all concerned -- including the patients."

Now, would it be right to understand that that assertion, and we see it elsewhere in the documents as well, describes a situation in which you're being told that patients apparently accepted the risk of being infected?

A. Well, I don't really know whether they accepted it or not, to be honest. I mean, this is not something I had to consider. I was -- this was the situation before I took office and, therefore, I don't really know whether they accepted it or not, whether --

Q. Let me explore it in this way. If within the Department there was a general belief that was being shared with ministers such as yourself that patients knew the risk of treatment and decided to run that risk, that might well have been a very influential factor in deciding whether or not some form of financial support might be made available?

A. Yes, but I didn't know whether that was the case or not.

Q. No. No, I absolutely understand that, Lord Horam. It's really exploring the extent to which that was regarded as important by the Department. Because the moral case might be very different between the situation of people who are given all information about the risks of treatment and decide to run that risk, and the risks --

A. Yes.

Q. -- develop, as opposed to those who are not given any, or are not given adequate information about the risk and are then infected?

A. Yes, I accept that.

Q. Yes. So it would have been a factor that might have influenced the thinking of the Department given that we see it set out here and elsewhere?

A. Well, it obviously should have been; yes.

Q. Whose job or role was it within the Department to oversee the submissions, et cetera, the briefings that were produced by officials to ensure that what was being said there was accurate?

A. I suppose ultimately the Permanent Secretary.

Q. And I'm not sure whether you'll be able to answer this final question, but I'll ask it in any event. Do you know whether there was any guidance at the time to civil servants or any kind of code of conduct which

told civil servants they should only include something in a briefing if they knew it to be correct, or that they should qualify the extent to which something was within their own knowledge?

A. No I don't think so there was. I'm not aware of it anyway.

MS RICHARDS: Thank you.

SIR BRIAN LANGSTAFF: Before you leave this document from the screen, could I just ask you about this, it's in the same vein, it's what you were told by the Department. Here, the Department is saying the risk of hepatitis C is very different because the risk of infection was known to all concerned.

Can we just go back to the previous document that we had on screen? WITN5249 -- whatever it is -- 001, a witness statement, page 53. Thank you.

And it's -- the words that were used at the very end of what you said to the House -- and I imagine that what you said to the House was effectively drafted for you by the civil servants?

A. Well, with input from me, yes.

SIR BRIAN LANGSTAFF: Yes. So it's the last line, last sentence:

"However, medical procedures rarely come without risk, are those are not always known about or capable

of being guarded against in time."

It might be said that seems to suggest to a listener that the risks of Factor VIII causing hepatitis C were not known about, is the implication, perhaps, to a listener or a reader, is it?

A. Yes, I'm not sure if that necessarily follows. I'm only stating a general principle here, they "rarely come without risk".

SIR BRIAN LANGSTAFF: That's plain.

A. Not a lot was known about --

SIR BRIAN LANGSTAFF: It's the clause that follows --

A. Mm.

SIR BRIAN LANGSTAFF: -- which is said in context.

A. Is that -- are you questioning whether that's accurate or not?

SIR BRIAN LANGSTAFF: Well, I'm questioning not whether that's accurate, if it's a general proposition, but if it's relating to the proposition that Factor VIII caused hepatitis C, and this was not known about -- that may be an implication -- then it's inconsistent with what counsel has just been putting to you, that everyone knew what the risks were. Do you follow?

So it almost looks as though the Department has drafted something for you to say which may not have corresponded with what other people in the Department

or the same officer was actually saying. It's the inconsistency that's concerning me, that's the point. Potential inconsistency.

A. Well, I concede your point. I concede your point, yes.

SIR BRIAN LANGSTAFF: Yes, thank you.

MS RICHARDS: Sir, those are the only questions I'm proposing to ask Lord Horam from those suggested. Do you have any questions?

SIR BRIAN LANGSTAFF: I think I've just asked it.

MS RICHARDS: Lord Horam, is there anything further that you wish to add?

A. Well, I just -- may I say I have profound sympathy for people who have been infected and affected by all of this. It's a total tragedy and I'm so sorry that I personally wasn't able to do more to help during my short period of office. We're now having an Inquiry. I have no experience of inquiries of this kind but it seems to me to be very thorough, and I do hope that, therefore, it gives some hope to people that there is some positive outcome to this dreadful period. Thank you.

MS RICHARDS: Thank you.

SIR BRIAN LANGSTAFF: Well, thank you very much for coming and enlightening us about what it was like as a junior

minister in your time and, in particular, the relations between yourself and the civil servants and the various tasks that you had to perform. So thank you very much.

MS RICHARDS: Sir, tomorrow we have the evidence of Baroness Hooper.

SIR BRIAN LANGSTAFF: Baroness Hooper, 10 o'clock.

(3.25 pm)

(The Inquiry was adjourned until 10.00 am on Thursday, 30 June 2022)

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