6 July 2022

1		Wednesday, 6 July 2022	1		Paragraph 1 says:
2	(10	.00 am)	2		"PS(H) may recall that Graham Ross of J Keith Park
3	(10	LORD WILLIAM ARTHUR WALDEGRAVE (continued)	3		& Co has written to Ministers on several occasions
4		Further questioned by MS RICHARDS	4		pressing for compensation for the blood transfusion
5	SIR	BRIAN LANGSTAFF: Yes?	5		recipients infected with HIV. With Ministers agreement,
6		RICHARDS: Lord Waldegrave, we had reached your written	6		officials have taken over the correspondence.
7	mo	answer of June 1991 yesterday afternoon where the line	7		Graham Ross expressed some concern at this but has been
, 8		was held in terms of the existing policy. If we can	, 8		assured that Ministers will be told of any new
9		pick matters up next in August of 1991.	9		arguments. This submission considers a point of
10		Lawrence, could we have DHSC0046973_035, please.	10		particular concern to Mr Ross that preserving the
11		You'll see this is a minute date 19 August 1991.	11		anonymity of blood donors could make it difficult for
12		It's from the Parliamentary Undersecretary's office to	12		the blood transfusion recipients to seek redress through
13		your private office, so that would have been, I think,	13		the courts."
14		Mr Dorrell.	14		I'll read the second:
15	A.	Mm-hm.	15		"In the submission we are also reporting the RHA's
16	Q.	"Please find attached a submission from Mr Canavan.	16		[Regional Health Authority's] willingness to take the
17	ω.	PS(H) thinks that this is an issue on which S of S would	17		lead in negotiating a deal to settle the blood
18		wish to take the decision."	18		transfusion issue, should Ministers wish to seek such
10		Then if we look at the attached submission, it's	10		a settlement."
20		at DHSC0003641 004.	20		
		_	20		Then the recommendation in paragraph 3:
21 22		The submission itself from Mr Canavan is dated	21		"We do not consider that these developments in
		13 August 1991, addressed to PS(H)'s office. I think we			themselves warrant a change in the Government's
23 24		need only look, for present purposes, at paragraphs 1	23 24		position. However, should Ministers be minded to seek
		and 3, so if we can scroll down slightly, please,			a way of settling the blood transfusion issue the
25		Lawrence.	25		J Keith Park and RHA developments may be helpful in 2
					-
1		reducing the risk of wider repercussions."	1		unchanged by the arguments about donor anonymity?
2		The submission then goes on to set out in more	2		"ii) he wishes any further action taken at this
3		detail the issue about anonymity of donors and the	3		stage to pursue the RHAs offer?"
4		impact that might have on the ability to litigate.	4		Lord Waldegrave, as we saw from the covering
5		I'm not going to read any of that out.	5		submission, this appears to have been passed up the
6		If we just go to page 3, please. If we pick it up	6		ministerial chain to you, but the documents I think
7		at paragraph 9, conclusions. At the top of the page:	7		don't tell us what, if any, decision you took in
8		"In the view of officials, the arguments about	8		response to this. Do you have any independent
9		donor anonymity do not warrant a concession to the blood	9		recollection of it?
10		transfusion recipients infected with HIV. However if	10	Α.	No, I don't. We didn't at that point change the policy,
11		Ministers were minded to seek a way of settling the	11		but we did later.
12		issue then the arguments might be used to prevent the	12	Q.	And I think there's then a gap in the available
13		settlement as a necessary measure to protect our	13		documentation addressing this issue until we get to the
14		voluntary blood donor system. However any such argument	14		end of November 1991, where we see that, from documents,
15		would have to be used with caution as any erosion of	15		it's clear that your view has changed. And so we'll
16		public interest immunity principle could have serious	16		pick up the story there.
17		implications for all Government Departments and for	17		DHSC0002894_011, please.
18		other public bodies. There would need to be	18		This is from Strachan Heppell to your
19		consultation with these other interests."	19		Private Office, 28 November 1991. If we look at the
20		Then if we go down to the bottom of the page under	20		text of the minute, it says:
21		the heading "Decisions Required":	21		"Transplant etc patients with HIV
22		"13. We are asking PS(H) whether:	22		"I attach a draft letter to the Chief Secretary on
23		"i) he is content that officials should inform	23		the lines we discussed.
24		J Keith Park that the Government's position on	24		"2. We shall need to bring the other Health
25		compensation for the blood transfusion cases is	25		Departments into the correspondence now as we shall want
		3			4

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1	them to bear their share of the cost.
2	"3. Meeting our share will put a considerable
3	strain on our finances this year. But a settlement
4	deferred to next year would of course be a less welcome
5	offer to those concerned."
6	I'm just going to show you one further minute from
7	Mr Heppell the following day and then ask you about it.
8	So that's 28 November.
9	29 November, we have DHSC0002537_262.
10	So the heading here "Blood transfusion etc
11	patients with HIV", again it's from Mr Heppell,
12	29 November, to your Private Office:
13	"I attach a draft letter to the Chief Secretary on
14	the lines we discussed. It offers a one-third
15	contribution to the cost on the basis we might have to
16	go to one half.
17	"2. Secretary of State will want to reflect on
18	the financial and policy aspects of the letter before he
19	writes.
20	"3. On finances, the position is that we have
21	already absorbed an extra £3 million for the
22	haemophiliacs as a consequence of higher costs and
23	numbers than expected. Nevertheless we can make some
24	further contribution if that is what Secretary of State
25	judges necessary to resolve the matter. There is 5
1	"4. We must also assume that Treasury would not

1	"4. We must also assume that Treasury would not
2	entertain any further bids on the Reserve for additional
3	cases.
4	"5. On policy, this extension of eligibility will
5	leave us with a less secure ringfence than for
6	haemophiliacs. We believe that two groups of people,
7	those infected with hepatitis and those treated with
8	human growth hormone, are currently preparing legal
9	action against the Department. Both groups will be able
10	to argue that like the HIV cases they were entitled to
11	expect safe treatment. And the hepatitis cases will
12	also be able to point to infection through blood. So we
13	will be more vulnerable than we now are on the no-fault
14	compensation issue."
15	Then we can see if we go further down, that's the
16	end of the minute.
17	So it looks from those two documents,
18	Lord Waldegrave, that by the end of November of 1991,
19	you had taken the decision, discussed it with Mr Heppell
20	and others, that the time had come to change the
21	departmental line and extend financial support to those
22	infected with HIV through transfusion. Do you have any
23	recollection of exactly how and when that came about?
24	Because, as I say, there's a dearth of documents really
25	between August and November.
	7

1		inevitably some uncertainty about the final outturn this
2		year but £6 million can be guaranteed if Secretary of
3		State is prepared to accept that this will use up all
4		his personal fund."
5		Just pausing there, what's the reference to the
6		personal fund, Lord Waldegrave?
7	Α.	There was a sort of small central fund to deal with
8		particular issues that came up from time to time smaller
9		than these, where I thought we needed to take action.
10		I've always thought in a department it's sensible to
11		have what the officials would have referred to as
12		a "back pocket", if there was something unexpected and
13	~	relatively small that could be swiftly dealt with.
14	Q.	In relation to allocation from that personal fund, did
15	٨	that require Treasury agreement?
16 17	Α.	I think it depended on the scale of it. It was a very
18		small fund. It was £1 million, perhaps. For example, there were regular issues surrounding the arrival of new
10		and effective drugs that were very expensive, for
20		cancer treatment for example, and sometimes they came
20		unexpectedly, and one would probably have been able to
22		clear that at official level with the Treasury, say it
23		was a million or £2 million and just deal with it
24		quickly.
25	Q.	Then continuing with the minute:
	-	6
1	A.	No, I don't have any independent recollection, I'm
1 2	A.	No, I don't have any independent recollection, I'm afraid. The only comments I can make are, of course,
	А.	• •
2	A.	afraid. The only comments I can make are, of course,
2 3	A.	afraid. The only comments I can make are, of course, that there are two things, there's one important thing
2 3 4	A.	afraid. The only comments I can make are, of course, that there are two things, there's one important thing not in the documents which is that I had secured a very
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1		"Dear Chief Secretary, "Deard transferring at a private with UN/	1		provided to haemophiliacs including if we can arrange it
2 3		"Blood transfusion etc patients with HIV	2 3		access to the original Macfarlane Trust. This help was
4		"After last Thursday's Cabinet we had a word about the continuing campaign on behalf of non-haemophiliac	4		in practice, though not formally, taken into account in arriving at the out of court settlement."
4 5		patients infected by HIV in the course of treatment -	4 5		Over the page:
6		blood transfusion, transplant or tissue transfer - in	6		"If we take the first approach the estimated cost
7		this country.	7		is £10 million. The second would cost an estimated
, 8		"I have looked very carefully at this. While I do	8		£12 million and bring forward the time when the
9		not think the strength of the case, or indeed its public	9		Macfarlane Trust will need topping up. But the cleanest
10		support, is the same as for the haemophiliacs there is	10		way of resolving this is to go for the second and
11		no doubt that there is considerable sympathy for these	11		I recommend we do that.
12		unfortunate people or that a concession on our part	12		"A clean resolution will also mean dealing with
13		would be widely welcomed. By contrast if we continue to	13		the cases without any intrusive investigation into
14		refuse any help there is a real prospect that the	14		whether the infection may have arisen in another way.
15		campaign will gather pace and become a damaging and	15		We did not carry out any such investigation with the
16		running sore over the next few months.	16		haemophiliacs. But we will need to carry out some
17		"My conclusion is that we should move now to	17		validation of the cases falling into new categories,
18		resolve the matter by recognising the needs of these	18		though only as far as practicable and sensible.
19		people and their families in the same way as we have	19		"Applying those criteria to existing cases would
20		recognised those of haemophiliacs. We could do this in	20		give us about 75 cases which arose in the
21		one of two ways:-	21		United Kingdom.
22		"First, by giving them the same as we gave to the	22		"The criteria will also mean accepting that there
23		haemophiliacs and their families in the out of court	23		is likely to be a handful of cases in future years who
24		settlement.	24		will also be eligible for payment.
25		"Second, by also giving them the earlier help	25		"As to the financing of this, I have already
		9			10
1		topped up the haemophiliacs money by £3 million because	1		you're asking for a Treasury contribution from
2		numbers and costs were higher than expected.	2		the Reserve. Was that, as it were, an opening gambit in
3		Nevertheless, I am prepared to pay a third of the £12m.	3		terms of discussion?
4		I hope that the other Health Departments will be able to	4	Α.	Yes. Now, I have no direct memory of this, but I do
5		make a contribution in respect of cases arising in their	5		have direct memory of what I've just said, that we had
6					
7		countries and that it will be possible for the treasury	6		secured overall a good PES settlement. So the resource
0		countries and that it will be possible for the treasury to meet the balance from the Reserve.	6 7		across the Department was I'm not saying in those
8					-
8 9		to meet the balance from the Reserve.	7		across the Department was I'm not saying in those
		to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and	7 8		across the Department was I'm not saying in those tough times was, but it was a little it wasn't
9		to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang."	7 8 9		across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little
9 10		to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and lan Lang." And that's Peter Brooke, Northern Ireland,	7 8 9 10		across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre.
9 10 11		to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland.	7 8 9 10 11		across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support
9 10 11 12		to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief	7 8 9 10 11 12 13	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the
9 10 11 12 13	А.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now	7 8 9 10 11 12 13	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point.
9 10 11 12 13 14	A. Q.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it	7 8 9 10 11 12 13 14	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury
9 10 11 12 13 14 15		to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just	7 8 9 10 11 12 13 14 15	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time.
9 10 11 12 13 14 15 16	Q.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes.	7 8 9 10 11 12 13 14 15 16	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR0000003_043.
9 10 11 12 13 14 15 16 17	Q.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to	7 8 9 10 11 12 13 14 15 16 17	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR0000003_043. This is 3 December 1991. It's from Mr Dickson to
9 10 11 12 13 14 15 16 17 18	Q. A.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to me.	7 8 9 10 11 12 13 14 15 16 17 18	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR000003_043. This is 3 December 1991. It's from Mr Dickson to Mr Grice in the Treasury and to the Chief Secretary to
9 10 11 12 13 14 15 16 17 18 19	Q. A. Q.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to me. Because you needed the money?	7 8 9 10 11 12 13 14 15 16 17 18 19	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR0000003_043. This is 3 December 1991. It's from Mr Dickson to Mr Grice in the Treasury and to the Chief Secretary to the Treasury, and we can see it refers in the opening
9 10 11 12 13 14 15 16 17 18 19 20	Q. A. Q. A.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to me. Because you needed the money? And permission, yeah.	7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR000003_043. This is 3 December 1991. It's from Mr Dickson to Mr Grice in the Treasury and to the Chief Secretary to the Treasury, and we can see it refers in the opening paragraph to your letter to Mr Mellor.
 9 10 11 12 13 14 15 16 17 18 19 20 21 	Q. A. Q. A. Q.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to me. Because you needed the money? And permission, yeah. And the permission was the permission to spend money	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR000003_043. This is 3 December 1991. It's from Mr Dickson to Mr Grice in the Treasury and to the Chief Secretary to the Treasury, and we can see it refers in the opening paragraph to your letter to Mr Mellor. I'm not going to read through the detail of it. If
 9 10 11 12 13 14 15 16 17 18 19 20 21 22 	Q. A. Q. A. Q. A.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to me. Because you needed the money? And permission, yeah. And the permission was the permission to spend money Yes.	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23		across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR000003_043. This is 3 December 1991. It's from Mr Dickson to Mr Grice in the Treasury and to the Chief Secretary to the Treasury, and we can see it refers in the opening paragraph to your letter to Mr Mellor. I'm not going to read through the detail of it. If we could just go to the third page
 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 	Q. A. Q. Q. A. Q.	to meet the balance from the Reserve. "I am copying this to Peter Brooke, David Hunt and Ian Lang." And that's Peter Brooke, Northern Ireland, David Hunt, Welsh Office, Ian Lang, Scotland. So you set out there clearly to the Chief Secretary your decision that the policy should now change. In terms of the financing of it Just Yes. My hope that the policy would change; not entirely up to me. Because you needed the money? And permission, yeah. And the permission was the permission to spend money Yes. even from within the Department's own budget?	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A.	across the Department was I'm not saying in those tough times was, but it was a little it wasn't relaxed, but it was a little more there was a little more room for manoeuvre. Now, I still thought that I should get some support from the Reserve, and I had a go at that, but in the end, as we know, I surrendered that point. If we can just pick matters up with an internal Treasury minute, so not one you would have seen at the time. HMTR000003_043. This is 3 December 1991. It's from Mr Dickson to Mr Grice in the Treasury and to the Chief Secretary to the Treasury, and we can see it refers in the opening paragraph to your letter to Mr Mellor. I'm not going to read through the detail of it. If we could just go to the third page Who's handwriting do we think that is?

(3) Pages 9 - 12

1	Q.	And I'm just going to come back to what has been said	1		Health documents before asking you a little more
2		there, I'll double check that.	2		generally about it.
3	Α.	I think that must be right.	3		So we get to DHSC0002931_005.
4	Q.	If we go to paragraph 8 we can see the recommendation to	4		Now, this is a minute from Mr France, so it's from
5		Mr Mellor is:	5		the permanent secretary.
6		"We recommend that you try to dissuade	6	Α.	Sir Christopher, I think.
7		Mr Waldegrave and colleagues from offering	7	Q.	Sir Christopher France, yes, sorry.
8		a compensation scheme. It may seem attractive to him in	8		2 December 1991, to your Private Office. And if we
9		the short-term. But in the longer term, it could cost	9		go down to the text of it, it says:
10		much more by leading to a no-fault compensation scheme -	10		"1. I have seen Mr Heppell's minute of 29
11		even if one restricted to medical negligence."	11		November. I very much share his misgivings on the
12		So the suggestion is Mr Mellor tries to talk you	12		policy case for a concession here (and the finance would
13		out of it, if I can put it that way.	13		not be easy either).
14		If we go back to the first page and just read the	14		"2. It is never very comfortable to resist claims
15		handwritten entry:	15		for compensation from those who have encountered major
16		"This is a longstanding dilemma. It is not	16		problems through no fault of their own or anyone else.
17		comfortable to deny compensation to this group when the	17		But unless Government is prepared to draw a line and
18		haemophiliacs can get it. But giving compensation to	18		stick to it, it will end up with a de facto
19		them [would] mean another long stride down the slippery	19		(very expensive) no-fault compensation system.
20		slope to no-fault compensation generally. I am afraid,	20		"3. The ringfence around the haemophiliacs is
20		therefore, our advice has to be against [it]."	20		bound to be attacked, but we are unlikely ever to find
21		I will check whose handwriting that is.	21		a better one if we abandon it. The haemophiliacs were
22	Α.	I think you're right.	22		doubly disadvantaged by their existing, hereditary
23 24	Q.	That's the internal response from the Treasury. Can	23 24		disease which already affected their position on
24 25	ω.	I then just pick up a handful of further Department of	24		employment, insurance and the like. They can be
25		13	25		14
1		separate from other victims of medical accidents, but	1		because Sir Christopher was doing his duty to put, as he
2		the next defensible boundary is not easy to see.	2		saw it, a case against a minister embarking on a piece
3		I advise long reflection before we move further in to	3		of expenditure that he thought might be wrong. It's not
4		no-fault compensation for medical accidents. Is this	4		far from the ultimate weapon that a permanent secretary
5		really the most pressing marginal case for the	5		has of writing to the Public Accounts Committee, as
6		deployment of money from the health programme?"	6		happened, for example, in the case of the Pergau Dam,
7		Now, you've told us you would have regular	7		when Douglas Hurd gave foreign aid to Malaysia. That is
8		meetings, the top of the office meetings, with	8		the ultimate thing, and it goes straight to Parliament.
9		Sir Christopher and others. This is, I think, perhaps	9		Now it's not quite that, but it's only one step
10		the only example we have of Sir Christopher putting his	10		down, so I would have taken this very seriously, and
11		views on this issue in writing. Does the fact that it	11		that is why, after this, I took the trouble to get on
12		was set out in this formal way rather than simply being	12		paper all the opinions of my other ministers, to see
13		conveyed to you in your weekly meetings a reflection of	13		whether they thought I'd gone completely mad. One of
14		the extent to which he was opposed to your proposal?	14		them did, but the others didn't.
15	A.	Yes, it's a very important intervention from him, which	15	Q.	We'll just look briefly at that, to complete the paper
16		I would have taken extremely seriously, as I did take	16		trail, at DHSC0002537_063.
17		extremely seriously. I thought that, as I I won't go	17		It's a minute of 5 December from your Private Office
18		over what I said yesterday that the ring-fence around	18		to the Private Offices of your three ministers:
19		those infected with HIV/AIDS by the Health Service was	19		"The Secretary of State has noted the Permanent
20		a much clearer and more commonsensical line to defend.	20		Secretary's minute of 2 December to me, and would
21		The Permanent Secretary and the Deputy Secretary,	21		appreciate your Ministers' views."
22		Strachan Heppell, are both advising very strongly	22		I think the date is wrong but I don't think
23		against it. "I advise long reflection" means	23		anything turns on that.
24		"Don't do it".	24		You've probably anticipated my next question in
25		I would have taken that extremely seriously	25		your last answer. This seems quite an unusual step to
		15			16

(4) Pages 13 - 16

1		be formally seeking the views	1		essentially.
2	A.	Yes.	2		Then if we look at Mr Dorrell's response, PS(H),
3		of your ministerial colleagues, but it reflects	3		DHSC0002537_242. 11 December:
4		the fact that you had your Permanent Secretary and other	4		"PS(H) has seen your minute of 5 December, asking
5		senior civil servants opposed to the suggested change of	5		for his views on Permanent Secretary's minute of
6		line?	6		2 December. He has commented 'Without enthusiasm I am
7	A.	Yes.	7		in favour of extending the concession to Blood
8	Q.	Then, as you say, in terms of the responses,	8		Transfusion etc, victims. The initial concession was
9		DHSC0002537_062, Baroness Hooper, PS(L), on 5 December,	9		a political fix - this would simply redefine what is
10		her view coincided with that of Mr Heppell and with the	10		essentially the same fix'."
11		Permanent Secretary. So she says:	11		It might be said to be a reluctant agreement,
12		"I think we should hold the line however difficult	12		but
13		this may be. I am not aware of a sudden pressure via	13	A.	Reluctant to I don't want to make a speech about this
14		correspondence or otherwise."	14		but perhaps rather difficult today to enter into an SA
15		But I think the Minister of State and Mr Dorrell	15		defending the trade of politics, but the I don't
16		really took, as it were, your side of the line.	16		regard "political" as a bad word in a democracy. It
17		So if we see DHSC0002938_004.	17		means at its best that you have taken into account as
18		This is on 10 December and on behalf of MS(H) so	18		many views as you can and come to a decision. The trade
19		Mrs Bottomley. Paragraph 2:	19		of politics should be and is an honourable one, so
20		"MS(H) commented that she has always been cautious	20		certainly Mr Dorrell is using the word as a bit of a boo
21		in this area for the reasons outlined in	21		word there, but I would have bridled at that a bit and
22		Permanent Secretary's minute of 2 December. However,	22		thought, and responded I think that the job of the
23		given the current circumstances she supports moves	23		Secretary of State was to try to take into account all
24		seeking a further explanation."	24		the arguments put externally and internally and come to
25		So Mrs Bottomley agreed with your proposal	25		a conclusion and if that's politics, that's politics.
		17			18
1	Q.	If we just pick matters up in your statement, please,	1		Parliament) put forward in opposition to Rosie Barnes'
2		WITN5288001, if we go to page 88, paragraph 4125, you	2		Bill. Such difficult judgements are I think the essence
3		say this, and it's referring to Christopher France's	3		of democratic government. Just as my senior officials
4		advice:	4		were right to warn, I think that the Government was
5		"While I do not now actively remember seeing this	5		right to concede and run the risk on the no-fault
6		advice, I would certainly have done so at the time.	6		compensation concerns. As I was later to express it to
7		This was advice coming from (respectively) the	7		the Chief Secretary, I believed that it was politically
8		Permanent Secretary [Sir Christopher France] and	8		and morally the correct course. I was very aware of the
9		the Deputy Secretary (Grade 2) Civil Servant	9		particular stigma and fear that surrounded AIDS at the
10		[Strachan Heppell] heading the policy area, both of whom	10		time, and I did see this as a potentially distinguishing
11		that put their advice in formal minutes. The Inquiry	11		feature from other cases raised in the debate on
12		asks why I 'rejected' their advice. They were right to	12		no-fault compensation."
13		warn me in the terms they did, and I would have taken	13		The balance that you identify there, the balance
14		very serious note of their advice. I would have been	14		of risks being a matter for ministers to judge,
15		well aware of the dangers of widening the policy, and	15		presumably and this is a more generally question,
16		their advice would - appropriately - have been	16		Lord Waldegrave the more senior the Minister, the
17		a forceful reminder of those risks. Ultimately,	17		easier or perhaps the less difficult it may be for that
18		however, it was for ministers to judge the balance of	18		minister to consider but reject the advice of senior
19		risks. Here the balance was between trying to maintain	19		officials?
20		a distinction between haemophiliacs and blood	20	Α.	Yes, a Secretary of State should take great care.
21		transfusion patients both infected with HIV by	21		Secretaries of State come and go, the officials have the
22		NHS treatment which the 'court of public opinion'	22		corporate memory of the Department, and are an
23		rejected, versus the weakening of the defences against	23		essential when it comes to the legitimacy of
24		pressure for no-fault compensation which we believed to	24		spending, for example, they are the guardians of public
25		be an unacceptable outcome for the reasons (agreed by	25		good. And they have, as I say, the Public Accounts
		19			20

(5) Pages 17 - 20

1		Committee route to go down. Now, this is not that case.	1		pressure in Parliament, (questions, motions and
2		It's a matter where I balanced the risks differently	2		debates), from the media campaign and from allied
3		from them.	3		correspondence, led me to judge that the government's
4		A Secretary of State is also, remember, not just	4		position was not sustainable. We had tried the policy
5		the head of his or her department but a member of	5		of holding the line/protecting the ring-fence and it was
6		the collectivity of the Cabinet, of the Government, and	6		not convincing public opinion or Parliament. The
7		has a duty to look to the wider interests of the	7		increasing unpopularity of our stance was - in one
8	~	Government as well as his own or her own department.	8		sense - useful because it was a lever that I could
9	Q.	And you say in your statement that, looking at the	9		deploy with the Treasury and others to try to change the
10		documents, you think the initiative to change course was	10		policy with which I had become uncomfortable, hence my
11		probably your initiative?	11		warning that, ' if we continue to refuse any help
12	A.	Well, there were campaigners out there.	12		there is a real prospect that the campaign will gather
13	Q.	Yes.	13		pace and becoming a damaging and running sore over the
14	Α.	There were the redoubtable campaigners from Liverpool,	14		next few months'."
15	^	but I think it was, yes. And in terms of within Government	15		Is there anything you have to add to that, or is
16	Q.		16		that the best explanation?
17	A.	Yes.	17	Α.	Well, I think only I think the papers show that as
18	Q.	it was your initiative as Secretary of State?	18		far as back as April and even earlier than that I was
19	A.	Yes.	19		uncomfortable with it before the public campaigning had
20	Q.	Then I just wanted to ask you to look at what you say	20		got going. The issue of campaigning and so on is one of
21		about your thinking in paragraph 4.119 of your	21		the things that a minister has to judge all the time,
22		statement.	22		because there are hundreds of campaigns going at any one
23		So it's page 86, please, Lawrence.	23		time. I remember as a new MP, I can't remember now what
24		You say, picking it up in the fourth line:	24		the campaign was, but my constituency secretary said,
25		"The reality was that the combined increased 21	25		"We've got a huge campaign, we've had 100 letters on 22
1		something". We had 70,000 constituents, how do you know	1		in somewhat the same way.
2		whether that really represents So you have to try	2	0	Now we saw reference to letters being copied to the
3		to judge. I'm by no means diminishing campaigning, it's	3	ч.	Scottish Office, Welsh Office and Northern Ireland
4		a vital part of our democracy, but you have to judge.	4		Office, and again, really for the sake of completeness
5		I mean, I suppose the greatest by far the	5		and because it's one of the few instances where we have
6		greatest and most effective single-issue campaign of my	6		direct evidence of their involvement, if we can just
7					and of on a bill and on one of the barry dot
, 8		lifetime was one which we'll have to wait for my			look at the communications from those ministers
		lifetime was one which we'll have to wait for my grandchildren to judge whether it was right or not	7	Δ	look at the communications from those ministers.
ч		grandchildren to judge whether it was right or not,	7 8	A.	I think this was a much I perhaps because there
9 10		grandchildren to judge whether it was right or not, which was the Brexit campaign.	7 8 9	А.	I think this was a much I perhaps because there was more time, but there was a much better order in all
10		grandchildren to judge whether it was right or not, which was the Brexit campaign. So one has to try to judge these things.	7 8 9 10		I think this was a much I perhaps because there was more time, but there was a much better order in all this, and I think I'd got them on side as allies.
10 11		grandchildren to judge whether it was right or not, which was the Brexit campaign. So one has to try to judge these things. Campaigners are a vital part of democracy, but you	7 8 9 10 11	A. Q.	I think this was a much I perhaps because there was more time, but there was a much better order in all this, and I think I'd got them on side as allies. So if we start with the Scottish Office.
10 11 12	0	grandchildren to judge whether it was right or not, which was the Brexit campaign. So one has to try to judge these things. Campaigners are a vital part of democracy, but you have they are one element to take into account.	7 8 9 10 11 12		I think this was a much I perhaps because there was more time, but there was a much better order in all this, and I think I'd got them on side as allies. So if we start with the Scottish Office. SCGV0000237_072.
10 11 12 13	Q.	grandchildren to judge whether it was right or not, which was the Brexit campaign. So one has to try to judge these things. Campaigners are a vital part of democracy, but you have they are one element to take into account. Would it be right to look at it in this way, perhaps:	7 8 9 10 11 12 13		I think this was a much I perhaps because there was more time, but there was a much better order in all this, and I think I'd got them on side as allies. So if we start with the Scottish Office. SCGV0000237_072. This is 17 December 1991 and it's Ian Lang,
10 11 12 13 14	Q.	grandchildren to judge whether it was right or not, which was the Brexit campaign. So one has to try to judge these things. Campaigners are a vital part of democracy, but you have they are one element to take into account. Would it be right to look at it in this way, perhaps: one of the reasons why, in relation to this particular	7 8 9 10 11 12 13 14		I think this was a much I perhaps because there was more time, but there was a much better order in all this, and I think I'd got them on side as allies. So if we start with the Scottish Office. SCGV0000237_072. This is 17 December 1991 and it's lan Lang, Secretary of State for Scotland, writing to Mr Mellor,
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1

1	At least 2 cases in Scotland have now applied for
2	legal aid and there could be damaging publicity at each
3	stage of the legal process.
4	"While it is difficult to estimate the total
5	Scottish costs it seems on present information likely to
6	be around £900,000. Like William, I would be prepared
7	to find a third of these costs if the Treasury would
8	meet the balance from the Reserve. An early decision in
9	principle on funding would be helpful."
10	So that's Scotland.
11	In terms of the Welsh Office, DHSC0002717_014.
12	2 January 1992, from David Hunt, Secretary of
13	State for Wales. He refers to having seen copies of
14	your letter and of lan Lang's letter, and then says
15	this:
16	"I too would support proposals for a settlement
17	through the Macfarlane Trust and would be prepared to
18	make a similar contribution in the current financial
19	year if you are able to meet the balance from
20	the Reserve. On the basis of the costs in William's
21	letter, and in line with our contribution to the earlier
22	settlement, Welsh costs are likely to be around
23	£200,000. If you are able to agree our officials can
24	discuss how contributions should be made."
25	Then to complete the geographical picture, if we 25
	20
1	you.
2	HMTR0000003_051.
3	This is 13 January 1992 from Mr Mellor. It refers
4	to your letter and to the letters from Ian Lang,
5	Peter Brooke and David Hunt, and then Mr Mellor says

4	to your letter and to the letters from Ian Lang,
5	Peter Brooke and David Hunt, and then Mr Mellor says
6	this:
7	"2. I understand why you want to provide
8	compensation for this unfortunate group and
9	I sympathise. But I also have serious reservations
10	about whether it would be possible realistically to ring
11	fence any such compensation. There are a range of other
12	groups who have also suffered as a result of treatment
13	under the NHS where there is no question of negligence.
14	By compensating those acquiring HIV from blood
15	transfusion, we will be taking a further long stride
16	towards no-fault compensation in general.
17	"3. Virginia Bottomley put forward a good defence
18	of our current position in the adjournment debate called
19	by Gavin Strang on 20 December. It would be difficult
20	to reverse our position so soon after that clear
21	statement.
22	"4. But I also have to say that all this is
23	overtaken by the extent of doctors' and dentists'
~ 1	

24 overpayments in the current year. You will appreciate that the latest news about the further overpayments to $$27\end{tabular}$$ 25

2		Ireland office, this is addressed to you, 27 December:
3		"Thank you for sending me a copy of your letter on
4		2 December to David Mellor about financial help for
5		non-haemophiliac patients"
6		Et cetera.
7		"I feel there is little public understanding or
8		sympathy for the Government's position on this matter
9		and that the campaign for a settlement is likely to
10		gather momentum in the months ahead. I would therefore
11		support the proposal to recognise the needs of these
12		unfortunate people and their families by settling on the
13		same basis as for haemophiliacs.
14		"I am pleased to say that we are not aware of any
14		
		non-haemophiliac patients being infected in the course
16		of health service treatment in Northern Ireland and no
17		costs would fall on our budget at present. If any such
18		cases do come to light in the future we would of course
19		be prepared to pay an appropriate share of the costs."
20		So it would appear that there was a joined-up
21		approach on this issue between the four departments?
22	Α.	Yes, I think the Treasury would have said the Secretary
23		of State for Health has squared away his colleagues,
24		annoyingly.
25	Q.	Then if we just pick it up with the Treasury response to
		26
1		dentists this year has come as a very unpleasant shock
1		dentists this year has come as a very unpleasant shock. Your officials have now told mine that the gross
2		Your officials have now told mine that the gross
2 3		Your officials have now told mine that the gross overpayment to dentists this year is likely to be
2 3 4		Your officials have now told mine that the gross overpayment to dentists this year is likely to be a staggering £8,000 per dentist at the very least. That
2 3 4 5		Your officials have now told mine that the gross overpayment to dentists this year is likely to be a staggering £8,000 per dentist at the very least. That comes to well over £100 million which you will be
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go to HMTR0000003_047. We have here from the Northern

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1 A. No to the Reserve - 1 as I understand it is a reference the the that 2 Co coses to the Reserve. 2 because there was uncertainly about the possibility 3 A. Yes. 0 future claimants - 4 Q. You unsign the Department of Health monies? Q future claimants - A. Yes. 6 A. Well, again, ifs not a direct recollection unaided, but A. Yes. Q future claimants - 7 Q. Just join guo on the question of when Treesury agreement was required to departmental expenditure, and Parliament - 10 Q. Just joing yoo the question of when Treesury A. Yes. Parliament - 11 Q. Just joing yoo the question of when Treesury A. Yes. Parliament - 11 Q. Just joing yoo the question of when Treesury A. Yes. Parliament - 12 Just joing yoo the question of when Treesury Parliament - Parliament - 13 agreement was required to departmental mole she think ould be - Image and the bid and the annual Parliament - 14 used without Treesury approval Parliament - Parliament - Parliament - 14 Well, if thad impinkicloso, certainy if it had Im
3 A Yes. 3 of - 4 Q You understood this as also saying no in the sene of you using the Department of Health monies? 3 of - 6 A Well, again, if no ta direct coolection unaided, but have read that, I think, or my officials would 6 A Oute. 7 I would have read that, a think, or my officials would 7 C - there was a possibility of future expenditure, that was something that had to be notified formally to you propose?. 9 Parliament - 10 Q. Just picking up on the question of when Treasury agreement, was it the each to which the each to which the each to which the each to which the each the eac
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18 Ministers will be seen as susceptible to public pressure 18 Prime Minister, once again, came to my rescue as he did
20 vulnerable on the 'no fault compensation' issue. On the 20 concerned.
21 other hand if a line has to be drawn on which to stand 21 Q. And we can then, I think, see you wrote to the
22 ground, the distinction between recipients of Factor 8 22 Prime Minister, 7 February 1992: HMTR0000003_603.
23 and whole blood is proving a very weak position to 23 We've looked at this with Sir John but perhaps worth
24 defend and there is little public understanding or 24 looking again briefly with you. So paragraph 1 refers
25 sympathy for the Department's position. Compensation 25 to the meeting that Sir John had had with Conservative

(8) Pages 29 - 32

1	Party members. It refers to a meeting you had had with	1		£3m myself in this year and next, and would want an
2	MPs, and you refer to the strength of feeling the issue	2		equal sum each year from the reserve. Should the cases
3	was causing across all parties.	3		be settled at a faster rate than I anticipate I would
4	Paragraph 2 refers to the proposals you put to the	4		hope to be able to use some of the second year's money
5	Chief Secretary and you say:	5		this year.
6	" for reasons which I well understand, he did	6		"7. I am copying this minute only to the Chief
7	not feel able to agree.	7		Secretary."
8	"3. However, given the mounting Parliamentary and	8		Now, I think the Chief Secretary line of not using
9	public concern, I believe we should reconsider my	9		the Reserve was maintained.
10	proposals."	10	Α.	Mm.
11	Then you set out three elements. Similar monies	11	Q.	But is it your understanding, your evidence, that
12	as with the haemophilia scheme. You then propose	12		effectively the intervention of the Prime Minister
13	a panel to handle decisions on individual cases	13		enabled there to be agreement that the policy would
14	determining eligibility. And thirdly, the undertaking	14		change but with the Department funding
15	not to pursue legal action.	15	Α.	Exactly.
16	Paragraph 5:	16	Q.	scheme?
17	"We must recognise the risk of weakening our	17		And I don't think we need to go to the all of the
18	general opposition to no fault compensation. The Chief	18		further documents but, again for the transcript, you
19	Secretary is rightly concerned about this. But we shall	19		wrote to Mr Mellor on 12 February, it's DHSC0002582_003,
20	have to make plain we are responding, as with the	20		in which you explained you'd look at the programme to
21	haemophiliacs, to very special circumstances but that	21		work out where you would find the money from and there's
22	our general policy remains firm."	22		some additional correspondence on that which I don't
23	Then top of the next page you say:	23		think we need to look at.
24	"6. Given the other claims on my budget, I cannot	24		If we then come to the announcement in Parliament,
25	meet all the cost of around £12m. I can, however, find 33	25		to complete the chronological picture, it's at 34
1	DHSC0003625_040. It's a written answer	1		right to recognise that this group, who share the
2	17 February 1992, and if we just go down to you are	2		tragedy of those with haemophilia in becoming infected
2	response to the question, you say:	3		with HIV through medical treatment within the UK, is
4	"Pursuant to the reply of 14 November 1991 at	4		also a very special case."
5	column 656; I have decided that the special provision	5		Then over the page:
6	already made for those with haemophilia and HIV is to be	6		"The circumstances of each infected transfusion or
7	extended to those who have been infected with HIV as	7		tissue recipient will need to be considered individually
, 8	a result of National Health Service blood transfusion or	, 8		to establish that their treatment in the UK was the
9	tissue transfer in the United Kingdom. The payments	9		source of their infection."
10	will also apply to any of their spouses, partners and	10		The next paragraph then deals with the
11	children to whom their infection may have been passed	11		establishment of the panel and the work on the mechanics
12	on. The rates of payment are shown in the table.	12		of dealing with claims.
13	Similar help will be available throughout the UK.	13		The third paragraph explains that:
14	"The Government have never accepted the argument	14		"Parliamentary authority for making these payments
15	for a general scheme of no fault compensation for	15		will be sought through Supply Estimates and the
16	medical accidents, as such a scheme would be unworkable	16		confirming Appropriation Act. On the basis of the
17	and unfair. That remains our position.	17		reported cases the estimated cost could be £12 million.
18	"We made special provision for those with	18		However, I cannot be certain about the cost, as numbers
19	haemophilia and HIV because of their very special	19		of valid claims are not known."
20	circumstances. It has been argued that this special	20		And that picks up on the issue we picked up a few
21	provision should be extended to include those who have	21		minutes ago
22	become infected with HIV through blood or tissue	22	Α.	Yes.
23	transfer within the UK. I have considered very	23	Q.	the contingent liability, the future uncertain
24	carefully all the circumstances and the arguments which	24		liability.
25	have been put to us. I have concluded that it would be	25	Α.	Yes.
	35			36
				(0) B

(9) Pages 33 - 36

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1	Q.	"I share the great sympathy which is universally felt	1		not too bad in the circumstances of the time.
2		for the blood and tissue recipients who have tragically	2		So I can't really answer more than to say I did it
3		become infected thorough their treatment. Money cannot	3	-	as quickly as I thought I could.
4		compensate for this but I hope that the provision we are	4	Q.	And if we leave to one side you may say it's a big
5		making will provide some measure of financial security	5		thing to leave to one side, but the financial issue, the
6		for those affected and their families."	6		issue of needing to secure Treasury agreement and to
7		So we can see it essentially takes to	7		persuade the Treasury, and just look at it as a matter
8		February 1992 for the position to be formally and	8		of principle. Was there ever a good reason for the
9		particularly changed. Looking back at it now, why did	9		initial ring-fence excluding those infected through
10		it take that length of time and did it take too long?	10		transfusion?
11	А.	Why it took that length of time, I think, was that it	11	Α.	Well, the original ring-fence had derived from way back
12		took that length of time to overcome the arguments of	12		from '87 or not way back, some years back the
13		precedent, which were real. And I'm sure the	13		ring-fence then made around the haemophiliac case, which
14		campaigners helped. But I think I found, and I believed	14		had been made strongly. But that ring-fence had its
15		myself, thinking about it all the time, that there	15		defenders to the end, as we've seen. I simply thought
16		just the HIV/AIDS ring-fence, if you like, was a far	16		that it wasn't the best place to put the necessary
17		more logical and stronger one because that was what had	17		ring-fence, and of course officials in my department and
18		driven my commitment to this case in the first place,	18		in the Treasury were against moving very strongly
19		from personal experience and other experience, one knew	19		against moving at all, for reasons of the dangers that
20		the stigma and all that. I won't repeat what I said	20		they saw, which I don't think were fulfilled, but that's
21		yesterday.	21		for subsequent history.
22		Could it have been done earlier and better? I'm	22	Q.	Now we've seen a couple of references in the materials
23		sure that, you know, someone could have done better than	23		to the fear that moving the ring-fence may lead to
24		I could, I'm sure. But I did manage to change both	24		further campaigns or further claims, including for those
25		policies within just about a year and I think that was	25		infected with hepatitis. And there were also references
		37			38
		to all an energy because many the beams and all and			On that refere a pain to Onethered Michae and
1		to other cases, human growth hormone, and others.	1		So that refers again to Scotland, Wales and
2		I think it's right from the documents that during the	2		Northern Ireland, I think.
2 3		I think it's right from the documents that during the time you were at the Department of Health, neither	2 3		Northern Ireland, I think. Now you are aware now, I think, of, amongst other
2 3 4		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the	2 3 4		Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later
2 3 4 5		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the	2 3 4 5		Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment.
2 3 4 5 6		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the same way as the cohort we're talking about, blood	2 3 4 5 6	Α.	Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment. Mm-hm.
2 3 4 5 6 7		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the same way as the cohort we're talking about, blood products or blood transfusion with hepatitis C?	2 3 4 5 6 7	A. Q.	Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment. Mm-hm. I'm not going to be asking you about the details of
2 3 4 5 6 7 8	A.	I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the same way as the cohort we're talking about, blood products or blood transfusion with hepatitis C? No, that wasn't an issue brought to my attention.	2 3 4 5 6 7 8		Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment. Mm-hm. I'm not going to be asking you about the details of that. But is it right to understand that this issue,
2 3 5 6 7 8 9		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the same way as the cohort we're talking about, blood products or blood transfusion with hepatitis C? No, that wasn't an issue brought to my attention. Can I then move rather more shortly to the question of	2 3 4 5 6 7 8 9		Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment. Mm-hm. I'm not going to be asking you about the details of that. But is it right to understand that this issue, this issue about when screening for hepatitis C should
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2 3 6 7 8 9 10 11		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the same way as the cohort we're talking about, blood products or blood transfusion with hepatitis C? No, that wasn't an issue brought to my attention. Can I then move rather more shortly to the question of screening of blood donations for hepatitis C. I'm only going to show you one document because this wasn't an	2 3 4 5 6 7 8 9 10 11		Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment. Mm-hm. I'm not going to be asking you about the details of that. But is it right to understand that this issue, this issue about when screening for hepatitis C should be introduced into the Transfusion Service, was not an issue upon which you were asked to make any decision
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2 3 4 5 6 7 8 9 10 11 12 13		I think it's right from the documents that during the time you were at the Department of Health, neither officials nor you gave any express consideration to the provision of financial support for those infected in the same way as the cohort we're talking about, blood products or blood transfusion with hepatitis C? No, that wasn't an issue brought to my attention. Can I then move rather more shortly to the question of screening of blood donations for hepatitis C. I'm only going to show you one document because this wasn't an issue in which the documents came to your office. Just to illustrate the issue, if we go to PRSE0004667, I. So	2 3 4 5 6 7 8 9 10 11 12 13		Northern Ireland, I think. Now you are aware now, I think, of, amongst other things, the decision of Mr Justice Burton in a later judgment. Mm-hm. I'm not going to be asking you about the details of that. But is it right to understand that this issue, this issue about when screening for hepatitis C should be introduced into the Transfusion Service, was not an issue upon which you were asked to make any decision during your time as Secretary of State for Health? I certainly don't remember it, and the papers seem to
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25 least. 25	23		so, the whole approach to this would have been	23		say
	24		different. But no such voices were heard by me at	24		mir
43	25			25		an
			43			

1		their hands and said there's something going wrong here.
2		I don't want to judge them without having much more
3		knowledge of that.
4	Q.	And it's right to say that you have not been provided
5		with all of the copious documentation about the
6		Committee's decision making and which bits did go to
7		ministers and which did not because none of it was
8		brought to your attention at the time?
9	Α.	Mm.
10	Q.	It's more just a general question. I'm not asking you
11		to pass judgement, because you haven't been provided
12		with the material and the Inquiry that other witnesses
13		have. It's just more the general question, and knowing
14		what you know about the Department about what were
15		matters of concern. Is the issue one that, given it's
16		importance in public health terms, should have come to
17		your attention at some stage as Secretary of State, do
18		you think?
19	A.	I don't think the original easy decision to press on to
20		do it, that needn't have come to me because it was an
21		obvious decision to take on the advice given to the
22		parliamentary secretary and to the officials. If there
23		had been thought to be a serious muddle or mishap or
23 24		delay of some kind that needed the impetus of the
24		Secretary of State to sort out, that should have come to
25		
		12
1	Q.	And then the concept of reflective learning, it's an
1 2	Q.	And then the concept of reflective learning, it's an important concept in the modern NHS, it's important for
	Q.	
2	Q.	important concept in the modern NHS, it's important for
2 3	Q.	important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for
2 3 4	Q.	important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants?
2 3 4 5	Q.	important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you,
2 3 4 5 6	Q.	important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics.
2 3 4 5 6 7	Q.	important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics. How can governments learn from mistakes, particularly if
2 3 4 5 6 7 8		important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics. How can governments learn from mistakes, particularly if they don't ever learn about them?
2 3 4 5 7 8 9		important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics. How can governments learn from mistakes, particularly if they don't ever learn about them? Well, if they never learn about them, they're never
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2 3 6 7 8 9 10 11		important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics. How can governments learn from mistakes, particularly if they don't ever learn about them? Well, if they never learn about them, they're never going to learn from them, certainly. So going back to my evidence to the BSE Inquiry, the necessary openness, the necessary involvement of voices outside expert
2 3 4 5 6 7 8 9 10 11 12 13		important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics. How can governments learn from mistakes, particularly if they don't ever learn about them? Well, if they never learn about them, they're never going to learn from them, certainly. So going back to my evidence to the BSE Inquiry, the necessary openness, the necessary involvement of voices outside expert voices outside as well as inside. In one sense it goes
2 3 4 5 6 7 8 9 10 11 12 13 14		important concept in the modern NHS, it's important for healthcare professionals for NHS bodies. What about for government departments, ministers and civil servants? This is really a general question to you, Lord Waldegrave, building upon your years in politics. How can governments learn from mistakes, particularly if they don't ever learn about them? Well, if they never learn about them, they're never going to learn from them, certainly. So going back to my evidence to the BSE Inquiry, the necessary openness, the necessary involvement of voices outside expert voices outside as well as inside. In one sense it goes right back to my first job in the Cabinet Office in the
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1	policy documentation". I found rather alarmingly that	1
2	Mr Heath had had this document from this very young	2
3	person on his desk. I don't know what he did with it.	3
4	But I have always believed in that. We've made	4
5	great steps since, and but I'm giving a rather poor	5
6	answer, I'm afraid, but the key, particularly in the	6
7	science heavy departments, is the involvement across the	7
8	board of expertise inside and outside the department,	8
9	which involves openness of policy analysis. Not policy	9
10	decisions. I'm a defender of the idea that ministers	10
11	and their immediate civil servants should be allowed to	11
12	discuss all issues in some privacy, at the time at any	12
13	rate. But what underlies policy in terms of factual	13
14	analysis and scientific analysis should be made as open	14
15	as possible.	15
16	Q . And then just picking up on that theme of openness, some	16
17	of the documents we've looked at might suggest a degree	17
18	of preoccupation with how to present decisions so as to	18
19	avoid criticism or fallout or adverse press comment or	19
20	adverse publicity. How does that fit with openness?	20
21	A. Well, it's difficult. We are a democracy. So all the	21
22	time you're in a conversation, an argument with the	22
23	public and with experts and with the opposition in	23
24	Parliament, if they're doing there job properly. So of	24
25	course you're looking to put your best foot forward and 45	25
,		4
1 2	argument. They simply say, "That fellow Waldegrave admitted he got that wrong so he's probably getting this	1 2
2	wrong".	2
4	But there are times when you have to try it and the	4
5	greatest much greater politicians than I can do	5
6	it. And when it is inevitable, it must be done.	6
7	Because one thinks of the extreme situations in the War	5 7
8	and so forth, the British Government in the Second World	8
9	War on the whole admitted when things were going wrong,	9
10	and therefore retained the trust of the people for the	10
11	next stage. Those are great issues, far higher than	11
12	I was ever involved with, but the principle I think must	12
13	be the same. But it takes skill and confidence and very	13
14	good politicians of my time could do it. Say, "We got	14
15	that policy wrong but this is why we did it and this is	15
16	what we're going to do instead".	16
17	And sometimes they can take the public with them.	17
18	But it takes skill and it takes confidence to do that,	18
19	and you won't get any thanks from the opposition,	19
20	they'll say, "Well, you're just hopeless, you just get	20
21	everything wrong".	21
22	MS RICHARDS: Sir, those are the questions I was proposing	22
23	to ask Lord Waldegrave. If we could now take a break	23
24	and that can be our normal morning break, but that will	24
25	provide the opportunity for further lines of questions	25
	47	

1	to put your copp in the strangest you, but you must
	to put your case in the strongest way, but you must
2	never stray over the line of suppressing things which
3	ought to be made available to make that debate a proper
4	debate. Easy to say but not always easy to judge at the
5	time.
6	Q. Governments I promise this is a question I drafted in
7	advance and not prompted by recent events governments
8	seem to find it sometimes hard to say, "We got things
9	wrong", and it could be said for example, announcing the
10	HIV transfusion decision in February 1992. A full
11	answer or full explanation, full press release could
12	have been "We drew a line here, in retrospect that was
13	a mistake, we're now rectifying that mistake".
14	Why is it that sometimes governments, departments,
15	ministers, find it so difficult to say something has
16	gone wrong, and do you have any reflections as to how
17	that could be altered for improved?
18	A. Well, in a relatively long and not always successful
19	political career, I suppose the problem is of any
20	adversarial system I don't know whether the same
21	exists in court, but our Parliament is a high court,
22	people say that if you say, "I got it wrong" the
23	other side says, "Well you're no use then, are you? You
24	just get things wrong". They very seldom say, "Well
25	done, you've admitted a fault" and it's gone to the next
	46
1	to be suggested.
2	SIR BRIAN LANGSTAFF: Yes, certainly.
3	Let me explain. You may know already but if so,
4	forgive me for repeating it.
5	The Inquiry works because there are a number of
6	participants. Core participants are often represented
7	by legal representatives, and have a right through those
8	representatives to put questions for counsel to ask you.
9	Obviously they have to have a proper chance to do that.
10	That involves really the questions being formulated at
11	the end of what else you have had to say, because then
12	they'll know what might be missing. And to give that
13	a proper opportunity, we'll take a break.
14	If I say how long do you think you might need?
15	MS RICHARDS: Quite possibly only 30 minutes, but if we said
16	40 minutes I think that will undoubtedly be ample.
17	SIR BRIAN LANGSTAFF: Yes, so if we come back then, at
18	11.45 shall I say not before 11.45?
19	You'll be told if there's a need for more time.
20	And I can't tell you how long the session will be after
21	that. It may be short, it may be long; it depends how
22	many questions there are.
23	But that's what we'll do. So 11.45. Not
24	before 11.45.
25	(11.06 pm)
	48
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1		(A short break)	1		finally recognised a greater responsibility to people
2	(11.	.54 am)	2		with haemophilia and regret that by deferring that
3		RICHARDS: Lord Waldegrave, because the questions I'm now	3		decision for so long a great deal of [personal] anguish
4		going to ask are specific questions put forward on	4		and suffering has been caused to so many of our
5		behalf of Core Participants, they won't follow	5		members'."
6		a particular chronological or thematic scheme, so we may	6		And then there is recognition of the role of
7		jump around a little from topic to topic.	7		Mr Major and you:
, 8		The first question relates to the response to the	, 8		"It is a triumph for a caring prime Minister and
9		haemophilia settlement and the £42 million figure. And	9		Secretary of State for Health. John Major and
10		I've been asked to ask you whether you were aware of	10		William Waldegrave are to be applauded for addressing
11		disquiet amongst haemophiliacs or The Haemophilia	11		this problem so promptly - it is unfortunate the
12		Society on the level or size of the compromise? And	12		settlement has been so low.
13		I think I can assist you to answer that question by	13		
14			14		"We are naturally very disappointed with the
14		looking at a couple of documents.	14		level of the proposed settlement. It means that each of
	A.	I remember the press notice			the 217 claimants will receive an average payment of
16	Q.	Yes, exactly. If we could have, please, Lawrence,	16		£35,000'."
17		HSOC0012313, this is the press notice of	17		I'm not quite sure where that figure comes from
18		11 November 1990 issued by The Haemophilia Society:	18		but, in any event:
19		"The Haemophilia Society today reacted with grave	19		"This is a settlement which has been agreed
20		disappointed to the announcement by the Government that	20		between both the claimants and the Government's lawyers
21		£42m is to be made available to people with Haemophilia	21		and is naturally one which we have to accept'."
22		and HIV."	22		Then it continues over the page but I'm not going
23		Then Mr Watters, the general secretary, is	23		to read the rest of it.
24		recorded as observing:	24		I think it's right, that came to your attention
25		" 'We welcome the fact that the Government have 49	25		whether or not it was because of the press release, you 50
		40			50
1		I think received a letter from Mr Watters?	1		affected haemophiliacs and their families."
2	Α.	Yes.	2		Now, I think it would follow, you were aware at
3	Q.	And it essentially reflects the concern about 'would	3		the time of The Haemophilia Society's view that the
4		have liked to have seen more money made available'.	4		settlement was too low?
5		I am not going to put that up on screen, it's DHSC	5	Α.	Yes, they clearly would have hoped for more.
6		0003657_011. And you responded to that, and I think if	6	Q.	And did that cause any pause for thought or reflection
7		we put it up on screen and then I'll go back to the	7		or change of approach on the part of the Government?
8		question. That's DHSC0003119_006.	8	Α.	Well, I think what dominated my mind at the time was
9		So this was your letter back to Mr Watters of	9		first of all obviously that the proposal had come from
10		The Haemophilia Society, 18 February 1991, on the level	10		the victims' lawyers, and secondly, some benchmarking
11		of the settlement you say in the second paragraph that:	11		against what was happening in other countries, and that
12		" the proposals put to us by the plaintiffs'	12		I think led me and others to think that this was a fair
13		solicitors and which have been agreed in principle	13		settlement, though clearly, as I say in the letter, not
14		provide a fair and reasonable resolution of the	14		compensation, but a fair and settlement which stood
15		litigation."	15		reasonably well in comparison to other countries and to
16		Then the fourth paragraph you say:	16		what the lawyers themselves had suggested.
17		"I realise that no amount of money can ever fully	17	Q.	If we just leave this on screen, because I'm going to
18		compensate for the tragedy that has befallen those	18		ask another
19		haemophiliacs with HIV, and that, as in any compromise,	19	Α.	Just one other important point I think in that letter
20		the amounts made available may fall short of what may	20		and throughout.
21		have been hoped for. However, in total, the Government	21	Q.	Yes, of course.
22		has made available £76 million and ensured that	22	Α.	We do say in that letter that although this is an
23		entitlement to social security benefits will not be	23		out-of-court statement, we will however continue to keep
24		affected by these payments. We therefore believe we	24		under review the amounts available to the
25		have made very considerable financial provision for the	25		Macfarlane Trust, which is quite unusual in a settlement
		51			52

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1		of this kind.	1		a
2	Q.	And that I think anticipates the next question I was	2		F
3		asked to ask you. You mentioned yesterday that there	3		I
4		was the agreement to pay the 42 million but the	4		
5		possibility of additional money, and as I understand it,	5		t
6		that was a reference to the keeping under review the	6		t
7		monies that would be made available to the	7		
8		Macfarlane Trust?	8		C
9	Α.	The Macfarlane Trust, yes.	9		6
10	Q.	And then I was asked to ask you whether that was	10		6
11		announced in any form so that the plaintiffs or their	11		r
12		legal representatives would have been aware of it? This	12		
13		is a letter to Mr Watters of the Haemophilia Society,	13		i
14		and the paragraph you've just referred to is the last	14		N
15		paragraph on this page. The last sentence where you	15		M
16		say:	16	Α.	١
17		"We will however continue"	17	Q.	١
18	Α.	I think we had made that clear, and I can't remember	18		
19		whether without looking, whether it was in my written	19		r
20		answer, but it was certainly clear, I think, and	20		e
21		subsequent events showed that there were further	21		t
22		payments.	22		c
23	Q.	And if we just go to your final written answer, when the	23		ł
24		final terms of settlement had been agreed, that's	24		c
25		DHSC0002451_011. We can see this is the June 1991	25		į
		53			
1		that officials might become entrenched in a view and not	1		r
2		be as open to considering new views?	2		(
3	Α.	That's a good point. Memory can be a fixed doctrine,	3		ł
4		a house doctrine, if you like. I think there are two	4		(
5		sides to it. I think officials remembering past issues	5		٦
6		and past arguments is a good thing, because ministers,	6		t
7		particularly, for example, in my case, come to their new	7		â
8		portfolio completely cold. But of course, you can get	8		â
9		an entrenched departmental view that it takes a strong	9		t
10		minister to change. So there's pluses and minuses.	10		C
11		I think forgetfulness is bad, but forgetfulness	11	Q.	ŀ
12		but memory shouldn't merge into fixed doctrine, if you	12		ł
13		like.	13		i
14	Q.	In your evidence yesterday, you talked about how	14		t
15		a response to information from experts about emerging	15		5
16		public health issues could sometimes be: it's just	16		f
17		another scare, isn't it.	17		C
18	Α.	Mm-hm.	18	_	(
19	Q.	And the question building on that is this: do you think	19	Α.	l
20		there was or is a tendency for politicians to hope that	20		C
21		things were not as bad as they in fact were, and then to	21		\
22		go on to hold this as an entrenched view? Or put	22		i
23		another way, is there an element of wishful thinking, of	23		V
24		hopping things will turn out all right?	24		t
25	Α.	I think there are different kinds of personality amongst 55	25		İ

1		announcement. And if we go to the right-hand column,
2		please, Lawrence. It's the fourth paragraph down,
3		l think.
4		I read this out yesterday, I think, but we see
5		there the reference to the 42 million and the reference
6		to the previous sum and then it says:
7		"We are also committed to ensuring that the
8 9		original Macfarlane Trust set up in March 1988 with a Government grant of £10 million will continue to be
3 10		able to give additional help where there is special
11		need."
12		Now that's not necessarily completely clear, but
13		is that a reflection of what you'd said in the letter to
14		Mr Watters: the keeping under review payments to the
15		Macfarlane Trust?
16	Α.	Yes, I would certainly believe that to be so, yes.
17	Q.	We can take that down. Thank you.
18		Next question picks up on the idea of corporate
19		memory. When Mrs Bottomley, Baroness Bottomley, gave
20		evidence, she referred to the turnover of ministers in
21		the Department of Health meaning there could be a lack
22		of corporate memory and I think you've referred today to
23		how the corporate memory is essentially held by
24 25		officials and the question I'm asked to explore with you
25		is does that mean there is a risk, or a greater risk 54
1		ministers. My children once gave me the Little Book of
1 2		ministers. My children once gave me the Little Book of Gloom by Eeyore for Christmas and then, forgetting they
2		Gloom by Eeyore for Christmas and then, forgetting they
2 3 4 5		Gloom by Eeyore for Christmas and then, forgetting they had done that, they gave it to me again for next Christmas, so I perhaps tend to the gloomier side. There are some who are Tiggers. I think this perhaps is
2 3 4 5 6		Gloom by Eeyore for Christmas and then, forgetting they had done that, they gave it to me again for next Christmas, so I perhaps tend to the gloomier side. There are some who are Tiggers. I think this perhaps is true of the population at large. I think a certain
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1	Q.	The next question is about Government spending more	1		Now,
2		generally. In your experience, who really makes the key	2		you can't set
3		spending decisions in government? Is it there are	3		change them
4		three candidates in the question, you may have more	4		Now,
5		the Chancellor and Treasury, the civil servants with the	5		this? Well, h
6		corporate memory, or the departmental ministers?	6		Where you s
7	Α.	It's a bit of all three. I think I did say yesterday	7		have, doing v
8		that one has to remember that the continuing momentum of	8		State for Hea
9		government gives rather small room for immediate	9		"You're all go
10		manoeuvre. The Secretary of State for Health, it's	10		tomorrow". (
11		rather odd, in some ways, that we consider the	11		But y
12		traditional great offices of state as being the Home	12		Now
13		Office, the Foreign Office, and so on. The Secretary of	13		A governmer
14		State for Health is responsible for a million employees,	14		a mandate w
15		for the biggest single organisation of health care	15		civil servants
16		single unified of health care perhaps anywhere in the	16		to do this" ar
17		western world. It is an immense task. Now, you can't	17		shifting it. Th
18		shift you can't come in and say, "We're going to	18		will say, "Are
19		shift" I think the budget was roughly 30 billion in	19		way before, t
20		my day "We're going to switch 5 billion next year to	20		that. Are you
21		this", it would have meant chaos across hospitals and	21		when you de
22		GPs and the whole of the sphere. You have only got	22		important po
23		a little bit of room for manoeuvre to steer the great	23		your change
24 25		I think Sir John used this analogy to steer the great	24 25		to you mus
25		supertanker in a slightly different way. 57	23		the support of
1		Treasury is organised in the Chief Secretary's	1		or woman, th
2		department and the spending departments with having	2		So if
3		little very high powered but very small shadow teams	3		done in gove
4		that shadow each department. And if they are not	4		a cop-out.
5		convinced either that the Government knows what it's	5	Q.	The next que
6		doing by shifting to this new priority or they think	6		HIV Litigation
7		it's wrong, they will try and stop you. You will then	7		if you need n
8		have to persuade the Chief Secretary and if you can't	8		I will, Lord W
9		persuade him, you go to Cabinet and Chancellor and other	9		deal with this
10		ministers would be involved.	10		that the Scot
11		So it's all three, I think. But I'm one of those	11		position of th
12		who is very averse to the idea that civil servants just	12		afterthought
13		overrule ministers all the time, and when you hear	13	Α.	I think that p
14		a minister blaming the Civil Service, it's because the	14		sorted it out
15		minister doesn't know either either doesn't know what	15		been conside
16		he or she wants, or doesn't know doesn't clarify it	16		principal rea
17		enough.	17	_	things were i
18		The proof of that is that I was part of the	18	Q.	Now, you've
19		introduction of a very bad policy under the Thatcher	19		your thinking
20		Government: the Poll Tax. I had a part in that, in the	20		that you were
21		design of that. It was a very bad policy, I think, but	21		receiving abo
22		it was put to the electorate, it was pursued in all	22		respective m
22		sorts of ways. The Government came in with a mandate to	23		documentati
23		do it offer the election. The sixil convents did it to	24		waa at a lass
		do it after the election. The civil servants did it to the best of their availability, though I think, to a man	24 25	A.	was at a less Yes.

1		Now, that doesn't mean and never should mean that
2		you can't set priorities and change them, but you can't
3		change them overnight.
4		Now, coming back to the question, who controls
5		this? Well, history, if you like, controls a lot of it.
6		Where you start. You have the Health Service that you
7		have, doing what it's doing when you were Secretary of
8		State for Health. You can't tell those million people
9		"You're all going to be doing something different
10		tomorrow". Chaos ensues.
11		But you can steer it.
12		Now who has the responsibility for steering it?
13		A government, a strong government that comes in with
14		a mandate will help to steer it very much, because the
15		civil servants will say "You have a democratic mandate
16		to do this" and they will start preparing it and
17		shifting it. The department that you're trying to shift
18		will say, "Are you quite sure? We've been doing this
19		way before, that will mean less of this and more of
20		that. Are you recognising that it means less of this
21		when you demand more of that?" Those are legitimate and
22		important points to raise. If you're well founded in
23		your change of direction as a minister, you'll be able
24		to you must win it through. But you must also have
25		the support of the officials in the Treasury. The
		58
1		or woman, they thought it was the wrong thing to do.
1 2		or woman, they thought it was the wrong thing to do. So if you know what you want to do, you can get it
2		So if you know what you want to do, you can get it
2 3		So if you know what you want to do, you can get it done in government and blaming the civil servants is
2 3 4	Q.	So if you know what you want to do, you can get it done in government and blaming the civil servants is a cop-out.
2 3 4 5	Q.	So if you know what you want to do, you can get it done in government and blaming the civil servants is a cop-out. The next question, and this goes back to the
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1	Q.	Does that, combined with the way in which the	1		looking at the position of those infected with
2		negotiations took place, mean ultimately that in the	2		hepatitis C, given that, in parallel, the Department at
3		overall settlement, no separate consideration was given	3		least was aware that the issue of screening was under
4		to the merits or potential legal merits of the Scottish	4		consideration in recognition of the fact that this was
5		litigation?	5		a serious condition?
6	Α.	l don't well, I have to be careful, because I haven't	6	Α.	Mm. I can't give a real answer to that, because the
7		seen many documents of the Scottish Office, but lan Lang	7		issues just never came before me and I think if I start
8		is an extremely conscientious minister, Secretary of	8		to make up plausible arguments, I shall not give a good
9		State, and I'm sure that if serious and difficult issues	9		answer.
10		had arisen in Scotland, although it would have caused	10	Q.	The next question is this: if the litigation had not
11		grave difficulties if they were going to arrive at	11		settled and had been fought to trial and the plaintiffs
12		a position seriously different from the overall UK	12		had succeeded, from which pot would the damages and
13		position which John Major and I had announced, they	13		costs have come; Department of Health, Reserve or
14		would have been considered. So I can't really answer in	14		somewhere else?
15		detail, but I would be very surprised if the Scottish	15	Α.	A lot of ifs, but they would have probably come from
16		Office then hadn't wouldn't have raised them.	16		the I don't know. I'd have to think of whether
17		I recall from the papers, complicated issues about	17		I don't honestly know. Depending how much it was and so
18		category G people, for example. I think there was	18		on, I imagine the Secretary of State for Health, having
19		consideration given carefully to these issues.	19		lost that case if it had gone to court and we'd lost
20	Q.	You've explained, as a matter of fact, that the issue of	20		and there was some very large bill, I would certainly
21		giving any form of financial support to those infected	21		have tried to get it from the Reserve, I'm sure. But in
22		with hepatitis C was not something which you gave any	22		other cases, of course, smaller cases where because
23		particular consideration to. The question I've been	23		there were negligence cases that were won against the
24		asked to raise with you is why that was the case. Why	24		Health Service all the time, they normally came out of
25		do you think that the Department, that you were not	25		the budget of the Health Service under Duncan Nichol.
		61			62
4		Dut I think if the rold been a huge defect like that your	4		course of his lang life has been a wonderful comparison
1		But I think if there'd been a huge defeat like that, new	1		course of his long life has been a wonderful campaigner
2		money would have had to be found from somewhere and	2 3		for a whole range of issues. My late friend Tam Dalyell
3 4	0	probably the Reserve. Is there room in Government this is the next	3 4		was a one-man campaigner on all manner of issues and
4 5	Q.	question, entirely unrelated question for some form	4 5		representative of all manner of unpopular causes. So there are great MPs who do this. But I think the
6		of devil's advocate to challenge and test received	6		institutionalisation of it in the Commissioners is
7		wisdom, particularly where there is a risk of groupthink	7		probably a good step.
, 8		and entrenched views?	8	Q.	The last question is this: we've explored in some detail
q	٨	Yes. And there's been a development in recent years on	9	ω.	how, as a matter of fact, the decision making was taken
10	м.	this, it seems to me, if I understand it rightly, by the	3 10		both in relation to the settlement of the HIV
11		establishment they're always referred to in the	11		Haemophilia Litigation and then to the extension to the
12		newspapers as tsars, I don't know why, particularly as	12		ring-fence so to speak to provide financial support to
13		they're mostly tsarinas. But independent they're	13		those infected through transfusion, and you've talked
14		Civil Service offices, but they're independent	14		about response to campaigning, and a sense of a moral
15		commissioners with a championing championship right.	15		case, there were the financial, reputational
16		My youngest daughter works with the Children's	16		considerations and so on. Were there any underlying
17		Commissioner. I think those are rather good	17		principles guiding the Department to shape decision
18		developments, where they're part of Whitehall but	18		making about who might get financial support and who
19		they're independent and they're meant, as I understand	10		might not?
20		it, to raise the issues for their area.	20	Α.	Well, one has to remember of course that they were
21		So that's one way of meeting that rather sensible	21	7	responsible, the Department was responsible for the
22		suggestion which has happened in recent years. There	22		whole of national health care and there were thousands
23		may be more to be done in that way.	23		and thousands and thousands of other responsibilities
24		Parliament is of course supposed to do it, and	23		that they had to ensure. I gave the example of one that
25		there are wonderful MPs, the great Frank Field in the	25		was always coming up and causing problems and causing
		63			64

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1		huge press campaigns sometimes, which was new drugs.	1	Q.	Would it, having regard to the material we've looked at,
2		Very expensive often, coming from America, but often	2		be right to understand, then, that obviously there were
3		promising great benefits.	3		cases where there might be negligence and legal
4		And what were the principles? Well, the	4		liability and so compensation might follow in those
5		principles can I say this: I think that most of the	5		cases, there was the policy against no-fault
6		officials in the health department were there by choice.	6		compensation.
7		They wanted to work in health care, particularly more	7	Α.	Mm-hm.
8		senior ones. They had some steerage over where their	8	Q.	Then, in terms of the circumstances in which the
9		careers go. They were interested in the issues of	9		Department might provide financial assistance of some
10		public health and they were very knowledgeable about	10		form to those who didn't fall into the category of
11		them and they worked all hours of the day and night	11		establishment of legal liability, that there were no
12		trying to advance them. I think their principles were	12		there was no established policy or principle guiding
13		what one would have thought: how do we do the best for	13	Α.	l see what you mean.
14		the public health of the country with the limited amount	14	Q.	how those decisions would be taken. It was
15		of money we've got?	15		a response, on a somewhat ad hoc basis, to
16		I don't know whether that's a very good answer,	16	Α.	I think so, because there were quite different kinds of
17		but it's the nearest I can give, I think. I don't think	17		considerations which merged. For example, there had
18		there was any separate morality. I don't believe in a	18		been the vaccine-damaged children case, where there was
19		separate morality of government. There isn't such	19		the overriding importance of maintaining the confidence
20		a thing as a raison d'état, there's just morality. And	20		of people in the vaccine programme, and that if
21		there was no such thing as a separate morality for the	21		confidence waned, there would be measurable deaths, and
22		Department of Health, it was trying to do its best with	22		the risk it was an easier risk calculation in a way.
23		all the always limited resources for the health of the	23		And that's brought home to me by, when I was Secretary
24		nation, which is what we called our campaign, and on the	24		of State for Health, we had the first year ever,
25		whole, they did it conscientiously, I think. 65	25		I think, when no child died of measles. That is no 66
1		longer so because of disgraceful attacks on the	1		slightly slightly roundabout answer to that question.
2		MMR vaccine. So and so what I'm saying, in an	2		But I suppose it's inevitable that they would, in the
3		elaborate way, is I think they were right to deal with	3		speed with which we moved, have heard about it in many
4		the vaccine-damaged children. But it was a different	4		cases from the media, yes.
5		kind of issue than so rather difficult to predict.	5	Q.	
6		I think you couldn't make a sort of paradigm which	6	ч.	the impact upon individuals finding out about
7		would fit every case. It's back to what I tried to say	7		the proposals only in that way, almost, as it were,
8		yesterday, that I think that's the job of the Secretary	8		a deal done behind their backs, it might be seen by
9		of State, to look at the cases and say: this is one	9		some, do you think, looking back, that the Government
10		where you've got to do something special.	10		may have jumped the gun in making the announcement when
11	Q.	And then, sorry, this is, I think, the final question,	11		they did?
12		it's one I omitted to ask a few minutes ago and meant	12	A.	No. I would go back to what I said yesterday,
13		to, it just goes back to the nature and timing of the	13		that I believed that there was a moment in time where
14		announcement that was made by John Major and by you on	14		a deal was doable, which was, in the terms of the time,
15		11 December 1990. Did you understand when the	15		a fair deal, and that if we missing that opportunity,
16		announcement was made that it would be taking place in	16		we'd be back in a situation the awful situation of
17		circumstances which would lead to many of the individual	17		just proceeding on to litigation and nightmare.
18		plaintiffs learning for the first time of the proposals	18	MS	RICHARDS: Sir, those are the questions I am proposing to
19		from the media?	19		ask from those put forward by Core Participants.
20	Α.	Um, I knew that the proposals had come from the	20		I just want to check Ms Grey has no questions
21		plaintiffs' counsel and lawyers, and that there'd been	21		of her own.
22		interaction with the steering committee. So that	22		Questions from SIR BRIAN LANGSTAFF
23		I knew we all knew, I think that not every victim	23	SIR	R BRIAN LANGSTAFF: I just have one area to ask you about
24		had been informed of what the lawyers for the plaintiffs	24		and it really arises out of your reflective comments at
25		were recommending. If that's an answer to that	25		the very end of the questioning before we had the break
		67			68
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1		this morning, coupled with your description of	1
2		yourselves as an Eeyore more than a Tigger, and it's	2
3		this: does part of your idea that there should be	3
4		openness and policy analysis by Government extend to	4
5		what might colloquially be put as "the Government being	5
6		straight with people" in the information it gives?	6
7	Α.	Of course, yes. I think that the loss of confidence in	7
8		Government, if people question the data they may	8
9		question the policy analysis built on it but if they	9
10		think the Government is, to use a straightforward word,	10
11		lying to them about the data, then that is a very	11
12		serious matter in a democracy.	12
13	SIR	BRIAN LANGSTAFF: Accepting that, there may be matters	13
14		short of lying. Let me give you one example which may	14
15		yet come to me for final decision. There is material	15
16		before me in relation to this Inquiry which means or	16
17		might mean, it's evidence to the effect that, by	17
18		March 1982 it was known that there was a possible risk,	18
19		a possible cause of AIDS was transmission by blood.	19
20		By the middle of 1982 it was regarded as	20
21		a substantial possibility to the extent that it might	21
22		well be thought to be the likeliest cause. By the end	22
23		of 1982 the general consensus seems to have been, on the	23
24		evidence as so far before me, and reflected in the	24
25		medical press at the time, that it was perhaps indeed	25
		69	
1		the BSE crisis for having been filmed giving his child	1
2		a hamburger. I thought the criticism in a sense was	
			2
3			2 3
3 4		unfair. He was saying this is certain as far as we	2 3 4
4		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving	3 4
		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one	3
4 5		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but	3 4 5
4 5 6		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable	3 4 5 6
4 5 6 7		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action.	3 4 5 6 7
4 5 6 7 8		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable	3 4 5 6 7 8
4 5 7 8 9		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and	3 4 5 6 7 8 9
4 5 7 8 9		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and certainty of science are one of the most difficult areas	3 4 5 6 7 8 9 10
4 5 7 8 9 10 11		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and certainty of science are one of the most difficult areas any minister has to face, and I'm not sure I can give	3 4 5 6 7 8 9 10 11
4 5 7 8 9 10 11		unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and certainty of science are one of the most difficult areas any minister has to face, and I'm not sure I can give you a better answer than that without myself spending	3 4 5 6 7 8 9 10 11 12
4 5 7 8 9 10 11 12 13	SIR	unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and certainty of science are one of the most difficult areas any minister has to face, and I'm not sure I can give you a better answer than that without myself spending the energy to look back at what they were what the	3 4 5 6 7 8 9 10 11 12 13
4 5 7 8 9 10 11 12 13 14	SIR	unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and certainty of science are one of the most difficult areas any minister has to face, and I'm not sure I can give you a better answer than that without myself spending the energy to look back at what they were what the situation was then.	3 4 5 6 7 8 9 10 11 12 13 14
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4 5 6 7 8 9 10 11 12 13 14 15 16 17	SIR A.	unfair. He was saying this is certain as far as we know, and it's certain to the extent that I am behaving with my own family as if it is certain. I know no one wants to involve one's children's within politics, but he was tying to make the point that it was reasonable within certainly the bounds of action. But I think those judgments around probability and certainty of science are one of the most difficult areas any minister has to face, and I'm not sure I can give you a better answer than that without myself spending the energy to look back at what they were what the situation was then. BRIAN LANGSTAFF: But the principle which I should apply, as you would see it, would be that a government should be open, as far as its analysis is concerned, and	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17
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1		the likeliest cause, and that went on strengthening. It
2		was the view we were being told by Dr Walford of the
3		Department.
4		When ministers referred to the risk of getting or
5		the possibility of transmission by AIDS, what was said
6		was, and no more than, there was no conclusive proof
7		that blood transmitted the cause of AIDS.
8		It may be submitted to me at the end of the
9		Inquiry the Core Participants have a chance to make
10		submissions that that was a deliberate obfuscation of
11		the truth they may go that far. It might be said by
12		the other side that it was deliberately chosen words so
13		as not to be technically untruthful, because
14		"conclusive" is a strong word, no conclusive proof. But
15		to avoid panicking the public. What would your reaction
16		be to that?
10	Α.	My first reaction is that I'm glad, Sir Brian,
	А.	, .
18		that I don't have to make the judgment. I would again
19		have to immerse myself. I want to be careful not to
20		appear, on the basis of really no firsthand
21		investigation, to condemn anybody. But it's a very
22		difficult judgment ever to say in science that something
23		is certain. And it's that difficulty which I think
24		affects quite a lot of I remember my colleague
25		John Gummer being much criticised at the beginning of
		70
1		yourself against that. And it goes a little bit back to
1 2		yourself against that. And it goes a little bit back to what we were talking about earlier, about being willing
2		what we were talking about earlier, about being willing
2 3		what we were talking about earlier, about being willing to make mistakes. In this area of factual analysis,
2 3 4	SIR	what we were talking about earlier, about being willing to make mistakes. In this area of factual analysis, you've got to follow the great saying of Maynard Keynes:
2 3 4 5		what we were talking about earlier, about being willing to make mistakes. In this area of factual analysis, you've got to follow the great saying of Maynard Keynes: "When the facts change, I change my mind."
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1	remained open for further support, and I'm very glad
2	that this Inquiry may be able to do a great deal more.
3	But I think we were right in what we did then, and I am
4	also pretty sure that it wouldn't have happened without
5	a kick or two from me.
6	Finally, and this goes, Sir Brian, to what you've
7	been saying, I think, that the confidence which we all
8	need to maintain in our Health Service is best served,
9	in the light of tragedies like this, by openness about
10	the causes of them. Because only if we take the steps
11	to reassure people that we've learnt the lessons will
12	that vital confidence be maintained.
13	Could I finally say, Sir Brian, on a completely
14	different note, that I'd like to have on record thanks
15	for the efficiency and courtesy of the staff of the
16	Inquiry, and, if I may name one person, of Laura.
17	MS RICHARDS: Thank you, Lord Waldegrave.
18	Sir Brian?
19	SIR BRIAN LANGSTAFF: I can simply say, first, that Laura
20	fully deserves what you've said publicly about her, and
21	I simply recognise that now she may be listening and
22	blushing. If so, it's appropriate.
23	But can I in particular thank you for your
24	evidence. You've given us, I think, a fascinating
25	insight into how policy can be made by one person having 73

1	an idea as to what is right and what is not, and how					
2	that idea can be progressed through to a conclusion and					
3	the various different pressures that lie upon it, to the					
4	turning of the supertanker or the adjustment of the					
5	steering wheel, as you've described it. So thank you					
6	very much for that fascinating insight.					
7	MS RICHARDS: Sir, tomorrow we have a presentation on the					
8	role of the Chief Medical Officers, particularly in the					
9	1980s.					
10	SIR BRIAN LANGSTAFF: So tomorrow, ten o'clock.					
11	(12.35 pm)					
12	(The hearing adjourned until 10.00 am the following day)					
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(20) MS RICHARDS: - agree

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