Wednesday, 6 July 2022

(10.00 am)

LORD WILLIAM ARTHUR WALDEGRAVE (continued)

Further questioned by MS RICHARDS

SIR BRIAN LANGSTAFF: Yes?

MS RICHARDS: Lord Waldegrave, we had reached your written answer of June 1991 yesterday afternoon where the line was held in terms of the existing policy. If we can pick matters up next in August of 1991.

Lawrence, could we have DHSC0046973_035, please.

You'll see this is a minute date 19 August 1991. It's from the Parliamentary Undersecretary's office to your private office, so that would have been, I think, Mr Dorrell.

A. Mm-hm.

Q. "Please find attached a submission from Mr Canavan. PS(H) thinks that this is an issue on which S of S would wish to take the decision."

Then if we look at the attached submission, it's at DHSC0003641_004.

The submission itself from Mr Canavan is dated 13 August 1991, addressed to PS(H)'s office. I think we need only look, for present purposes, at paragraphs 1 and 3, so if we can scroll down slightly, please, Lawrence.

Paragraph 1 says:

"PS(H) may recall that Graham Ross of J Keith Park & Co has written to Ministers on several occasions pressing for compensation for the blood transfusion recipients infected with HIV. With Ministers agreement, officials have taken over the correspondence. Graham Ross expressed some concern at this but has been assured that Ministers will be told of any new arguments. This submission considers a point of particular concern to Mr Ross that preserving the anonymity of blood donors could make it difficult for the blood transfusion recipients to seek redress through the courts."

I'll read the second:

"In the submission we are also reporting the RHA's [Regional Health Authority's] willingness to take the lead in negotiating a deal to settle the blood transfusion issue, should Ministers wish to seek such a settlement."

Then the recommendation in paragraph 3:

"We do not consider that these developments in themselves warrant a change in the Government's position. However, should Ministers be minded to seek a way of settling the blood transfusion issue the J Keith Park and RHA developments may be helpful in

reducing the risk of wider repercussions."

The submission then goes on to set out in more detail the issue about anonymity of donors and the impact that might have on the ability to litigate.

I'm not going to read any of that out.

If we just go to page 3, please. If we pick it up at paragraph 9, conclusions. At the top of the page:

"In the view of officials, the arguments about donor anonymity do not warrant a concession to the blood transfusion recipients infected with HIV. However if Ministers were minded to seek a way of settling the issue then the arguments might be used to prevent the settlement as a necessary measure to protect our voluntary blood donor system. However any such argument would have to be used with caution as any erosion of public interest immunity principle could have serious implications for all Government Departments and for other public bodies. There would need to be consultation with these other interests."

Then if we go down to the bottom of the page under the heading "Decisions Required":

"13. We are asking PS(H) whether:

"i) he is content that officials should inform J Keith Park that the Government's position on compensation for the blood transfusion cases is

unchanged by the arguments about donor anonymity?

"ii) he wishes any further action taken at this stage to pursue the RHAs offer?"

Lord Waldegrave, as we saw from the covering submission, this appears to have been passed up the ministerial chain to you, but the documents I think don't tell us what, if any, decision you took in response to this. Do you have any independent recollection of it?

A. No, I don't. We didn't at that point change the policy, but we did later.

Q. And I think there's then a gap in the available documentation addressing this issue until we get to the end of November 1991, where we see that, from documents, it's clear that your view has changed. And so we'll pick up the story there.

DHSC0002894_011, please.

This is from Strachan Heppell to your Private Office, 28 November 1991. If we look at the text of the minute, it says:

"Transplant etc patients with HIV

"I attach a draft letter to the Chief Secretary on the lines we discussed.

"2. We shall need to bring the other Health Departments into the correspondence now as we shall want

them to bear their share of the cost.

"3. Meeting our share will put a considerable strain on our finances this year. But a settlement deferred to next year would of course be a less welcome offer to those concerned."

I'm just going to show you one further minute from Mr Heppell the following day and then ask you about it. So that's 28 November.

29 November, we have DHSC0002537_262.

So the heading here "Blood transfusion etc patients with HIV", again it's from Mr Heppell, 29 November, to your Private Office:

"I attach a draft letter to the Chief Secretary on the lines we discussed. It offers a one-third contribution to the cost on the basis we might have to go to one half.

"2. Secretary of State will want to reflect on the financial and policy aspects of the letter before he writes.

"3. On finances, the position is that we have already absorbed an extra £3 million for the haemophiliacs as a consequence of higher costs and numbers than expected. Nevertheless we can make some further contribution if that is what Secretary of State judges necessary to resolve the matter. There is

inevitably some uncertainty about the final outturn this year but £6 million can be guaranteed if Secretary of State is prepared to accept that this will use up all his personal fund."

Just pausing there, what's the reference to the personal fund, Lord Waldegrave?

A. There was a sort of small central fund to deal with particular issues that came up from time to time smaller than these, where I thought we needed to take action. I've always thought in a department it's sensible to have what the officials would have referred to as a "back pocket", if there was something unexpected and relatively small that could be swiftly dealt with.

Q. In relation to allocation from that personal fund, did that require Treasury agreement?

A. I think it depended on the scale of it. It was a very small fund. It was £1 million, perhaps. For example, there were regular issues surrounding the arrival of new and effective drugs that were very expensive, for cancer treatment for example, and sometimes they came unexpectedly, and one would probably have been able to clear that at official level with the Treasury, say it was a million or £2 million and just deal with it quickly.

Q. Then continuing with the minute:

"4. We must also assume that Treasury would not entertain any further bids on the Reserve for additional cases.

"5. On policy, this extension of eligibility will leave us with a less secure ringfence than for haemophiliacs. We believe that two groups of people, those infected with hepatitis and those treated with human growth hormone, are currently preparing legal action against the Department. Both groups will be able to argue that like the HIV cases they were entitled to expect safe treatment. And the hepatitis cases will also be able to point to infection through blood. So we will be more vulnerable than we now are on the no-fault compensation issue."

Then we can see if we go further down, that's the end of the minute.

So it looks from those two documents, Lord Waldegrave, that by the end of November of 1991, you had taken the decision, discussed it with Mr Heppell and others, that the time had come to change the departmental line and extend financial support to those infected with HIV through transfusion. Do you have any recollection of exactly how and when that came about? Because, as I say, there's a dearth of documents really between August and November.

A. No, I don't have any independent recollection, I'm 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 favourable overall PES settlement for the next year. It's not explained in these documents, but I did, and I remember The Chief Executive of the National Health Service, Duncan Nichol, saying, "Well, that will keep us going for several years", and that, on the finance side, made me a little more generally confident, I think.

On the other side, in the autumn there are party conferences, there's much external work where we meet many -- in the summer you meet constituents and so on. So I think my own ideas, which had been clearly visible earlier on, will probably have been firmed up in August/September.

Q. Then that takes us to the final version of what I think was probably the draft being referred to by Mr Heppell in these minutes. And it's a letter you sent to Mr Mellor, the Chief Secretary to the Treasury, on 2 December.

Lawrence, it is at DHSC0002921_009.

I'm going to read this in full because effectively it provides, I think, the clearest indication of the formal change of position. So:

"Dear Chief Secretary,

"Blood transfusion etc patients with HIV

"After last Thursday's Cabinet we had a word about the continuing campaign on behalf of non-haemophiliac patients infected by HIV in the course of treatment - blood transfusion, transplant or tissue transfer - in this country.

"I have looked very carefully at this. While I do not think the strength of the case, or indeed its public support, is the same as for the haemophiliacs there is no doubt that there is considerable sympathy for these unfortunate people or that a concession on our part would be widely welcomed. By contrast if we continue to refuse any help there is a real prospect that the campaign will gather pace and become a damaging and running sore over the next few months.

"My conclusion is that we should move now to resolve the matter by recognising the needs of these people and their families in the same way as we have recognised those of haemophiliacs. We could do this in one of two ways:-

"First, by giving them the same as we gave to the haemophiliacs and their families in the out of court settlement.

"Second, by also giving them the earlier help

provided to haemophiliacs including if we can arrange it access to the original Macfarlane Trust. This help was in practice, though not formally, taken into account in arriving at the out of court settlement."

Over the page:

"If we take the first approach the estimated cost is £10 million. The second would cost an estimated £12 million and bring forward the time when the Macfarlane Trust will need topping up. But the cleanest way of resolving this is to go for the second and I recommend we do that.

"A clean resolution will also mean dealing with the cases without any intrusive investigation into whether the infection may have arisen in another way. We did not carry out any such investigation with the haemophiliacs. But we will need to carry out some validation of the cases falling into new categories, though only as far as practicable and sensible.

"Applying those criteria to existing cases would give us about 75 cases which arose in the United Kingdom.

"The criteria will also mean accepting that there is likely to be a handful of cases in future years who will also be eligible for payment.

"As to the financing of this, I have already

topped up the haemophiliacs money by £3 million because numbers and costs were higher than expected. Nevertheless, I am prepared to pay a third of the £12m. I hope that the other Health Departments will be able to make a contribution in respect of cases arising in their countries and that it will be possible for the treasury 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 --

A. Just --

Q. Yes.

A. My hope that the policy would change; not entirely up to me.

Q. Because you needed the money?

A. And permission, yeah.

Q. And the permission was the permission to spend money --

A. Yes.

Q. -- even from within the Department's own budget?

A. Yes.

Q. Now, here you say you're prepared to pay a third, but

you're asking for a Treasury contribution from the Reserve. Was that, as it were, an opening gambit in terms of discussion?

A. Yes. Now, I have no direct memory of this, but I do have direct memory of what I've just said, that we had secured overall a good PES settlement. So the resource 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.

Q. 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 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 --

A. Who's handwriting do we think that is?

Q. I think that's Mr Mellor's handwriting.

A. Thank you. I think that must be right, Yes.

Q. And I'm just going to come back to what has been said there, I'll double check that.
A. I think that must be right.
Q. If we go to paragraph 8 we can see the recommendation to Mr Mellor is:
"We recommend that you try to dissuade Mr Waldegrave and colleagues from offering a compensation scheme. It may seem attractive to him in the short-term. But in the longer term, it could cost much more by leading to a no-fault compensation scheme - even if one restricted to medical negligence."
So the suggestion is Mr Mellor tries to talk you out of it, if I can put it that way.
If we go back to the first page and just read the handwritten entry:
"This is a longstanding dilemma. It is not comfortable to deny compensation to this group when the haemophiliacs can get it. But giving compensation to them [would] mean another long stride down the slippery slope to no-fault compensation generally. I am afraid, therefore, our advice has to be against [it]."
I will check whose handwriting that is.
A. I think you're right.
Q. That's the internal response from the Treasury. Can I then just pick up a handful of further Department of

Health documents before asking you a little more generally about it.
So we get to DHSC0002931_005.
Now, this is a minute from Mr France, so it's from the permanent secretary.
A. Sir Christopher, I think.
Q. Sir Christopher France, yes, sorry.
2 December 1991, to your Private Office. And if we go down to the text of it, it says:
"1. I have seen Mr Heppell's minute of 29 November. I very much share his misgivings on the policy case for a concession here (and the finance would not be easy either).
"2. It is never very comfortable to resist claims for compensation from those who have encountered major problems through no fault of their own or anyone else. But unless Government is prepared to draw a line and stick to it, it will end up with a de facto (very expensive) no-fault compensation system.
"3. The ringfence around the haemophiliacs is bound to be attacked, but we are unlikely ever to find a better one if we abandon it. The haemophiliacs were doubly disadvantaged by their existing, hereditary disease which already affected their position on employment, insurance and the like. They can be

separate from other victims of medical accidents, but the next defensible boundary is not easy to see. I advise long reflection before we move further in to no-fault compensation for medical accidents. Is this really the most pressing marginal case for the deployment of money from the health programme?"
Now, you've told us you would have regular meetings, the top of the office meetings, with Sir Christopher and others. This is, I think, perhaps the only example we have of Sir Christopher putting his views on this issue in writing. Does the fact that it was set out in this formal way rather than simply being conveyed to you in your weekly meetings a reflection of the extent to which he was opposed to your proposal?
A. Yes, it's a very important intervention from him, which I would have taken extremely seriously, as I did take extremely seriously. I thought that, as I -- I won't go over what I said yesterday -- that the ring-fence around those infected with HIV/AIDS by the Health Service was a much clearer and more commonsensical line to defend.
The Permanent Secretary and the Deputy Secretary, Strachan Heppell, are both advising very strongly against it. "I advise long reflection" means "Don't do it".
I would have taken that extremely seriously

because Sir Christopher was doing his duty to put, as he saw it, a case against a minister embarking on a piece of expenditure that he thought might be wrong. It's not far from the ultimate weapon that a permanent secretary has of writing to the Public Accounts Committee, as happened, for example, in the case of the Pergau Dam, when Douglas Hurd gave foreign aid to Malaysia. That is the ultimate thing, and it goes straight to Parliament.
Now it's not quite that, but it's only one step down, so I would have taken this very seriously, and that is why, after this, I took the trouble to get on paper all the opinions of my other ministers, to see whether they thought I'd gone completely mad. One of them did, but the others didn't.
Q. We'll just look briefly at that, to complete the paper trail, at DHSC0002537_063.
It's a minute of 5 December from your Private Office to the Private Offices of your three ministers:
"The Secretary of State has noted the Permanent Secretary's minute of 2 December to me, and would appreciate your Ministers' views."
I think the date is wrong but I don't think anything turns on that.
You've probably anticipated my next question in your last answer. This seems quite an unusual step to

be formally seeking the views --
A. Yes.
Q. -- of your ministerial colleagues, but it reflects the fact that you had your Permanent Secretary and other senior civil servants opposed to the suggested change of line?
A. Yes.
Q. Then, as you say, in terms of the responses, DHSC0002537_062, Baroness Hooper, PS(L), on 5 December, her view coincided with that of Mr Heppell and with the Permanent Secretary. So she says:

"I think we should hold the line however difficult this may be. I am not aware of a sudden pressure via correspondence or otherwise."

But I think the Minister of State and Mr Dorrell really took, as it were, your side of the line.

So if we see DHSC0002938_004.

This is on 10 December and on behalf of MS(H) so Mrs Bottomley. Paragraph 2:

"MS(H) commented that she has always been cautious in this area for the reasons outlined in Permanent Secretary's minute of 2 December. However, given the current circumstances she supports moves seeking a further explanation."

So Mrs Bottomley agreed with your proposal

essentially.

Then if we look at Mr Dorrell's response, PS(H), DHSC0002537_242. 11 December:

"PS(H) has seen your minute of 5 December, asking for his views on Permanent Secretary's minute of 2 December. He has commented 'Without enthusiasm I am in favour of extending the concession to Blood Transfusion etc, victims. The initial concession was a political fix - this would simply redefine what is essentially the same fix'."

It might be said to be a reluctant agreement, but --
A. Reluctant to -- I don't want to make a speech about this but perhaps rather difficult today to enter into an SA defending the trade of politics, but the -- I don't regard "political" as a bad word in a democracy. It means at its best that you have taken into account as many views as you can and come to a decision. The trade of politics should be and is an honourable one, so certainly Mr Dorrell is using the word as a bit of a boo word there, but I would have bridled at that a bit and thought, and responded I think that the job of the Secretary of State was to try to take into account all the arguments put externally and internally and come to a conclusion and if that's politics, that's politics.

Q. If we just pick matters up in your statement, please, WITN5288001, if we go to page 88, paragraph 4125, you say this, and it's referring to Christopher France's advice:

"While I do not now actively remember seeing this advice, I would certainly have done so at the time. This was advice coming from (respectively) the Permanent Secretary [Sir Christopher France] and the Deputy Secretary (Grade 2) Civil Servant [Strachan Heppell] heading the policy area, both of whom that put their advice in formal minutes. The Inquiry asks why I 'rejected' their advice. They were right to warn me in the terms they did, and I would have taken very serious note of their advice. I would have been well aware of the dangers of widening the policy, and their advice would - appropriately - have been a forceful reminder of those risks. Ultimately, however, it was for ministers to judge the balance of risks. Here the balance was between trying to maintain a distinction between haemophiliacs and blood transfusion patients both infected with HIV by NHS treatment which the 'court of public opinion' rejected, versus the weakening of the defences against pressure for no-fault compensation which we believed to be an unacceptable outcome for the reasons (agreed by

Parliament) put forward in opposition to Rosie Barnes' Bill. Such difficult judgements are I think the essence of democratic government. Just as my senior officials were right to warn, I think that the Government was right to concede and run the risk on the no-fault compensation concerns. As I was later to express it to the Chief Secretary, I believed that it was politically and morally the correct course. I was very aware of the particular stigma and fear that surrounded AIDS at the time, and I did see this as a potentially distinguishing feature from other cases raised in the debate on no-fault compensation."

The balance that you identify there, the balance of risks being a matter for ministers to judge, presumably -- and this is a more generally question, Lord Waldegrave -- the more senior the Minister, the easier or perhaps the less difficult it may be for that minister to consider but reject the advice of senior officials?
A. Yes, a Secretary of State should take great care. Secretaries of State come and go, the officials have the corporate memory of the Department, and are an essential -- when it comes to the legitimacy of spending, for example, they are the guardians of public good. And they have, as I say, the Public Accounts

Committee route to go down. Now, this is not that case. It's a matter where I balanced the risks differently from them.

A Secretary of State is also, remember, not just the head of his or her department but a member of the collectivity of the Cabinet, of the Government, and has a duty to look to the wider interests of the Government as well as his own or her own department.

Q. And you say in your statement that, looking at the documents, you think the initiative to change course was probably your initiative?

A. Well, there were campaigners out there.

Q. Yes.

A. There were the redoubtable campaigners from Liverpool, but I think it was, yes.

Q. And in terms of within Government --

A. Yes.

Q. -- it was your initiative as Secretary of State?

A. Yes.

Q. Then I just wanted to ask you to look at what you say about your thinking in paragraph 4.119 of your statement.

So it's page 86, please, Lawrence.

You say, picking it up in the fourth line:

"The reality was that the combined increased

pressure in Parliament, (questions, motions and debates), from the media campaign and from allied correspondence, led me to judge that the government's position was not sustainable. We had tried the policy of holding the line/protecting the ring-fence and it was not convincing public opinion or Parliament. The increasing unpopularity of our stance was - in one sense - useful because it was a lever that I could deploy with the Treasury and others to try to change the policy with which I had become uncomfortable, hence my warning that, '... if we continue to refuse any help there is a real prospect that the campaign will gather pace and becoming a damaging and running sore over the next few months'."

Is there anything you have to add to that, or is that the best explanation?

A. Well, I think only -- I think the papers show that as far as back as April and even earlier than that I was uncomfortable with it before the public campaigning had got going. The issue of campaigning and so on is one of the things that a minister has to judge all the time, because there are hundreds of campaigns going at any one time. I remember as a new MP, I can't remember now what the campaign was, but my constituency secretary said, "We've got a huge campaign, we've had 100 letters on

something". We had 70,000 constituents, how do you know whether that really represents ... So you have to try to judge. I'm by no means diminishing campaigning, it's a vital part of our democracy, but you have to judge.

I mean, I suppose the greatest -- by far the greatest and most effective single-issue campaign of my lifetime was one which we'll have to wait for my 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.

Q. Would it be right to look at it in this way, perhaps: one of the reasons why, in relation to this particular issue, the campaign may have provided the tipping point or given you the weaponry to take to the Treasury, was because you yourself were not convinced of the sustainability and logic of the underlying ring-fence, the underlying --

A. That's exactly right. I think I mentioned yesterday that it says in one of the newspaper articles that one of the campaigning solicitors took the same view: let's get the haemophiliac matter settled and then we'll start campaigning on the other one. Perhaps -- and now I can't guarantee this from memory, but maybe I thought

in somewhat the same way.

Q. Now we saw reference to letters being copied to the Scottish Office, Welsh Office and Northern Ireland Office, and again, really for the sake of completeness and because it's one of the few instances where we have direct evidence of their involvement, if we can just look at the communications from those ministers.

A. 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.

Q. So if we start with the Scottish Office.

SCGV0000237_072.

This is 17 December 1991 and it's Ian Lang, Secretary of State for Scotland, writing to Mr Mellor, copied to you. He says:

"I have seen a copy of William Waldegrave's letter of 2 December to you about those non-haemophiliac patients infected with HIV in the course of treatment and I support his proposals for a settlement. I too would favour the second option of linkage with the Macfarlane Trust as this is the cleaner solution.

"There is much public sympathy in Scotland for the handful of cases here and much will be made if we continue to present an unsympathetic response. These unfortunate people will eventually be forced into Court.

At least 2 cases in Scotland have now applied for legal aid and there could be damaging publicity at each stage of the legal process.

"While it is difficult to estimate the total Scottish costs it seems on present information likely to be around £900,000. Like William, I would be prepared to find a third of these costs if the Treasury would meet the balance from the Reserve. An early decision in principle on funding would be helpful."

So that's Scotland.

In terms of the Welsh Office, DHSC0002717_014.

2 January 1992, from David Hunt, Secretary of State for Wales. He refers to having seen copies of your letter and of Ian Lang's letter, and then says this:

"I too would support proposals for a settlement through the Macfarlane Trust and would be prepared to make a similar contribution in the current financial year if you are able to meet the balance from the Reserve. On the basis of the costs in William's letter, and in line with our contribution to the earlier settlement, Welsh costs are likely to be around £200,000. If you are able to agree our officials can discuss how contributions should be made."

Then to complete the geographical picture, if we

go to HMTR0000003_047. We have here from the Northern Ireland office, this is addressed to you, 27 December:

"Thank you for sending me a copy of your letter on 2 December to David Mellor about financial help for non-haemophiliac patients ..."

Et cetera.

"I feel there is little public understanding or sympathy for the Government's position on this matter and that the campaign for a settlement is likely to gather momentum in the months ahead. I would therefore support the proposal to recognise the needs of these unfortunate people and their families by settling on the same basis as for haemophiliacs.

"I am pleased to say that we are not aware of any non-haemophiliac patients being infected in the course of health service treatment in Northern Ireland and no costs would fall on our budget at present. If any such cases do come to light in the future we would of course be prepared to pay an appropriate share of the costs."

So it would appear that there was a joined-up approach on this issue between the four departments?

A. Yes, I think the Treasury would have said the Secretary of State for Health has squared away his colleagues, annoyingly.

Q. Then if we just pick it up with the Treasury response to

you.

HMTR0000003_051.

This is 13 January 1992 from Mr Mellor. It refers to your letter and to the letters from Ian Lang, Peter Brooke and David Hunt, and then Mr Mellor says this:

"2. I understand why you want to provide compensation for this unfortunate group and I sympathise. But I also have serious reservations about whether it would be possible realistically to ring fence any such compensation. There are a range of other groups who have also suffered as a result of treatment under the NHS where there is no question of negligence. By compensating those acquiring HIV from blood transfusion, we will be taking a further long stride towards no-fault compensation in general.

"3. Virginia Bottomley put forward a good defence of our current position in the adjournment debate called by Gavin Strang on 20 December. It would be difficult to reverse our position so soon after that clear statement.

"4. But I also have to say that all this is overtaken by the extent of doctors' and dentists' overpayments in the current year. You will appreciate that the latest news about the further overpayments to

dentists this year has come as a very unpleasant shock. 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 looking to me to provide from the Reserve. I have also learned from officials that there will be claims for overpayments this year for Scotland and Wales. It brings the cumulative overpayment to doctors and dentists to over half a billion pounds, more than the total increases many colleagues received in their 1991 Survey settlements.

"5. In these circumstances, you leave me no room to help you or the other health departments by providing additional access to the Reserve for the blood transfusion patients. I cannot, therefore, agree to what you propose."

A. And I think there's an important point here, because we're sliding about as to whether it's just access to the Reserve --

Q. Yes.

A. -- or agreement. I think he's saying no, which is what he wrote on the minute. "I cannot agree to what you propose". I think that means no.

Q. And so on any view he's clearly saying --

A. No to the Reserve --
Q. -- no access to the Reserve.
A. Yes.
Q. You understood this as also saying no in the sense of you using the Department of Health monies?
A. Well, again, it's not a direct recollection unaided, but I would have read that, I think, or my officials would have read that as saying, "No, I cannot agree to what you propose".
Q. Just picking up on the question of when Treasury agreement was required to departmental expenditure, and leaving aside what you said about the extent to which perhaps modest payments from the personal fund could be used without Treasury agreement, was it the case that any expenditure from departmental monies that had not been itemised as part of the bid and the annual settlement had to get Treasury approval?
A. Well, if it had implications, certainly if it had implications. Yes in principle. *De minimis*, really *de minimis*, perhaps no. But where there were implications, and there were implications here of contingent liabilities and so on, as we learn later on, that certainly you needed permission from the Treasury, yes.
Q. And the reference there to contingent liabilities, that

as I understand it is a reference to the fact that because there was uncertainty about the possibility of --
A. Yes.
Q. -- future claimants --
A. Quite.
Q. -- there was a possibility of future expenditure, that was something that had to be notified formally to Parliament --
A. Yes.
Q. -- and that's why Treasury approval would be --
A. That would be an additional reason why they were unhappy about this.
Q. If we then, I think, pick matters up -- there's an internal Treasury minute, but that's not something you'd have seen at the time, so for the transcript I'll just give the reference: HMTR0005118_005. It's a minute of the 5 [February] 1992 suggesting that the Chief Secretary might agree if it was to come entirely from Departmental funds.

If we can then look at DHSC0002585_017. This is a minute from Mr Scofield to your Private Office, 6 February 1992, and we can see reference in the first paragraph to the fact that there had been a meeting between the Prime Minister and a group of senior

conservative MPs where Mr Major agreed to consider further the question of financial help for people infected with HIV.

There's reference to a request for a progress report, and we've looked at this with Sir John Major.

There is then detail of how the money might be found departmentally. I'm not going to read through the details of that.

If we go over the page, if we pick it up under the heading "Ring fencing" at the about of the page we can see it says:

"Both the Prime Minister and Chief Secretary have emphasised the need to establish a robust position on ring fencing. This is difficult as a settlement now for recipients of HIV-infected blood and tissue following public clamour may well encourage claims from those damaged by hepatitis, CJD or other medical accidents. Ministers will be seen as susceptible to public pressure if only it is intense enough. Ministers will be more vulnerable on the 'no fault compensation' issue. On the other hand if a line has to be drawn on which to stand ground, the distinction between recipients of Factor 8 and whole blood is proving a very weak position to defend and there is little public understanding or sympathy for the Department's position. Compensation

for HIV infected patients from the non-haemophiliac group would at least be limited to cases where HIV infection, likely to lead to fatal illness, has been brought about through NHS treatment."

Then if we go to the next page, paragraph 8 just references how officials have been working on how a scheme could operate, and then 9:

"If the Prime Minister does intervene to break the impasse with the Chief Secretary, Ministers will wish to decide when and how to make an announcement. There are no new factors which can be drawn on to justify a change of policies. Ministers may therefore have to say that they are respecting the overwhelming wishes of Members of the House."

A. And there is the clear understanding of the Department of Health, which would have been my understanding, that there was an impasse with the Chief Secretary. And the Prime Minister, once again, came to my rescue as he did before, and I think came to the rescue of the victims concerned.
Q. And we can then, I think, see you wrote to the Prime Minister, 7 February 1992: HMTR0000003_603.

We've looked at this with Sir John but perhaps worth looking again briefly with you. So paragraph 1 refers to the meeting that Sir John had had with Conservative

Party members. It refers to a meeting you had had with MPs, and you refer to the strength of feeling the issue was causing across all parties.

Paragraph 2 refers to the proposals you put to the Chief Secretary and you say:

"... for reasons which I well understand, he did not feel able to agree.

"3. However, given the mounting Parliamentary and public concern, I believe we should reconsider my proposals."

Then you set out three elements. Similar monies as with the haemophilia scheme. You then propose a panel to handle decisions on individual cases determining eligibility. And thirdly, the undertaking not to pursue legal action.

Paragraph 5:

"We must recognise the risk of weakening our general opposition to no fault compensation. The Chief Secretary is rightly concerned about this. But we shall have to make plain we are responding, as with the haemophiliacs, to very special circumstances but that our general policy remains firm."

Then top of the next page you say:

"6. Given the other claims on my budget, I cannot meet all the cost of around £12m. I can, however, find

£3m myself in this year and next, and would want an equal sum each year from the reserve. Should the cases be settled at a faster rate than I anticipate I would hope to be able to use some of the second year's money this year.

"7. I am copying this minute only to the Chief Secretary."

Now, I think the Chief Secretary line of not using the Reserve was maintained.

A. Mm.

Q. But is it your understanding, your evidence, that effectively the intervention of the Prime Minister enabled there to be agreement that the policy would change but with the Department funding --

A. Exactly.

Q. -- scheme?

And I don't think we need to go to the all of the further documents but, again for the transcript, you wrote to Mr Mellor on 12 February, it's DHSC0002582_003, in which you explained you'd look at the programme to work out where you would find the money from and there's some additional correspondence on that which I don't think we need to look at.

If we then come to the announcement in Parliament, to complete the chronological picture, it's at

DHSC0003625_040. It's a written answer 17 February 1992, and if we just go down to you are response to the question, you say:

"Pursuant to the reply of 14 November 1991 at column 656; I have decided that the special provision already made for those with haemophilia and HIV is to be extended to those who have been infected with HIV as a result of National Health Service blood transfusion or tissue transfer in the United Kingdom. The payments will also apply to any of their spouses, partners and children to whom their infection may have been passed on. The rates of payment are shown in the table. Similar help will be available throughout the UK.

"The Government have never accepted the argument for a general scheme of no fault compensation for medical accidents, as such a scheme would be unworkable and unfair. That remains our position.

"We made special provision for those with haemophilia and HIV because of their very special circumstances. It has been argued that this special provision should be extended to include those who have become infected with HIV through blood or tissue transfer within the UK. I have considered very carefully all the circumstances and the arguments which have been put to us. I have concluded that it would be

right to recognise that this group, who share the tragedy of those with haemophilia in becoming infected with HIV through medical treatment within the UK, is also a very special case."

Then over the page:

"The circumstances of each infected transfusion or tissue recipient will need to be considered individually to establish that their treatment in the UK was the source of their infection."

The next paragraph then deals with the establishment of the panel and the work on the mechanics of dealing with claims.

The third paragraph explains that:

"Parliamentary authority for making these payments will be sought through Supply Estimates and the confirming Appropriation Act. On the basis of the reported cases the estimated cost could be £12 million. However, I cannot be certain about the cost, as numbers of valid claims are not known."

And that picks up on the issue we picked up a few minutes ago --

A. Yes.

Q. -- the contingent liability, the future uncertain liability.

A. Yes.

Q. "I share the great sympathy which is universally felt for the blood and tissue recipients who have tragically become infected thorough their treatment. Money cannot compensate for this but I hope that the provision we are making will provide some measure of financial security for those affected and their families."

So we can see it essentially takes to February 1992 for the position to be formally and particularly changed. Looking back at it now, why did it take that length of time and did it take too long?

A. Why it took that length of time, I think, was that it took that length of time to overcome the arguments of precedent, which were real. And I'm sure the campaigners helped. But I think I found, and I believed myself, thinking about it all the time, that there just -- the HIV/AIDS ring-fence, if you like, was a far more logical and stronger one because that was what had driven my commitment to this case in the first place, from personal experience and other experience, one knew the stigma and all that. I won't repeat what I said yesterday.

Could it have been done earlier and better? I'm sure that, you know, someone could have done better than I could, I'm sure. But I did manage to change both policies within just about a year and I think that was

not too bad in the circumstances of the time.

So I can't really answer more than to say I did it as quickly as I thought I could.

Q. And if we leave to one side -- you may say it's a big thing to leave to one side, but the financial issue, the issue of needing to secure Treasury agreement and to persuade the Treasury, and just look at it as a matter of principle. Was there ever a good reason for the initial ring-fence excluding those infected through transfusion?

A. Well, the original ring-fence had derived from way back from '87 -- or not way back, some years back -- the ring-fence then made around the haemophiliac case, which had been made strongly. But that ring-fence had its defenders to the end, as we've seen. I simply thought that it wasn't the best place to put the necessary ring-fence, and of course officials in my department and in the Treasury were against moving -- very strongly against moving at all, for reasons of the dangers that they saw, which I don't think were fulfilled, but that's for subsequent history.

Q. Now we've seen a couple of references in the materials to the fear that moving the ring-fence may lead to further campaigns or further claims, including for those infected with hepatitis. And there were also references

to other cases, human growth hormone, and others. 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?

A. No, that wasn't an issue brought to my attention.

Q. 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 this is a document we've looked at in the Inquiry already with other witnesses, 21 December 1990, it's a submission from Mr Canavan to the Chief Medical Officer and to PS(L), so Baroness Hooper. It's headed "Hepatitis C antibody screening test: Advisory Committee on the Virological Safety of Blood (ACVSB)". And you'll see the recommendation in paragraph 2:

"It is recommended that screening should be introduced as a public health measure. The other UK Health Ministers are also being asked to improve the introduction of screening in their transfusion services."

So that refers again to Scotland, Wales and 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.

A. Mm-hm.

Q. 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?

A. I certainly don't remember it, and the papers seem to show that I wasn't involved.

Q. We can take the document down, thank you, Lawrence.

Other than the references we've seen to hepatitis as something that can be transmitted and the potential concern about the ring-fence, do you recall what your state of knowledge was about the risks of hepatitis, hepatitis C in particular, and its potential seriousness?

A. I don't, I'm afraid. I do remember -- I mean it was referred to there -- that there was a new strain. It was because we referred to non-A, non-B for a long time, there were new things being discovered, but I don't have

any direct knowledge of it, no.
Q. You told us in your statement, and we touched on it yesterday, that in terms of the triggers for issues that you might expect to come to the Secretary of State as opposed to being dealt with by other ministers or officials, one of those would be issues of major public health concern?
A. Mm-hm.
Q. It might be said that making a blood supply safer by introducing a test to prevent the transmission of hepatitis C was an issue of major public health concern. Does it surprise you, looking at it now, that this was not an issue that was brought to your attention at the time?
A. Well, reading the papers now, the initial decision taken was an obvious one: let's get on with it, and they say let's do it -- I can't remember, it'll be done by spring or ...
Q. Something to that effect.
A. Then there's, I read, the issues about prototypes and new kinds of tests and too many false positives and so on and it doesn't arrive until September. Now, it's impossible for me without really investigating that to know whether all that was reasonable or whether the junior minister or the officials should have raised

their hands and said there's something going wrong here. I don't want to judge them without having much more knowledge of that.
Q. And it's right to say that you have not been provided with all of the copious documentation about the Committee's decision making and which bits did go to ministers and which did not because none of it was brought to your attention at the time?
A. Mm.
Q. It's more just a general question. I'm not asking you to pass judgement, because you haven't been provided with the material and the Inquiry that other witnesses have. It's just more the general question, and knowing what you know about the Department about what were matters of concern. Is the issue one that, given it's importance in public health terms, should have come to your attention at some stage as Secretary of State, do you think?
A. I don't think the original easy decision to press on to do it, that needn't have come to me because it was an obvious decision to take on the advice given to the parliamentary secretary and to the officials. If there had been thought to be a serious muddle or mishap or delay of some kind that needed the impetus of the Secretary of State to sort out, that should have come to

me, but I don't see evidence for that in the papers. I mean without -- in the papers I've seen.
Q. Can I then turn to a handful of broader issues. One of the concerns about the establishment of precedent and the impact in terms of the policy against no-fault compensation was based on an assumption that there was no fault involved on the part of the NHS or on governments.
A. Mm.
Q. I think that's fair?
A. Mm-hm, yeah.
Q. Could the Department, the Government more generally, or the NHS, know that there was nothing -- that there was no fault -- leave aside legal liability -- no fault or lessons to be learnt, nothing that could be done to improve public health without undertaking some form of investigation or inquiry?
A. It's a very difficult question to answer, that. The press of continuing events mean that there's a limited capacity to go back and review all the time previous decisions, unless weighty voices had been saying that there was a serious mistake earlier. If that had been so, the whole approach to this would have been different. But no such voices were heard by me at least.

Q. And then the concept of reflective learning, it's an 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?
A. 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 central policy review staff, part of whose mission was to try to take a step back and look at policy as it developed and look both forwards and backwards and to involve outsiders.
That is a very important aspect of the improvement of government, I think. I wrote a minute then which I found to my great alarm -- I was only 20 something -- had been sent by my boss straight to the Prime Minister saying "William Waldegrave has written the attached minute saying we should be much more open about things and give proper press conferences and publish much more

policy documentation". I found rather alarmingly that Mr Heath had had this document from this very young person on his desk. I don't know what he did with it.

But I have always believed in that. We've made great steps since, and ... but I'm giving a rather poor answer, I'm afraid, but the key, particularly in the science heavy departments, is the involvement across the board of expertise inside and outside the department, which involves openness of policy analysis. Not policy decisions. I'm a defender of the idea that ministers and their immediate civil servants should be allowed to discuss all issues in some privacy, at the time at any rate. But what underlies policy in terms of factual analysis and scientific analysis should be made as open as possible.

Q. And then just picking up on that theme of openness, some of the documents we've looked at might suggest a degree of preoccupation with how to present decisions so as to avoid criticism or fallout or adverse press comment or adverse publicity. How does that fit with openness?

A. Well, it's difficult. We are a democracy. So all the time you're in a conversation, an argument with the public and with experts and with the opposition in Parliament, if they're doing there job properly. So of course you're looking to put your best foot forward and

to put your case in the strongest way, but you must never stray over the line of suppressing things which ought to be made available to make that debate a proper debate. Easy to say but not always easy to judge at the time.

Q. Governments -- I promise this is a question I drafted in advance and not prompted by recent events -- governments seem to find it sometimes hard to say, "We got things wrong", and it could be said for example, announcing the HIV transfusion decision in February 1992. A full answer or full explanation, full press release could have been "We drew a line here, in retrospect that was a mistake, we're now rectifying that mistake".

Why is it that sometimes governments, departments, ministers, find it so difficult to say something has gone wrong, and do you have any reflections as to how that could be altered for improved?

A. Well, in a relatively long and not always successful political career, I suppose the problem is of any adversarial system -- I don't know whether the same exists in court, but our Parliament is a high court, people say -- that if you say, "I got it wrong" the other side says, "Well you're no use then, are you? You just get things wrong". They very seldom say, "Well done, you've admitted a fault" and it's gone to the next

argument. They simply say, "That fellow Waldegrave admitted he got that wrong so he's probably getting this wrong".

But there are times when you have to try it and the greatest -- much greater politicians than I -- can do it. And when it is inevitable, it must be done. Because one thinks of the extreme situations in the War and so forth, the British Government in the Second World War on the whole admitted when things were going wrong, and therefore retained the trust of the people for the next stage. Those are great issues, far higher than I was ever involved with, but the principle I think must be the same. But it takes skill and confidence and very good politicians of my time could do it. Say, "We got that policy wrong but this is why we did it and this is what we're going to do instead".

And sometimes they can take the public with them. But it takes skill and it takes confidence to do that, and you won't get any thanks from the opposition, they'll say, "Well, you're just hopeless, you just get everything wrong".

MS RICHARDS: Sir, those are the questions I was proposing to ask Lord Waldegrave. If we could now take a break and that can be our normal morning break, but that will provide the opportunity for further lines of questions

to be suggested.

SIR BRIAN LANGSTAFF: Yes, certainly.

Let me explain. You may know already but if so, forgive me for repeating it.

The Inquiry works because there are a number of participants. Core participants are often represented by legal representatives, and have a right through those representatives to put questions for counsel to ask you. Obviously they have to have a proper chance to do that. That involves really the questions being formulated at the end of what else you have had to say, because then they'll know what might be missing. And to give that a proper opportunity, we'll take a break.

If I say -- how long do you think you might need?

MS RICHARDS: Quite possibly only 30 minutes, but if we said 40 minutes I think that will undoubtedly be ample.

SIR BRIAN LANGSTAFF: Yes, so if we come back then, at 11.45 -- shall I say not before 11.45?

You'll be told if there's a need for more time. And I can't tell you how long the session will be after that. It may be short, it may be long; it depends how many questions there are.

But that's what we'll do. So 11.45. Not before 11.45.

(11.06 pm)

(A short break)
(11.54 am)
MS RICHARDS: Lord Waldegrave, because the questions I'm now going to ask are specific questions put forward on behalf of Core Participants, they won't follow a particular chronological or thematic scheme, so we may jump around a little from topic to topic.

The first question relates to the response to the haemophilia settlement and the £42 million figure. And I've been asked to ask you whether you were aware of disquiet amongst haemophiliacs or The Haemophilia Society on the level or size of the compromise? And I think I can assist you to answer that question by looking at a couple of documents.

A. I remember the press notice --

Q. Yes, exactly. If we could have, please, Lawrence, HSOC0012313, this is the press notice of 11 November 1990 issued by The Haemophilia Society:

"The Haemophilia Society today reacted with grave disappointed to the announcement by the Government that £42m is to be made available to people with Haemophilia and HIV."

Then Mr Watters, the general secretary, is recorded as observing:

"... 'We welcome the fact that the Government have

finally recognised a greater responsibility to people with haemophilia and regret that by deferring that decision for so long a great deal of [personal] anguish and suffering has been caused to so many of our members'."

And then there is recognition of the role of Mr Major and you:

"'It is a triumph for a caring prime Minister and Secretary of State for Health. John Major and William Waldegrave are to be applauded for addressing this problem so promptly - it is unfortunate the settlement has been so low.

"'We are naturally very disappointed with the level of the proposed settlement. It means that each of the 217 claimants will receive an average payment of £35,000'."

I'm not quite sure where that figure comes from but, in any event:

"'This is a settlement which has been agreed between both the claimants and the Government's lawyers and is naturally one which we have to accept'."

Then it continues over the page but I'm not going to read the rest of it.

I think it's right, that came to your attention -- whether or not it was because of the press release, you

I think received a letter from Mr Watters?

A. Yes.

Q. And it essentially reflects the concern about 'would have liked to have seen more money made available'. I am not going to put that up on screen, it's DHSC 0003657_011. And you responded to that, and I think if we put it up on screen and then I'll go back to the question. That's DHSC0003119_006.

So this was your letter back to Mr Watters of The Haemophilia Society, 18 February 1991, on the level of the settlement you say in the second paragraph that:

"... the proposals put to us by the plaintiffs' solicitors and which have been agreed in principle provide a fair and reasonable resolution of the litigation."

Then the fourth paragraph you say:

"I realise that no amount of money can ever fully compensate for the tragedy that has befallen those haemophiliacs with HIV, and that, as in any compromise, the amounts made available may fall short of what may have been hoped for. However, in total, the Government has made available £76 million and ensured that entitlement to social security benefits will not be affected by these payments. We therefore believe we have made very considerable financial provision for the

affected haemophiliacs and their families."

Now, I think it would follow, you were aware at the time of The Haemophilia Society's view that the settlement was too low?

A. Yes, they clearly would have hoped for more.

Q. And did that cause any pause for thought or reflection or change of approach on the part of the Government?

A. Well, I think what dominated my mind at the time was first of all obviously that the proposal had come from the victims' lawyers, and secondly, some benchmarking against what was happening in other countries, and that I think led me and others to think that this was a fair settlement, though clearly, as I say in the letter, not compensation, but a fair and settlement which stood reasonably well in comparison to other countries and to what the lawyers themselves had suggested.

Q. If we just leave this on screen, because I'm going to ask another --

A. Just one other important point I think in that letter and throughout.

Q. Yes, of course.

A. We do say in that letter that although this is an out-of-court statement, we will however continue to keep under review the amounts available to the Macfarlane Trust, which is quite unusual in a settlement

of this kind.
Q. And that I think anticipates the next question I was asked to ask you. You mentioned yesterday that there was the agreement to pay the 42 million but the possibility of additional money, and as I understand it, that was a reference to the keeping under review the monies that would be made available to the Macfarlane Trust?
A. The Macfarlane Trust, yes.
Q. And then I was asked to ask you whether that was announced in any form so that the plaintiffs or their legal representatives would have been aware of it? This is a letter to Mr Watters of the Haemophilia Society, and the paragraph you've just referred to is the last paragraph on this page. The last sentence where you say:
"We will however continue" --
A. I think we had made that clear, and I can't remember whether -- without looking, whether it was in my written answer, but it was certainly clear, I think, and subsequent events showed that there were further payments.
Q. And if we just go to your final written answer, when the final terms of settlement had been agreed, that's DHSC0002451_011. We can see this is the June 1991

announcement. And if we go to the right-hand column, please, Lawrence. It's the fourth paragraph down, I think.
I read this out yesterday, I think, but we see there the reference to the 42 million and the reference to the previous sum and then it says:
"We are also committed to ensuring that the original Macfarlane Trust set up in March 1988 with a Government grant of £10 million will continue to be able to give additional help where there is special need."
Now that's not necessarily completely clear, but is that a reflection of what you'd said in the letter to Mr Watters: the keeping under review payments to the Macfarlane Trust?
A. Yes, I would certainly believe that to be so, yes.
Q. We can take that down. Thank you.
Next question picks up on the idea of corporate memory. When Mrs Bottomley, Baroness Bottomley, gave evidence, she referred to the turnover of ministers in the Department of Health meaning there could be a lack of corporate memory and I think you've referred today to how the corporate memory is essentially held by officials and the question I'm asked to explore with you is does that mean there is a risk, or a greater risk

that officials might become entrenched in a view and not be as open to considering new views?
A. That's a good point. Memory can be a fixed doctrine, a house doctrine, if you like. I think there are two sides to it. I think officials remembering past issues and past arguments is a good thing, because ministers, particularly, for example, in my case, come to their new portfolio completely cold. But of course, you can get an entrenched departmental view that it takes a strong minister to change. So there's pluses and minuses.
I think forgetfulness is bad, but forgetfulness -- but memory shouldn't merge into fixed doctrine, if you like.
Q. In your evidence yesterday, you talked about how a response to information from experts about emerging public health issues could sometimes be: it's just another scare, isn't it.
A. Mm-hm.
Q. And the question building on that is this: do you think there was or is a tendency for politicians to hope that things were not as bad as they in fact were, and then to go on to hold this as an entrenched view? Or put another way, is there an element of wishful thinking, of hopping things will turn out all right?
A. I think there are different kinds of personality amongst

ministers. My children once gave me the Little Book of 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 amount of Eeyore-ness is a good thing, however, I would argue, because you need to try to imagine the risks that there are out there, and pre-empt them if you can. But one mustn't be too gloomy.
Q. Again, in your evidence yesterday, you referred to what had happened in terms of the nature and scale of infection from blood and blood products as being one of the greatest catastrophes in the history of the Health Service. Would that not on any view meet the threshold for a public Inquiry and do you have any understanding of why one was not ordered during the time you were in Government?
A. Well, it didn't seem to arise in my time, because the concentration was upon trying to find resource for the victims in my time. I don't remember it being suggested in my time, relatively short time, in office. I agree with the implication of the question that a disaster on this scale is a perfectly suitable one for a public inquiry.

Q. The next question is about Government spending more generally. In your experience, who really makes the key spending decisions in government? Is it -- there are three candidates in the question, you may have more -- the Chancellor and Treasury, the civil servants with the corporate memory, or the departmental ministers?

A. It's a bit of all three. I think I did say yesterday that one has to remember that the continuing momentum of government gives rather small room for immediate manoeuvre. The Secretary of State for Health, it's rather odd, in some ways, that we consider the traditional great offices of state as being the Home Office, the Foreign Office, and so on. The Secretary of State for Health is responsible for a million employees, for the biggest single organisation of health care -- single unified of health care perhaps anywhere in the western world. It is an immense task. Now, you can't shift -- you can't come in and say, "We're going to shift" -- I think the budget was roughly 30 billion in my day -- "We're going to switch 5 billion next year to this", it would have meant chaos across hospitals and GPs and the whole of the sphere. You have only got a little bit of room for manoeuvre to steer the great -- I think Sir John used this analogy -- to steer the great supertanker in a slightly different way.

Now, that doesn't mean and never should mean that you can't set priorities and change them, but you can't change them overnight.

Now, coming back to the question, who controls this? Well, history, if you like, controls a lot of it. Where you start. You have the Health Service that you have, doing what it's doing when you were Secretary of State for Health. You can't tell those million people "You're all going to be doing something different tomorrow". Chaos ensues.

But you can steer it.

Now who has the responsibility for steering it? A government, a strong government that comes in with a mandate will help to steer it very much, because the civil servants will say "You have a democratic mandate to do this" and they will start preparing it and shifting it. The department that you're trying to shift will say, "Are you quite sure? We've been doing this way before, that will mean less of this and more of that. Are you recognising that it means less of this when you demand more of that?" Those are legitimate and important points to raise. If you're well founded in your change of direction as a minister, you'll be able to -- you must win it through. But you must also have the support of the officials in the Treasury. The

Treasury is organised in the Chief Secretary's department and the spending departments with having little -- very high powered but very small shadow teams that shadow each department. And if they are not convinced either that the Government knows what it's doing by shifting to this new priority or they think it's wrong, they will try and stop you. You will then have to persuade the Chief Secretary and if you can't persuade him, you go to Cabinet and Chancellor and other ministers would be involved.

So it's all three, I think. But I'm one of those who is very averse to the idea that civil servants just overrule ministers all the time, and when you hear a minister blaming the Civil Service, it's because the minister doesn't know either -- either doesn't know what he or she wants, or doesn't know -- doesn't clarify it enough.

The proof of that is that I was part of the introduction of a very bad policy under the Thatcher Government: the Poll Tax. I had a part in that, in the design of that. It was a very bad policy, I think, but it was put to the electorate, it was pursued in all sorts of ways. The Government came in with a mandate to do it after the election. The civil servants did it to the best of their availability, though I think, to a man

or woman, they thought it was the wrong thing to do.

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.

Q. The next question, and this goes back to the HIV Litigation and the particular position of Scotland, if you need me to take you back to any of the documents, I will, Lord Waldegrave, but I think probably we can deal with this without looking at them. Do you agree that the Scottish haemophilia litigation and the position of the Scottish litigants was something of an afterthought in the settlement negotiation process?

A. I think that probably is a fair characterisation. We sorted it out afterwards satisfactorily, but it hadn't been considered before. I think as I said before, the principal reason for that was the speed with which things were moving.

Q. Now, you've talked about the importance you attached in your thinking and your decision making to the advice that you were receiving, the legal advice you were receiving about the merits of the case, and of respective merits of the case. I think the documentation suggests that the litigation in Scotland was at a less advanced stage.

A. Yes.

Q. Does that, combined with the way in which the negotiations took place, mean ultimately that in the overall settlement, no separate consideration was given to the merits or potential legal merits of the Scottish litigation?

A. I don't -- well, I have to be careful, because I haven't seen many documents of the Scottish Office, but Ian Lang is an extremely conscientious minister, Secretary of State, and I'm sure that if serious and difficult issues had arisen in Scotland, although it would have caused grave difficulties if they were going to arrive at a position seriously different from the overall UK position which John Major and I had announced, they would have been considered. So I can't really answer in detail, but I would be very surprised if the Scottish Office then hadn't -- wouldn't have raised them.

I recall from the papers, complicated issues about category G people, for example. I think there was consideration given carefully to these issues.

Q. You've explained, as a matter of fact, that the issue of giving any form of financial support to those infected with hepatitis C was not something which you gave any particular consideration to. The question I've been asked to raise with you is why that was the case. Why do you think that the Department, that you were not

looking at the position of those infected with hepatitis C, given that, in parallel, the Department at least was aware that the issue of screening was under consideration in recognition of the fact that this was a serious condition?

A. Mm. I can't give a real answer to that, because the issues just never came before me and I think if I start to make up plausible arguments, I shall not give a good answer.

Q. The next question is this: if the litigation had not settled and had been fought to trial and the plaintiffs had succeeded, from which pot would the damages and costs have come; Department of Health, Reserve or somewhere else?

A. A lot of ifs, but they would have probably come from the -- I don't know. I'd have to think of whether -- I don't honestly know. Depending how much it was and so on, I imagine the Secretary of State for Health, having lost that case -- if it had gone to court and we'd lost and there was some very large bill, I would certainly have tried to get it from the Reserve, I'm sure. But in other cases, of course, smaller cases where -- because there were negligence cases that were won against the Health Service all the time, they normally came out of the budget of the Health Service under Duncan Nichol.

But I think if there'd been a huge defeat like that, new money would have had to be found from somewhere and probably the Reserve.

Q. Is there room in Government -- this is the next question, entirely unrelated question -- for some form of devil's advocate to challenge and test received wisdom, particularly where there is a risk of groupthink and entrenched views?

A. Yes. And there's been a development in recent years on this, it seems to me, if I understand it rightly, by the establishment -- they're always referred to in the newspapers as tsars, I don't know why, particularly as they're mostly tsarinas. But independent -- they're Civil Service offices, but they're independent commissioners with a championing -- championship right. My youngest daughter works with the Children's Commissioner. I think those are rather good developments, where they're part of Whitehall but they're independent and they're meant, as I understand it, to raise the issues for their area.

So that's one way of meeting that rather sensible suggestion which has happened in recent years. There may be more to be done in that way.

Parliament is of course supposed to do it, and there are wonderful MPs, the great Frank Field in the

course of his long life has been a wonderful campaigner for a whole range of issues. My late friend Tam Dalyell was a one-man campaigner on all manner of issues and representative of all manner of unpopular causes. So there are great MPs who do this. But I think the institutionalisation of it in the Commissioners is probably a good step.

Q. The last question is this: we've explored in some detail how, as a matter of fact, the decision making was taken both in relation to the settlement of the HIV Haemophilia Litigation and then to the extension to the ring-fence so to speak to provide financial support to those infected through transfusion, and you've talked about response to campaigning, and a sense of a moral case, there were the financial, reputational considerations and so on. Were there any underlying principles guiding the Department to shape decision making about who might get financial support and who might not?

A. Well, one has to remember of course that they were responsible, the Department was responsible for the whole of national health care and there were thousands and thousands and thousands of other responsibilities that they had to ensure. I gave the example of one that was always coming up and causing problems and causing

huge press campaigns sometimes, which was new drugs. Very expensive often, coming from America, but often promising great benefits.

And what were the principles? Well, the principles -- can I say this: I think that most of the officials in the health department were there by choice. They wanted to work in health care, particularly more senior ones. They had some steerage over where their careers go. They were interested in the issues of public health and they were very knowledgeable about them and they worked all hours of the day and night trying to advance them. I think their principles were what one would have thought: how do we do the best for the public health of the country with the limited amount of money we've got?

I don't know whether that's a very good answer, but it's the nearest I can give, I think. I don't think there was any separate morality. I don't believe in a separate morality of government. There isn't such a thing as a raison d'état, there's just morality. And there was no such thing as a separate morality for the Department of Health, it was trying to do its best with all the always limited resources for the health of the nation, which is what we called our campaign, and on the whole, they did it conscientiously, I think.

Q. Would it, having regard to the material we've looked at, be right to understand, then, that obviously there were cases where there might be negligence and legal liability and so compensation might follow in those cases, there was the policy against no-fault compensation.

A. Mm-hm.

Q. Then, in terms of the circumstances in which the Department might provide financial assistance of some form to those who didn't fall into the category of establishment of legal liability, that there were no -- there was no established policy or principle guiding --

A. I see what you mean.

Q. -- how those decisions would be taken. It was a response, on a somewhat ad hoc basis, to --

A. I think so, because there were quite different kinds of considerations which merged. For example, there had been the vaccine-damaged children case, where there was the overriding importance of maintaining the confidence of people in the vaccine programme, and that if confidence waned, there would be measurable deaths, and the risk -- it was an easier risk calculation in a way. And that's brought home to me by, when I was Secretary of State for Health, we had the first year ever, I think, when no child died of measles. That is no

longer so because of disgraceful attacks on the MMR vaccine. So -- and so what I'm saying, in an elaborate way, is I think they were right to deal with the vaccine-damaged children. But it was a different kind of issue than -- so rather difficult to predict.

I think you couldn't make a sort of paradigm which would fit every case. It's back to what I tried to say yesterday, that I think that's the job of the Secretary of State, to look at the cases and say: this is one where you've got to do something special.

Q. And then, sorry, this is, I think, the final question, it's one I omitted to ask a few minutes ago and meant to, it just goes back to the nature and timing of the announcement that was made by John Major and by you on 11 December 1990. Did you understand when the announcement was made that it would be taking place in circumstances which would lead to many of the individual plaintiffs learning for the first time of the proposals from the media?

A. Um, I knew that the proposals had come from the plaintiffs' counsel and lawyers, and that there'd been interaction with the steering committee. So that I knew -- we all knew, I think -- that not every victim had been informed of what the lawyers for the plaintiffs were recommending. If that's an answer to that

slightly -- slightly roundabout answer to that question. But I suppose it's inevitable that they would, in the speed with which we moved, have heard about it in many cases from the media, yes.

Q. Having regard to that, and what might have been the impact upon individuals finding out about the proposals only in that way, almost, as it were, a deal done behind their backs, it might be seen by some, do you think, looking back, that the Government may have jumped the gun in making the announcement when they did?

A. No. I would go back to what I said yesterday, that I believed that there was a moment in time where a deal was doable, which was, in the terms of the time, a fair deal, and that if we missing that opportunity, we'd be back in a situation -- the awful situation of just proceeding on to litigation and nightmare.

MS RICHARDS: Sir, those are the questions I am proposing to ask from those put forward by Core Participants.

I just want to check -- Ms Grey has no questions of her own.

Questions from SIR BRIAN LANGSTAFF

SIR BRIAN LANGSTAFF: I just have one area to ask you about and it really arises out of your reflective comments at the very end of the questioning before we had the break

this morning, coupled with your description of yourselves as an Eeyore more than a Tigger, and it's this: does part of your idea that there should be openness and policy analysis by Government extend to what might colloquially be put as "the Government being straight with people" in the information it gives?

A. Of course, yes. I think that the loss of confidence in Government, if people question the data -- they may question the policy analysis built on it but if they think the Government is, to use a straightforward word, lying to them about the data, then that is a very serious matter in a democracy.

SIR BRIAN LANGSTAFF: Accepting that, there may be matters short of lying. Let me give you one example which may yet come to me for final decision. There is material before me in relation to this Inquiry which means or might mean, it's evidence to the effect that, by March 1982 it was known that there was a possible risk, a possible cause of AIDS was transmission by blood.

By the middle of 1982 it was regarded as a substantial possibility to the extent that it might well be thought to be the likeliest cause. By the end of 1982 the general consensus seems to have been, on the evidence as so far before me, and reflected in the medical press at the time, that it was perhaps indeed

the likeliest cause, and that went on strengthening. It was the view we were being told by Dr Walford of the Department.

When ministers referred to the risk of getting or the possibility of transmission by AIDS, what was said was, and no more than, there was no conclusive proof that blood transmitted the cause of AIDS.

It may be submitted to me at the end of the Inquiry -- the Core Participants have a chance to make submissions -- that that was a deliberate obfuscation of the truth -- they may go that far. It might be said by the other side that it was deliberately chosen words so as not to be technically untruthful, because "conclusive" is a strong word, no conclusive proof. But to avoid panicking the public. What would your reaction be to that?

A. My first reaction is that I'm glad, Sir Brian, that I don't have to make the judgment. I would again have to immerse myself. I want to be careful not to appear, on the basis of really no firsthand investigation, to condemn anybody. But it's a very difficult judgment ever to say in science that something is certain. And it's that difficulty which I think affects quite a lot of -- I remember my colleague John Gummer being much criticised at the beginning of

the BSE crisis for having been filmed giving his child a hamburger. I thought the criticism in a sense was 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.

SIR 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 shouldn't hide any facts from the public.

A. Yes. What you can't do, what you shouldn't ever do, I think, is hide the scientific analysis that is coming to you. Because they will be -- the government has very good scientists working for it, but sometimes scientists outside will say -- will want to say, "You've got the balance wrong", or, "You've made a mistake", or, "There are other considerations here". You've got to protect

yourself against that. And it goes a little bit back to 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."

SIR BRIAN LANGSTAFF: Thank you very much.

MS RICHARDS: Lord Waldegrave, was there anything that you wished to add?

THE WITNESS: Yes, briefly.

I'm grateful and impressed by the questions coming from the Core Participants. Perhaps I could say a few words which are really directed to them as much as to anybody else, which is to say this: that in the 18 months or so that I was Secretary of State for Health, I did not find anybody, in my judgment, either of those I agreed with or those who very vehemently disagreed with me, who did not act in good faith. We were wrestling with difficult problems and I believe that the decisions we took, whether right or wrong, were taken in good faith.

Second, we did change the policy, in the teeth of -- to pay what was then seen -- and I certainly take the question that was put to me as whether this is adequate, but was -- then seemed a fair settlement at -- in the terms of the time. I'm glad that the door

remained open for further support, and I'm very glad that this Inquiry may be able to do a great deal more. But I think we were right in what we did then, and I am also pretty sure that it wouldn't have happened without a kick or two from me.

Finally, and this goes, Sir Brian, to what you've been saying, I think, that the confidence which we all need to maintain in our Health Service is best served, in the light of tragedies like this, by openness about the causes of them. Because only if we take the steps to reassure people that we've learnt the lessons will that vital confidence be maintained.

Could I finally say, Sir Brian, on a completely different note, that I'd like to have on record thanks for the efficiency and courtesy of the staff of the Inquiry, and, if I may name one person, of Laura.

MS RICHARDS: Thank you, Lord Waldegrave.

Sir Brian?

SIR BRIAN LANGSTAFF: I can simply say, first, that Laura fully deserves what you've said publicly about her, and I simply recognise that now she may be listening and blushing. If so, it's appropriate.

But can I in particular thank you for your evidence. You've given us, I think, a fascinating insight into how policy can be made by one person having

an idea as to what is right and what is not, and how that idea can be progressed through to a conclusion and the various different pressures that lie upon it, to the turning of the supertanker or the adjustment of the steering wheel, as you've described it. So thank you very much for that fascinating insight.

MS RICHARDS: Sir, tomorrow we have a presentation on the role of the Chief Medical Officers, particularly in the 1980s.

SIR BRIAN LANGSTAFF: So tomorrow, ten o'clock.

(12.35 pm)

(The hearing adjourned until 10.00 am the following day)

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