

1                                   **Tuesday, 12 July 2022**  
 2   **(10.00 am)**  
 3                                   **SIR ROBERT FRANCIS (continued)**  
 4                                   **Questioned by MS RICHARDS (continued)**  
 5   **MS RICHARDS:** Sir, just before we start, there are  
 6       inevitably a lot of questions arising out of  
 7       Sir Robert's report reflecting the importance of this  
 8       matter to those who were infected and affected, and to  
 9       reflect that, sir, my suggestion is going to be that  
 10      when I finish, at whatever time I finish going through  
 11      the questions I'm asking, which I should say already  
 12      reflect the questions I have been asked to ask by -- on  
 13      behalf of Core Participants, that we have a longer than  
 14      usual break, perhaps an hour and a half lunch break,  
 15      which would enable those who are here and those who are  
 16      not here to feed those questions through to their legal  
 17      representatives who in turn can pass them on to me for  
 18      consideration.  
 19   **SIR BRIAN LANGSTAFF:** So those who are watching online may  
 20      expect that there won't be anything to watch for  
 21      a rather longer period around lunchtime, starting  
 22      perhaps just before our usual time, but certainly ending  
 23      at least an hour and a half later?  
 24   **MS RICHARDS:** Yes. Yes. I'm hoping I will finish what I'm  
 25      proposing to do before lunch in any event, so we might

1

1                   If we go to page 13, please:  
 2                   "Updated Note on 10% Uplift"  
 3                   So this refers to the Simmons v Castle issue, which  
 4                   I raised yesterday afternoon.  
 5                   If we just go to I think the last three  
 6                   paragraphs -- perhaps last two paragraphs. Sorry, can  
 7                   we start above that, my fault:  
 8                   "Aside from mesothelioma cases (where different  
 9                   provisions apply and where in consequence we have  
 10                  continued to provide pre-uplift figures in the relevant  
 11                  part of Chapter 6), there are now likely to be very few  
 12                  ongoing cases in which the pre-uplift figures will be  
 13                  relevant. From the sixteenth edition, we have now only  
 14                  provided figures which include the 10% uplift:  
 15                  "However, we are aware there will be some cases in  
 16                  which the pre-uplift figures remain relevant.  
 17                  In particular, we know there are lawyers working in our  
 18                  jurisdictions who use the Guidelines but where the  
 19                  'Simmons' uplift does not apply. Should it be necessary  
 20                  to do so, the uplifted figure can be easily be converted  
 21                  back to a pre-uplift figure simply by multiplying by  
 22                  a factor of 0.909."  
 23                  Just before I ask you to comment on that, can I give  
 24                  you what I have been asked to explore with you and then  
 25                  invite your comment.

3

1                   start with an early lunch but, as you know, I'm terrible  
 2                   at giving time estimates.  
 3   **SIR BRIAN LANGSTAFF:** Yes.  
 4   **MS RICHARDS:** That said it all.  
 5                   Sir Robert, can we pick up where we left off  
 6                   yesterday. We were looking at the position of those who  
 7                   were infected and what they might recover on your  
 8                   recommendations, and there was an issue we touched on  
 9                   relating to the Judicial Studies Board Guidelines and  
 10          the cases of Simmons v Castle, it probably seems  
 11          esoteric to those here, amongst which I include myself  
 12          who don't practice in personal injury law, but I'm going  
 13          to ask you to look at a document I know you looked at  
 14          overnight. I'm going to read out what's been said about  
 15          it to me by one of the legal representatives and then  
 16          invite your comment.  
 17                  Can we have RLIT0001640:  
 18                  "Guidelines for the assessment of general damages in  
 19                  personal injury cases"  
 20                  If we go over the page, we can see this is the  
 21                  document we were referring to yesterday, so the Judicial  
 22                  College's Guidelines. "General damages" refers  
 23                  essentially to damages for pain and suffering, and this  
 24                  is the 16th edition, which we mentioned in the course of  
 25                  yesterday afternoon.

2

1                   So this is an observation from one of the co-authors  
 2                   of these guidelines.  
 3                   If the aim is for the tariff in the compensation  
 4                   scheme largely to mirror what might be obtained in  
 5                   court, almost every award of general damages made today  
 6                   includes the 10%. Cases where the 10% uplift is not  
 7                   awarded today are so rare that the editors of the  
 8                   guidelines have chosen to drop the column which doesn't  
 9                   have the 10% uplift. In effect, therefore, what the man  
 10                  on the street sees as the right figure for damages in  
 11                  any given case is the figure which is uplifted by 10%.  
 12                  With that rather lengthy introduction, Sir Robert,  
 13                  what if any observations do you have?  
 14   **A.** Well, I mean, with respect, I disagree, and I disagree  
 15                  to this extent, that the purpose of my recommendations  
 16                  is to reflect the compensation someone might get for  
 17                  their injury. The 10% uplift in these guidelines is  
 18                  intended to reflect an obligation to pay fees out of  
 19                  those damages to lawyers.  
 20                  That, in relation to a compensation scheme, is  
 21                  perhaps an area we have yet to come to, and maybe you  
 22                  will be asking me about, but it's the actual damages --  
 23                  sorry, the compensation, in my view, should be  
 24                  completely different from any consideration as to when,  
 25                  if at all, fees should be paid to a lawyer.

4

1 So I -- and in any event, the conditional fee  
 2 agreements -- and I don't profess to be an expert in  
 3 them -- do not apply, I would have thought, to a claim  
 4 for compensation under a compensation scheme. The Act  
 5 under which such agreements are lawful relates only to  
 6 claims in court.

7 **SIR BRIAN LANGSTAFF:** Can I ask a few questions just really  
 8 because I think I know the answers, I may be wrong, of  
 9 course, but it is because those who are listening will  
 10 not be personal injury lawyers with a long history of  
 11 having had litigation under various different schemes.

12 Is the position this, that from 1990s onward  
 13 the courts in particular have become increasingly  
 14 concerned about the cost of going to law?

15 And you are nodding.

16 **A.** I'm sorry, yes. And, indeed, as have the Government,  
 17 bearing in mind that many damages cases involve the  
 18 payment of public funds.

19 **SIR BRIAN LANGSTAFF:** Legal Aid ceased to be generally  
 20 available for personal injury cases in, I think, the  
 21 mid-1990s.

22 **A.** Yes.

23 **SIR BRIAN LANGSTAFF:** And, therefore, had to be replaced by  
 24 some method of funding personal injury claims.

25 **A.** Yes.

5

1 succeeded.

2 **A.** Yes.

3 **SIR BRIAN LANGSTAFF:** And if they didn't succeed, then it  
 4 was a no win, no fee.

5 **A.** They got nothing.

6 **SIR BRIAN LANGSTAFF:** So that meant that the fees were quite  
 7 high or could be quite high, so far as the defendants  
 8 were concerned.

9 **A.** Yes. The rationale being that for the claimant's lawyer  
 10 to make a living, putting it bluntly, they had to charge  
 11 more to each client so that -- in effect to cover  
 12 the risk they had of not recovering any costs at all.  
 13 The nature of the agreement was that if they lost the  
 14 case, then they didn't get paid at all.

15 **SIR BRIAN LANGSTAFF:** So in a case where the prospects were  
 16 roughly 50/50, the costs would be double.

17 **A.** Yes.

18 **SIR BRIAN LANGSTAFF:** And that would be recovered by the  
 19 successful lawyer when they were successful and  
 20 forfeited when they weren't.

21 **A.** Yes.

22 **SIR BRIAN LANGSTAFF:** That system ceased to be approved for  
 23 various reasons relating to the increasing costs as it  
 24 seemed when, in this millennium, the matters were  
 25 revisited; is that correct?

7

1 **SIR BRIAN LANGSTAFF:** Which, in America, is done by the  
 2 lawyer taking a cut of the damages, but in this country  
 3 it was thought that the principle should be that  
 4 compensation should be 100 per cent, so the person who  
 5 was entitled to it should get everything, every penny  
 6 that they were seeking; is that correct?

7 **A.** That is correct, sir.

8 **SIR BRIAN LANGSTAFF:** The costs, however, might have to be  
 9 paid. Now, there's always perhaps an element of your  
 10 lawyer charging a bit more than your lawyer can recover  
 11 from the other side, but that was, on the whole,  
 12 marginal. The principle there being, perhaps, that most  
 13 people want to go to litigation riding in, as it were,  
 14 a Rolls Royce, whereas the system will pay for  
 15 a mid-ranking car, not necessarily a Mini but something  
 16 in between.

17 **A.** That rather depends but, yes --

18 **SIR BRIAN LANGSTAFF:** So there's always going to be perhaps  
 19 a shortfall, a smaller shortfall, which inevitably will  
 20 be paid by the claimant, or was.

21 **A.** Yes.

22 **SIR BRIAN LANGSTAFF:** However, under the system which  
 23 replaced Legal Aid, costs had to be afforded somehow.  
 24 That was by allowing the successful claimant to have  
 25 their solicitors costs paid by the other side if they

6

1 **A.** Yes. The government of the day took a decision that it  
 2 was -- too much money was being paid in this way and  
 3 that, therefore, the ability to recover that element of  
 4 the costs which related to the risk should not be  
 5 recoverable from the defendant.

6 **SIR BRIAN LANGSTAFF:** So an element of the costs now had to  
 7 be paid out of the damages.

8 **A.** Yes.

9 **SIR BRIAN LANGSTAFF:** That meant that the damages would not  
 10 be 100 per cent of what someone should have been  
 11 entitled to.

12 **A.** Exactly.

13 **SIR BRIAN LANGSTAFF:** It was recognised that problem then  
 14 needed to be sorted, and that was what, in the case of  
 15 *Simmons v Castle*, essentially the court said: well, in  
 16 this situation where there is this type of agreement, we  
 17 will add 10% on --

18 **A.** Yes.

19 **SIR BRIAN LANGSTAFF:** -- to the damages, the lump sum for  
 20 pain, suffering and loss of immunity, as it's called, in  
 21 order to cover that bit.

22 Have I got it broadly right?

23 **A.** Absolutely right, sir, yes.

24 **SIR BRIAN LANGSTAFF:** And that's where the 10% addition  
 25 comes from.

8

1 A. Yes.

2 **SIR BRIAN LANGSTAFF:** It's to make sure that someone

3 actually gets every penny they should have got rather

4 than having it taken out of the sum they would otherwise

5 have.

6 A. Yes.

7 **SIR BRIAN LANGSTAFF:** So your thesis is, well, the sum they

8 would otherwise have is actually the sum they're getting

9 under a scheme here where there isn't a lawyer involved

10 who charges a fee which needs to be recovered.

11 A. Yes. Well, as I, say it seemed to me that the issue

12 around legal representation or advice and so on in

13 relation to the scheme needs to be considered clearly

14 because it's a question, but it needs to be considered

15 separately from the award compensation, and it's for

16 that reason I suggested that, insofar as one refers to

17 these guidelines, one should take the figure without the

18 uplift and which you can get to -- I'm not sure the word

19 "simply" is one I would agree with, but by multiplying

20 the figure by the fraction that's mentioned here.

21 **SIR BRIAN LANGSTAFF:** Yes. Well, you need a calculator

22 rather than --

23 A. It's not a thing I would wish to do in my head, I have

24 to say. But then that's so with many things.

25 **SIR BRIAN LANGSTAFF:** Now, I hope those questions and

9

1 "- Accommodation

2 "- Special dietary requirements ..."

3 Then you say at 9.103:

4 "It would be possible for the scheme to allow for

5 claims under these, and indeed any head of claim where

6 the applicant can show they have incurred a loss.

7 I have already proposed that there would be a standard

8 annual sum added to the support payment to cover this

9 type of expense. It would be preferable to adopt

10 a broad approach like that wherever possible. I suggest

11 that the scheme allows for discretionary awards to be

12 made for additional expenses where the applicant can

13 show they are significantly in excess of the standard

14 annual payment. The discretion should not generally be

15 used in respect of goods and services available free of

16 charge, either through the scheme or a state agency."

17 And the reference to a standard annual sum, if we go

18 back to the bottom of page 115, you say in

19 paragraph 9.88 that:

20 "... unless they ..."

21 That is the regular payments made by the scheme --

22 the current schemes:

23 "... already exceed this figure - and some do - the

24 regular guaranteed annual payments under the support

25 schemes should be brought to a level where it equates to

11

1 answers may clarify a bit. There are at least some

2 people nodding. Thank you for that. But it may be that

3 there are further questions which have not been asked

4 which need to be asked and they can be asked later on.

5 **MS RICHARDS:** Exactly. I'm going to leave that point there

6 for now and we can pick it up in due course if required.

7 Yesterday I was asking you about the kind of

8 financial losses in terms of loss of earnings or support

9 payment, continuation as an alternative.

10 In terms of other heads of financial loss, if we

11 could have your report on screen, please, and go to

12 page 118.

13 The second heading there is "Other possible heads of

14 financial loss". You explain that:

15 "9.102 In conventional litigation, claims can be

16 made for any additional loss incurred as a result of the

17 injury."

18 Then you set out some examples which have been

19 mentioned by those who've made submissions to you:

20 "- Equipment

21 "- Transport

22 "- Holidays

23 "- Insurance

24 "- Medical treatment (not available on NHS)

25 "- Counselling

10

1 a total of the following ..."

2 The first point deals with your suggested increase

3 in the regular support payments.

4 The second is:

5 "A tax free sum in recognition of additional

6 financial losses caused by the diagnosis of HIV or HCV,

7 for example, increased or hard to get insurance cover,

8 convenient medical treatment, additional transport costs

9 etc of, say, £10,000."

10 So, if we go back to page 118, is it right to

11 understand your recommendation as follows? In terms of

12 any future losses of this kind, so not earnings but

13 other types of financial expenditure, your

14 recommendation is that the best way to deal with this is

15 by the additional annual sum, you've suggested £10,000,

16 which would cover the majority of these kinds of

17 expenses. The benefit of that presumably in part is it

18 avoids both the individual having to make detailed

19 claims potentially on an ongoing basis and it avoids the

20 scheme having to adjudicate upon those kind of detailed

21 claims?

22 A. Absolutely. I heard many stories from affected,

23 infected people about the distress caused to them by the

24 requirements of some of the previous support schemes,

25 requiring them to produce invoices for washing machines

12

1 or arguments about the types of equipment that were  
2 required, whether you could get something that was  
3 cheaper or not. Which, of course, in my experience, is  
4 unhappily reflected in litigation where claims, when  
5 they are made for this sort of thing, are often  
6 incredibly detailed and, again, require the intervention  
7 of an expert to tell you how much any of these things  
8 cost, even though in many cases perhaps they could be  
9 proved by the production of an invoice from B&Q or  
10 wherever it is.

11 So it is a yet another complicated business, and  
12 the more you descend into detail the more resource you  
13 need to put into determining the outcome, and the more  
14 time it takes for that determination. So, again, it  
15 struck me that this was an area where a broad-brush  
16 approach should be adopted, which would cover most  
17 cases.

18 Now, what the sum is -- I mean, I've mentioned just  
19 for the sake of argument £10,000. That might not be the  
20 appropriate sum, and clearly that would have to be  
21 worked out, you know, through consultation. But  
22 I predict there ought to be a sum -- when one looks at  
23 the description that I would hope the medical panel  
24 would provide of the progress of these awful diseases,  
25 the sorts of things that are typically required, that it

13

1 picture about periods of time when such things might  
2 have been needed. I mean, there might be an ongoing  
3 need or absence of insurance, and difficulties about  
4 mortgages and so on, but you would probably need to be  
5 ill to have required special equipment and transport in  
6 any great degree. So it would perhaps be possible to  
7 come up with a lump sum which would be applicable to  
8 periods where it was clear that the illness required it.

9 I'm afraid, I don't think I've descended into quite  
10 that detail in the report, but clearly there should be  
11 a reflection in the award for the expenses incurred in  
12 the past.

13 Q. So can I then -- before we leave recommendation 8, I'm  
14 just going to recap the heads of award that you have  
15 recommended for an infected person.

16 So an infected person would receive an injury impact  
17 award that would reflect physical and mental health --

18 A. Yes.

19 Q. -- including the physical and medical consequences of  
20 treatment for the infections, and that would be a lump  
21 sum that would be paid.

22 A. Yes.

23 Q. The infected person would receive a social impact award.  
24 That, as you have explained, reflects the social  
25 consequences of the infection, stigma, social isolation,

15

1 would be possible to produce the typical picture, and  
2 that's what you would expect the sum to reflect, and, in  
3 that way, it would relieve applicants, and indeed the  
4 scheme, of a great deal of complexity and need to  
5 descend into detail.

6 Q. So it's potentially both in the interests of applicants,  
7 for the reasons you have described and which I am sure  
8 many here listening will well recognise --

9 A. Yes.

10 Q. -- but also potentially in the interests of those  
11 ultimately funding the scheme, because it avoids the  
12 expense and time that would need to be taken in  
13 minute analysis of these kind of ongoing claims?

14 A. Yes.

15 Q. What, then, about past losses for -- again, these are  
16 items of expenditure which are not loss of earnings,  
17 how, if at all, should those be dealt with?

18 A. Well, of course, I have said in relation to past losses  
19 that the support payment should not be, as it were,  
20 taken into account, so that's something no doubt out of  
21 which claimants will have -- use some of that for some  
22 of these needs.

23 I think the choice there is -- I would say, again,  
24 preferably would be to think of a standard sum. But, of  
25 course, you do have, in relation to the past, a clearer

14

1 impact on ability to have a family and form  
2 relationships and the like.

3 A. Yes.

4 Q. Again, that's a lump sum payment.

5 A. Yes.

6 Q. The autonomy award, again a lump sum payment, in part  
7 picking up on the concept of aggravated damages, but it  
8 reflects issues such as -- and, as you say, there is  
9 a potential overlap in relation to the social impact in  
10 relation to matters such as family life and children,  
11 but it reflects matters such as lack of informed  
12 consent, treatment without consent and so on. So those  
13 are three lump sum elements.

14 A. Yes.

15 Q. There is then an infected person could claim a care  
16 award and that could be both in respect of past care,  
17 which would be received as a lump sum, however  
18 calculated, and then future care, which could be  
19 received either as a lump sum or as a periodical  
20 payment; is that right?

21 A. Yes, and I think one thing we have not mentioned,  
22 although it's in the report, is that that sum, as it's  
23 intended to reflect the care provided on  
24 an unremunerated basis by a relative or a close friend,  
25 would be held on trust if it was claimed by the infected

16



1 applicant for those people, which is what happens in  
 2 litigation, and it sounds terrifying, you've got money  
 3 on trust, but actually in practice it seems that  
 4 distributing the money very rarely causes contention,  
 5 although in theory it could do.

6 **Q.** We will come back to the interrelationship between that  
 7 and what an infected person might claim shortly.

8 Then the final element in relation to the infected  
 9 person is the financial loss award, past loss, the main  
 10 element of which would be -- would probably be a loss of  
 11 earnings --

12 **A.** Yes.

13 **Q.** -- and that would be received as a lump sum.

14 **A.** For the past, yes.

15 **Q.** For the past. And then a future loss --

16 **A.** Yes.

17 **Q.** -- which again could be by way of lump sum or could be  
 18 by way of periodical payments, but there one of the key  
 19 points is the continuation of the support payments. You  
 20 recommend those would continue uplifted and it may be in  
 21 practice those would reflect the equivalent of a loss of  
 22 earnings claims for individuals?

23 **A.** Yes.

24 **Q.** But those who might be able to show a greater future  
 25 loss of earnings could elect to pursue that by way of

17

1 a different origin and depend more on a relationship  
 2 with the infected person rather than the effects of the  
 3 disease itself. While I have mentioned physical  
 4 injuries the much more likely injury is a mental one,  
 5 and indeed a psychological one which may not result from  
 6 a recognised psychiatric illness.

7 "9.107 However, it is not unreasonable when setting  
 8 a general range of award to relate them to the severity  
 9 of the suffering of the relevant infected person.  
 10 I suggest that the approach taken should be for the  
 11 assessors to consider the nature of the injury, if any,  
 12 and the distress, anxiety and impact caused by the  
 13 applicant's experience of witnessing the effects of the  
 14 infection by reference to the guidelines and comparables  
 15 already referred to and identify by that process  
 16 an appropriate figure. However, the maximum payable  
 17 should be the sum the infected person either has been  
 18 awarded, or would have been awarded if they had made  
 19 a claim."

20 Now, in terms of the injury impact award that  
 21 an affected person could claim, if they had suffered  
 22 physical health consequences as a result of their caring  
 23 obligations or because -- or it could be exacerbation of  
 24 existing physical health problems because of the  
 25 witnessing the impact upon their loved one who is

19

1 an additional claim?

2 **A.** Yes.

3 **Q.** Can we then turn to recommendation 9, the claims that  
 4 could be made by an infected person -- affected person.

5 Could we have page 36 on screen, please, Lawrence.

6 We have the recommendations set out there and there  
 7 are, I think, six components to it: the injury impact  
 8 award, the social impact award, the family care award,  
 9 the autonomy award, a bereavement award.

10 Then if we go over the page, I think we have  
 11 a double (e) there, so this should probably read:  
 12 "f) a bereavement financial loss award ..."

13 Now, I want to approach this in stages, so I'm going  
 14 to ask, first, about the claims that could, on your  
 15 recommendations, be made by affected persons typically  
 16 where the infected person is still alive.

17 **A.** Yes.

18 **Q.** So in terms of the injury impact award, the first of  
 19 those, if we go to page 119, we can see this in  
 20 paragraphs 9.106 and 9.107.

21 The "Injury Impact Award", you say:  
 22 "... will be assessed in accordance with the same  
 23 principles as [you've] suggested should be applied to  
 24 the impact awards for the infected, but with necessary  
 25 differences. Clearly injury and distress have

18

1 infected, you would envisage that that would be captured  
 2 in this injury impact award.

3 **A.** Yes. As I say, there it is difficult to envisage what  
 4 range of physical --

5 **Q.** Yes.

6 **A.** -- injury would typically be caused in this way and, as  
 7 you say, it might well be through a caring obligation  
 8 and a physical injury, and I have to say that is an area  
 9 which would be an extension on what would generally be  
 10 recoverable at Common Law --

11 **Q.** Yes.

12 **A.** -- and intentionally so. But I've heard -- frankly,  
 13 I heard very little if anything about physical injuries  
 14 caused. I heard a lot about mental distress and mental  
 15 illness caused by the experience of these events.

16 **Q.** Again, importantly, and this may also be I think be  
 17 an extension of the Common Law, you are envisaging, in  
 18 terms of mental or psychological consequences, that  
 19 there would be an award for that even if there is not  
 20 a recognised psychiatric illness?

21 **A.** Yes. I recognise here that there would be a choice to  
 22 be made as to whether that should be generally speaking  
 23 part of the injury impact award or perhaps part of the  
 24 social impact award, but one way or the other I would  
 25 suggest that there needs to be recognition of that in

20

1 this very -- "remarkable" is the wrong word, but very  
2 awful and special case.

3 The law, if I can explain very briefly, generally  
4 restricts claims for mental injury caused by the  
5 experience of someone else's injury really quite  
6 strictly and you in effect either have to -- the  
7 definition has broadened a bit over the years but  
8 essentially you either have to be traumatised, if I can  
9 put it in a non-technical way, by witnessing a terrible  
10 event like an accident, but it has to be a shock, which  
11 is a sudden event, rather than what would be happening  
12 in the case here more typically an accretion over  
13 a period of time of stress and strain due to having to  
14 witness someone's deterioration and indeed death.

15 It's a moving area in the Common Law and there is  
16 more generosity than there used to be, but generally  
17 speaking it would be quite difficult to establish some  
18 of -- a claim in Common Law for some of the things  
19 I heard about, which seemed to me to have been  
20 inevitable, almost, consequences of inflicting this sort  
21 of infection on people in a family situation.  
22 Q. So here your recommendation reflects less the Common Law  
23 and more your sense of what the moral and just case  
24 requires?

25 A. Yes. And I think, for that reason, care needs to be  
21

1 let's do this as a subjective view, but I was  
2 an independent reviewer entitled to a view, but it  
3 seemed to me that there needed to be -- it would make  
4 sense for there to be a relationship between the sort of  
5 sums that were awarded and the degree of severity of the  
6 injury suffered by the infected person, because  
7 instinctively it felt to me that if the affected person  
8 was getting some sum significantly more than the  
9 infected person, then that wouldn't look the right way  
10 round, so -- and that -- I doubt you would get  
11 a psychiatrist to back that up because I am sure there  
12 can be disproportionate reactions to small -- it's  
13 a relatively minor -- and I hope no one thinks I'm  
14 disrespecting things, I'm looking at it in a comparative  
15 way, compared to a minor infection, I would just feel  
16 that -- looking at the proportionality across the piece,  
17 including those who have no such claim, that we need to  
18 be careful how much is awarded in this way.

19 Q. So that's the first element of claim for the affected  
20 individual.

21 The second is the social impact award.

22 A. Yes.

23 Q. Again, it is a similar approach to -- and similar  
24 thinking to the social impact award in relation to  
25 the --

23

1 adopted as to the level of that award because obviously  
2 the higher -- the more money that is awarded in this  
3 respect, the more difference there is between  
4 unfortunate people involved in this case as opposed to  
5 unfortunate people suffering quite similar injuries in  
6 cases, say, for instance, of a baby born with cerebral  
7 palsy needing lifetime care in -- a very demanding care  
8 obligations being imposed on a family, and I have  
9 certainly seen many such cases of serious harm being  
10 caused to parents. They can, generally speaking, claim  
11 nothing for that, and they would look askance at very  
12 large sums of money, so I sought to hint at least that  
13 there should be some recognition of that in how that sum  
14 is assessed.

15 Q. Ideally, would you envisage that it would be done again  
16 on a tariff-type basis?

17 A. Yes.

18 Q. But because the nature of the injuries there may be  
19 predominantly psychological and impact on mental health,  
20 it may be that the panel -- the medical panel which  
21 helps in drawing up some different parameters might  
22 perhaps benefit from psychiatric --

23 A. Oh, undoubtedly, yes.

24 Q. -- and psychological expertise?

25 A. Undoubtedly. But I think in addition to that, and it --  
22

1 A. Absolutely.

2 Q. -- infected person, but again you are suggesting there  
3 should be a reflection in the sense that you don't give  
4 more, and I think your suggestion is probably it should  
5 be no more than the half of the award that would be  
6 given --

7 A. And, again, that's --

8 Q. -- to the infected person.

9 A. -- a subjective view and we could discuss that for  
10 a long time. But I think for me the important point  
11 here is that, again, this would be an award you would  
12 not be able to claim in a civil claim and -- but it  
13 struck me, and I'm sure it strikes many people, that  
14 this is a very unusual area in which the stigma of the  
15 socialisation -- social isolation affects not only the  
16 infected but probably almost as much the people  
17 surrounding them, and you know, and I have seen, the  
18 accounts demonstrating that. And, therefore, it seems  
19 to me again there's a special case for that but, again,  
20 because it's not something you can recover generally,  
21 there needs to be a sense of proportion about it.

22 Q. Can we just have the full page on screen then. The next  
23 item here is "Family Care Award". Before we look at  
24 that, the recommendation, recommendation 9, included  
25 an autonomy award --

24

1 A. Yes --  
 2 Q. -- for the affected --  
 3 A. -- which doesn't appear in this list.  
 4 Q. -- but that's not here.  
 5 A. And I think that is an omission, and I think what should  
 6 have been there is a heading which basically referred  
 7 back to what I said about the autonomy award previously.  
 8 Q. Obviously, if you are seeking to capture  
 9 the interference with family and private life through  
 10 the autonomy award --  
 11 A. Yes.  
 12 Q. -- that may be something that has been very intimately  
 13 felt by family members. Again, in terms of --  
 14 A. Well, you take the parents who would probably have given  
 15 the consent for treatment of their children, who would  
 16 be directly -- feel directly responsible, quite wrongly  
 17 obviously, but understandably, for what has happened.  
 18 So I say that is a direct interference in their  
 19 family life. And to be -- I'm no expert in it but, at  
 20 least arguably, there might be a human rights claim  
 21 arising out of that. And the disruption to family life  
 22 is something which, in my view, justifies compensation,  
 23 difficult though it is to evaluate how much you should  
 24 give for that.  
 25 Q. Now, the family care award you deal with at

25

1 Q. Might it also -- in the case of where the infected  
 2 person has died, it may be more straightforward for the  
 3 affected person --  
 4 A. True.  
 5 Q. -- to make the family care award rather than have to add  
 6 it to a claim that might be made by the estate?  
 7 A. Yes, although, in terms of administration of the scheme,  
 8 clearly it would be better and less complex if care  
 9 claims were assessed in the round, because clearly they  
 10 interrelate and are interdependent on each other.  
 11 Q. Now, you have not recommended financial loss awards for  
 12 affected people. So those who may have had to give up  
 13 work or those who have not been able, for example, as  
 14 children to follow through their education with  
 15 a potentially quite a direct and obvious impact upon  
 16 their ability earn, you've not recommended financial  
 17 awards for those categories of individual.  
 18 A. No.  
 19 Q. Why is that?  
 20 A. Probably I'm betraying my experience of the Common Law,  
 21 care claims there are always measured by a cost of what  
 22 the care would be if you bought it basically, and  
 23 where -- and loss of earnings, on the whole I think this  
 24 is still the case, cannot be claimed where those exceed  
 25 that cost. The somewhat uncharitable theory behind that

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1 paragraph 9.110:  
 2 "Where a Care Award has not been made to the  
 3 infected person, Eligible affected persons as defined  
 4 should be able to claim directly for claim they have  
 5 provided free of charge to the infected person in the  
 6 past. They should not be entitled to an award for  
 7 future care, as the arrangements for this have to be in  
 8 the hands of the infected person."  
 9 This is an alternative -- in terms of past care,  
 10 an alternative to the care claim being made by the  
 11 eligible infected person. If that's not done, the  
 12 eligible affected person can claim for a degree of  
 13 compensation --  
 14 A. Yes.  
 15 Q. -- for the cost of the care they provided in the past.  
 16 A. Yes. It's a bit of a belt and braces provision because  
 17 one would envisage that in most cases the applicant --  
 18 the infected person's claim would include this. But  
 19 I have seen enough cases in personal injury to know that  
 20 families get estranged, not everyone is immediately  
 21 thought of, and sometimes people appear who have  
 22 actually given a lot of care who may no longer be part  
 23 of the family but haven't been considered. It's that  
 24 sort of situation I would envisage a separate claim  
 25 being made.

26

1 is that the injured person could have organised, if they  
 2 had the money, a sort of care, that's the value that's  
 3 been lost.  
 4 I appreciate that's not what some people are going  
 5 to feel is the case but, again, it's a question of the  
 6 extent to which this scheme should depart from Common  
 7 Law principles or not, and again it is a value judgment.  
 8 My judgment was this was an area where you are  
 9 compensating people for something that they had  
 10 voluntarily done, albeit they may feel compelled by  
 11 obligation to do it. So I understand that. But there  
 12 is an element of choice in what they have done, and  
 13 everyone's circumstances are slightly different, and  
 14 sometimes very different. And, for instance, if you had  
 15 a case where -- and you may have cases where a highly  
 16 remunerated person gives up that job in order to care  
 17 for their relatives, the question might be asked, kindly  
 18 I hope; well, you could have afforded to pay for someone  
 19 to come in to replace it, you didn't have to lose that  
 20 sum of money. That's the sort of issue one would hope  
 21 to avoid by not seeking to assess loss of earnings  
 22 claims in this field.  
 23 Q. Can I perhaps raise an issue that might be said to  
 24 explain why, in that context, that kind of question, as  
 25 you say, are posed in Common Law damages claims might

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1 not be so apt here. If one is thinking back to the  
2 1980s and to the 1990s in particular and HIV, and the  
3 stigma, the fear, the social isolation, there may have  
4 been in reality no alternative for those family members  
5 in terms of care. They would not have been able to find  
6 people who would be willing to care because of the  
7 prejudice, the discrimination, the stigma. That might  
8 be, would you accept, a reason for taking a different  
9 approach in these cases?

10 A. Well, it might be but that would probably apply to many  
11 other diseases. If you go back that far, I'm afraid  
12 I remember that having a disabled baby might carry  
13 a stigma and there wasn't necessarily a willingness to  
14 undertake those tasks there. You could say there was  
15 a shortage of carers. There probably was and probably  
16 is today people who are prepared to be paid to do these  
17 jobs. We know that is the case.

18 Again, it's a question of where you draw a line,  
19 both in Common Law, where it is called remoteness, how  
20 remote is the claim that's being made from the injury,  
21 and I think what influences that to some extent is  
22 partly a sort of policy issue, we've got to have a limit  
23 on how much by way of damages is had generally. But  
24 it's actually partly on the fact the further away you  
25 get from the direct needs of the individual infected

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1 scrutinised with some degree of care to do with the  
2 issues around choice, what was available and so on, some  
3 of which could end up being quite distressing and it  
4 would not be I think very helpful for many families  
5 for -- and if there were to be an investigation it  
6 won't -- Mrs Bloggs gave up a highly paid job in the  
7 City in order to care for the infected person, why  
8 didn't you choose Auntie Mabel who is sitting at home  
9 not doing very much? You know -- and all of which would  
10 be highly offensive to people, but I would foresee that  
11 if there was to be that sort of award there might need  
12 to be some enquiry into how reasonable the actions were  
13 which led to that loss.

14 Whereas when you are talking about care, the actual  
15 cost of care, in terms of hours and hourly rates and so  
16 on, you are establishing the actual need of  
17 an individual without much regard who actually -- in  
18 terms of its value, who provided it and you then  
19 distribute the money according to whoever provided it.

20 Q. I think it also follows from what's in your report and  
21 what's not in your report, that for the -- if we look at  
22 the "Injury Impact" section at the top of the page  
23 again, even where the affected person has suffered,  
24 let's say for the sake of argument, a recognised  
25 psychiatric illness as a result of their relationship,

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1 person, the more random are the circumstances that  
2 surround what actually happened, and it's remote in the  
3 sense that in legal terms it's thought to be not  
4 reasonably foreseeable, all these different  
5 circumstances, and it's sort of unfair to ask the  
6 tortfeasor, the person who has been negligent, to pay in  
7 this random way.

8 So that's a policy decision that the law takes in  
9 relation to those, and it seems to me that it would  
10 probably be wrong for a compensation scheme like this to  
11 take a different approach. But, again, I absolutely  
12 accept that a different view could be taken.

13 Q. I don't want to put words into your mouth, but is this  
14 a fair way to look at it: your recommendation in this  
15 respect, or the absence of a recommendation of the  
16 ability to bring a financial losses claim for  
17 the affected, reflects the approach taken in Common Law  
18 damages claims --

19 A. Yes.

20 Q. -- and the policy considerations which underpin that?

21 A. Yes.

22 Q. On the other hand, you can also see the case that can be  
23 made on moral and fairness grounds?

24 A. I can. I have to say if such claims were to be allowed  
25 I could foresee a case also being made for that to be

30

1 their caring responsibilities and so on, and as a result  
2 of that is unable to work, you are not recommending  
3 a loss of earnings claim for that category of individual  
4 either?

5 A. I haven't, but I would accept it could be considered.

6 Q. You would see that as less of a remove from the  
7 policy -- (overspeaking) --

8 A. Yes. I think all -- there are two aspects of  
9 proportionality or parity, if you like, I think need to  
10 be had in regard to all these what are in the end value  
11 judgments. One is the comparison between what this  
12 group of victims receives as opposed to the victims of  
13 other forms of health care related negligence or  
14 culpability. That's one thing.

15 But also one thing that I was extremely impressed by  
16 was that -- from the people I met and who came to my  
17 meetings, I had a very powerful sense that they were in  
18 this together and they didn't want things to be done  
19 which divided them, and the regretted that in some cases  
20 there did seem to be divisions, as inevitably there are  
21 about opinions in an area as fraught as this, and  
22 obviously people are going to receive different amounts  
23 because their circumstances are different but the wider  
24 the differences are and the circumstances affecting each  
25 family there are, there will be more division in that

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1 way.

2 While in a sense that might be a lesser point, one  
3 of the features absolutely central to this scheme is  
4 that it has to be a scheme people trust and think that  
5 overall, in terms of the entire community that has been  
6 affected in this way, is fair. So I just put that point  
7 out there.

8 So if you had, for instance, a family which had  
9 always had a modest income and, therefore, there was  
10 no -- the actual care claim was probably in excess of  
11 what they would have earned in a job, looking at  
12 a family where the, you know, fabled merchant banker was  
13 receiving a loss of earnings claim running into hundreds  
14 of thousands of pounds, so there might be a feeling we  
15 aren't all in this together.

16 Q. Just again to recap in relation to the eligible affected  
17 person where the infected person is still alive.

18 A. Yes.

19 Q. The elements of claim there are the ones we have  
20 described, the injury impact award, the social impact  
21 award, the autonomy award --

22 A. Yes.

23 Q. -- missing from this page but present in the  
24 recommendation, and the family care award, but that will  
25 represent past care, the care already given --

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1 Q. How that is then distributed may depend upon the  
2 particular arrangements and family arrangements?

3 A. It is probably worth pointing out that the care award,  
4 in those circumstances the executors or whoever else it  
5 is of the estate would, I think, be obliged to  
6 distribute those fairly amongst those who'd provided the  
7 care, and that would be independent of any dependency  
8 award we are about to come on to.

9 Q. So there's that element, and then there are the two  
10 further elements you identify here under the heading  
11 "Bereavement Award and Bereaved Family Financial Loss  
12 Award". So these are claims that are made not by the  
13 estate but by the eligible affected person. There is  
14 the bereavement award which is, as you have indicated  
15 previously when talking about it yesterday, you've  
16 suggested it reflects the award that can be made in  
17 a damages claim which, as you've said, is low, some  
18 people would regard it as --

19 A. £15,000-odd, yes. It may be a little higher now.  
20 Someone will tell me what it is, but it is in that  
21 region.

22 Q. That obviously is a one-off payment?

23 A. Yes.

24 Q. Then, if we go to the top of the next page. The  
25 "Bereaved Family Financial Loss Award", and you say:

35

1 A. Yes.

2 Q. -- because it will be for the individual infected person  
3 to make the claim for future care?

4 A. Yes. Obviously one of the purposes of a future care  
5 award is to free up these unfortunate families from  
6 having to provide so much of the work themselves,  
7 although obviously they would be free to do so and to  
8 receive by way of remuneration, if that was the  
9 arrangement, what was there.

10 Q. Can I turn then to the position where the infected  
11 person has died, unfortunately all too common  
12 a position.

13 A. All too common.

14 Q. First of all, as we alluded to yesterday, the estate of  
15 that person, so those representing, as it were, that  
16 person --

17 A. Yes.

18 Q. -- would be able to bring a claim which would encompass  
19 all the past elements that we have looked at. So it  
20 would encompass -- they would be able to bring a claim  
21 on behalf of their late husband, or whoever it might be,  
22 that would attract the injury award, the social impact  
23 award, the autonomy award and past care award and past  
24 financial loss award.

25 A. Yes.

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1 "9.112 This should be calculated as would a loss of  
2 dependency claim under the Fatal Accidents Act as  
3 described above. The claim would have to be brought by  
4 the personal representatives of the deceased infected  
5 person."

6 Again, for the benefit of those who will not be  
7 familiar necessarily with the concept of dependency  
8 claims under the Fatal Accidents Act, can you describe  
9 in a few sentences how that works?

10 A. I have attempted to do so elsewhere in the report, but  
11 essentially it is a claim made -- if we take, for  
12 instance, the children of a deceased person, who would  
13 have been expected, had their deceased person lived, to  
14 have received benefits from them which could --  
15 financial benefits, so their -- as children they would  
16 have been maintained, their food would have been bought,  
17 accommodation provided and so on, and as adults they  
18 might have had a dependency because they might have been  
19 given money to help with their education, again they  
20 might have been given money to help with their family  
21 and so on. They are quite specific in terms of claim.  
22 So there are formulae which are, generally speaking,  
23 used in personal injury claims to work these things out.  
24 What you take off a person's resources out of which they  
25 might be supporting dependents would be what they would

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1 have spent on themselves, for obvious reasons, and  
 2 you -- what -- the rest you then divvy up, as it were,  
 3 between the various dependents, if I can put it as  
 4 crudely as that.  
 5 So it is a figure, and it is invariably awarded as  
 6 a lump sum which reflects the amount of money, in money  
 7 terms, the value that a deceased person, but for their  
 8 death, would have provided to people dependent on them.  
 9 So usually children but, of course, can involve adults.  
 10 And, of course, if you have an adult who has special  
 11 needs, for instance, of one sort or the other,  
 12 the dependency claim might be higher, but it is governed  
 13 by the amount of resource that the deceased person would  
 14 have had, had they lived.  
 15 So it is a matter of starting with what their  
 16 earnings would have been, and then you take off that  
 17 what they would have spent on themselves -- and you  
 18 would include in that, if a deceased person provided  
 19 services to a member of the family, gardening, parental  
 20 care and so on, that could be evaluated as well but  
 21 there are fairly established -- or, very established  
 22 principles by which such claims are calculated, and it  
 23 struck me that the easier thing to do, rather than me  
 24 trying to reinvent the wheel, would be to use those  
 25 methodologies here.

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1 would continue in any event. But I would say, in line  
 2 with what I have said about infected persons, that that  
 3 should be taken into account, as it were, credited  
 4 against --  
 5 **Q.** Yes.  
 6 **A.** -- the dependency, and in many cases that would  
 7 probably -- it could well exceed the dependency, and --  
 8 so that being that position.  
 9 It occurs to me that there would, of course, be the  
 10 slightly complicated but not impossible indication to be  
 11 made, because the support payment is by definition  
 12 a periodical payment, and so that would have to be  
 13 capitalised in the sense of working out what the capital  
 14 value of that was, in order to see whether it is more or  
 15 less than the lump sum awardable under the Fatal  
 16 Accidents Act. But that's, you need a big calculator to  
 17 do it, but it's possible.  
 18 **Q.** But the important point, and again it just reflects some  
 19 concerns or questions that have been raised with me, is  
 20 those who are currently receiving those payments as  
 21 widows and widowers they should continue to get those --  
 22 **A.** Yes.  
 23 **Q.** -- no question of that being taken away?  
 24 **A.** No.  
 25 **Q.** Just as with the infected person, no question of their

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1 **Q.** There are categories of affected people who, under the  
 2 current support schemes, receive regular support  
 3 payments -- widows, widowers -- support payments  
 4 reflecting -- I think this is right for the English  
 5 figures, again someone can correct me, please, in the  
 6 break if I'm wrong -- for the first year 100 per cent of  
 7 the support payment?  
 8 **A.** Yes.  
 9 **Q.** That the infected person would have got and thereafter  
 10 I think it is 75%?  
 11 **A.** Yes.  
 12 **Q.** Consistent with your general recommendation that no one  
 13 should be worse off, consistent with your general  
 14 recommendation that the support payment should continue,  
 15 would it follow that that should continue and that,  
 16 therefore, those who are in that position might have  
 17 a choice, they could continue to receive those support  
 18 payments or they could bring a dependency claim but they  
 19 are likely only to want to bring a dependency claim in  
 20 terms of the future if they are going to recover more  
 21 than the support payments?  
 22 **A.** I think my answer is, yes, there is quite a lot wrapped  
 23 up in that question, if I may say so --  
 24 **Q.** Sorry.  
 25 **A.** -- but I would agree that the existing support payment

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1 support payments being taken away, but for the future  
 2 they wouldn't necessarily receive that and the  
 3 dependency or loss of earnings.  
 4 **A.** No.  
 5 **Q.** Those are the questions I want to ask about  
 6 recommendation 9.  
 7 I have no specific additional question in relation  
 8 to recommendation 10, which I think probably pulls  
 9 together a lot of what we've already discussed. We can  
 10 just go back to the text of it, for the sake of  
 11 completeness, at page 37.  
 12 So your recommendation 10 was:  
 13 "... [the] framework of tariff based compensation  
 14 ... at rates which broadly reflect comparable rates of  
 15 common law damages and other UK compensation schemes ...  
 16 assessed basis for defined financial losses. The  
 17 factors described in this report should inform the  
 18 matters for which compensation is awarded. The rates of  
 19 compensation should be based on the advice of the  
 20 independent clinical and legal panels."  
 21 So I think recommendation 10 essentially pulls  
 22 together a number of the earlier recommendations.  
 23 **A.** Yes, probably some critiques of the report should  
 24 probably say it shouldn't be a recommendation in that  
 25 form but I think it may be helpful to pull things

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1 together in that form.  
 2 **Q.** Absolutely. If we then pick up recommendation 11. So  
 3 there are three elements to recommendation 11:  
 4 "a) eligible infected and affected persons should  
 5 not be required to accept the offer of an award in full  
 6 and final settlement of any right to pursue legal  
 7 actions related to the infection ..."  
 8 So they should not be required to sign a waiver --  
 9 **A.** No, and --  
 10 **Q.** -- essentially or undertaking not to sue.  
 11 **A.** -- I made that recommendation because many -- well, not  
 12 many but there were certainly a number of people who  
 13 told me of the distress caused to them and indeed what  
 14 they saw as an interference with their choice and their  
 15 autonomy at having to -- feeling they had to make such  
 16 a waiver in order to receive what in reality were  
 17 relatively small sums in settlement and it seemed to me  
 18 that would not be the case here.  
 19 **SIR BRIAN LANGSTAFF:** I think there is also a matter of  
 20 principle, isn't there --  
 21 **A.** Yes.  
 22 **SIR BRIAN LANGSTAFF:** -- that this is a question of  
 23 entitlement not of contract --  
 24 **A.** Yes.  
 25 **SIR BRIAN LANGSTAFF:** -- whereas a settlement of a legal

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1 to litigate.  
 2 **Q.** Can I just understand with you recommendations 11(b) and  
 3 11(c).  
 4 **A.** Yes.  
 5 **Q.** So 11(b):  
 6 "any accepted scheme award should be set off against  
 7 any entitlement to damages for the same subject  
 8 matter ..."  
 9 Now, is that viewing it from the perspective of  
 10 a court assessing damages?  
 11 **A.** Yes. Well, clearly what I'm saying is that should,  
 12 having received a compensation award, an applicant  
 13 proceed with litigation in which damages were claimed  
 14 for the same subject matter? And, for instance,  
 15 a personal injury which was identical to the personal  
 16 injury included in the impact award, that that -- in  
 17 calculating any award of damages that the receipt of  
 18 that award should be taken into account, in other words  
 19 damages should be reduced by that amount.  
 20 **Q.** Just to spell that out in very straightforward terms,  
 21 I hope, if someone has received, say, £120,000 --  
 22 **A.** Yes.  
 23 **Q.** -- as their impact injury award for the infection which  
 24 they received and then they bring a claim, a legal  
 25 claim, and they are seeking general damages for pain and

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1 action is a matter of contract?  
 2 **A.** Absolutely correct, sir.  
 3 **SIR BRIAN LANGSTAFF:** And so it is not in the same position.  
 4 **A.** No.  
 5 **MS RICHARDS:** You set that out in a little more detail, your  
 6 thinking, we don't need to go to it, but in  
 7 paragraph 9.7 of your report, page 95.  
 8 **A.** Yes. Can I make one other point, which is that one of  
 9 the things I learned looking at other schemes, and again  
 10 in particular perhaps the 9/11 scheme, which was part of  
 11 the trust and confidence which was generated by that  
 12 scheme was the fact that it did not insist on a waiver  
 13 of the right to litigate on the basis that it was the  
 14 intention of the scheme so to provide something  
 15 sufficiently generous that people would not feel it was  
 16 necessary to do that, and in that case it worked I think  
 17 100 per cent.  
 18 Now, of course, you can achieve that result by  
 19 paying so much more money that it would be ridiculous to  
 20 go to court, and I'm certainly not recommending that  
 21 approach, but I do think that it makes this a more  
 22 consensual process, and one would hope that compensation  
 23 awarded would by and large satisfy people that they had  
 24 no need to litigate at least in order for the purpose of  
 25 getting damages. I can see there might be other reasons

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1 suffering, they wouldn't receive -- essentially there  
 2 wouldn't be double recovery, they wouldn't receive that  
 3 again.  
 4 **A.** No.  
 5 **Q.** The court would look at that and say: well, that  
 6 actually is as much or more what we would have awarded.  
 7 **A.** I think what is true here, which perhaps isn't  
 8 particularly apparent here, obviously it's the state who  
 9 would be providing the compensation. It might or might  
 10 not be the state who is the defendant in subsequent  
 11 litigation, but my recommendation would be whoever is  
 12 the defendant or paying party in litigation would be  
 13 able to claim, as it were, the credit for what was in  
 14 the compensation scheme where the claim was for the same  
 15 subject matter.  
 16 **Q.** But, of course, there may be elements of a claim that  
 17 could be brought by an individual through litigation  
 18 which are distinct from what is set out in your  
 19 compensation scheme, and those would be unaffected?  
 20 **A.** Yes.  
 21 **Q.** Then recommendation 11(c):  
 22 "the availability of an award under the scheme  
 23 should be a factor to which the court could have regard  
 24 when determining liability for costs in any court  
 25 proceedings related to the infection."

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1 Again, just to try to unpick and understand that, if  
 2 a person chose not to make an application to the  
 3 compensation scheme but to litigate and thereby incur  
 4 legal costs, is the suggestion that the court could but  
 5 wouldn't have to say, well, you are not going to get all  
 6 your costs --  
 7 A. Yes.  
 8 Q. -- because you could have got the same from making  
 9 an application under the compensation scheme?  
 10 A. It's already a feature of how courts award legal costs  
 11 that the court will take into account or can take into  
 12 account the conduct of the claimant, and indeed the  
 13 defendant for that matter, but here what's relevant is  
 14 the claimant, in the lead-up to the proceedings and,  
 15 therefore, it seemed to me that, in those circumstances,  
 16 say a claimant had decided not to go for an award of  
 17 compensation at all but just for damages, the court  
 18 might want to look at -- it wouldn't have to decide it  
 19 adversely to the claimant but it would want to be able  
 20 to look in justice at whether the claim could more  
 21 conveniently have been made under the scheme. But also  
 22 someone who has got an award under the scheme who then  
 23 proceeds anyway to litigate, if, for instance, they,  
 24 quote, "won" their litigation, but the difference -- the  
 25 excess, as it were, in terms of damages was really

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1 develop cirrhosis.  
 2 If their condition deteriorates to such an extent  
 3 that they do develop cirrhosis, then it becomes  
 4 a different magnitude of disease arguably, would it not  
 5 be open -- it would be open in the Common Law courts to  
 6 say, well, you've got hepatitis C at the moment, you are  
 7 receiving treatment, which appears to be effective, but  
 8 you did have hepatitis C for some long time, I can see  
 9 there is a chance that you might develop cirrhosis but  
 10 we'll pay you on the basis that you don't develop  
 11 cirrhosis but allow you to come back for a top-up  
 12 payment or rather more than a top-up payment if you do.  
 13 That's what we would call provisional damages in the  
 14 courts.

15 Why did you think such a situation, where there  
 16 would be fairly clearly -- a fairly clear, it's not  
 17 completely clear, but fairly clear demarcation between  
 18 those who do not have cirrhosis or pre-cirrhosis and  
 19 those who do?  
 20 A. Well, as I think I said yesterday, clearly that would be  
 21 an option and, as you say, it would be an option and at  
 22 the choice of the claimant in civil proceedings. I was  
 23 impressed perhaps more -- and not everyone will agree --  
 24 with the need being expressed to me for finality, and  
 25 I bear in mind that, if you take the case you mentioned,

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1 small, the court might want to look at whether it is  
 2 proportionate behaviour to bring the litigation at all.

3 So the idea of this is in general and it is not just  
 4 in this respect, but the costs regime is designed to  
 5 make people think twice and preferably a lot more than  
 6 twice before litigating in any event but particularly in  
 7 those sort of circumstances.

8 Q. So the recommendation of 11(c) only arises in the event  
 9 that somebody goes to court, and essentially it is there  
 10 to reflect that which the court can do anyway in  
 11 assessing costs?

12 A. Yes. But it removes any uncertainty as to whether that  
 13 is the case.

14 Q. Recommendation 12 related to the issue of final awards  
 15 rather than provisional, and then the second element is  
 16 the choice between lump sum or periodical payments in  
 17 relation to future loss.

18 We addressed that yesterday. I'm not going to ask  
 19 you about that further, although it may be that  
 20 Core Participants and their legal representatives may  
 21 want me to return to it, but I'm not proposing to for  
 22 current purposes.

23 SIR BRIAN LANGSTAFF: Can I ask a question then arising out  
 24 of that. It's in relation to those who suffer from the  
 25 infection of hepatitis C, who have not yet and may never

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1 it would be -- what would happen if you asked for  
 2 a final award at the pre-cirrhosis stage would be that  
 3 there would be an assessment made of the risk of getting  
 4 cirrhosis and the damages would be -- or the award would  
 5 take into account whatever that risk was, and I'm  
 6 assuming that the risk could be in some way quantified  
 7 and allow that to happen, which would mean some  
 8 people -- or it could be done on the basis of  
 9 probabilities as well, so you could say, well, someone  
 10 is probably going to get cirrhosis, don't quite know  
 11 when it might happen, or you could do it on the basis of  
 12 the percentage risk of it happening. Both approaches,  
 13 I suspect, could be possible on the basis of what I have  
 14 seen in the descriptions of hepatitis C.

15 I was impressed by the fact that so many people  
 16 spoke to me about wanting their affairs settled and,  
 17 therefore, a final award would be the way to do that.  
 18 If you have a provisional award system, as you say, you  
 19 would make an initial award, which would assume the  
 20 best, in effect, that the cirrhosis -- what would  
 21 develop from that would not happen and you would then  
 22 allow, in defined circumstances, a second claim to be  
 23 made should the unwanted occur.

24 I won't say this is impossible to solve, but the  
 25 circumstances aren't always as clear-cut as that, and

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1 you have the issue, then, you've got cirrhosis, are you  
2 going to progress to liver failure? Are you going to  
3 progress to cancer? And how many times is a person able  
4 to have provisional awards dealing with the next stage  
5 of a disease? And with other areas, do you allow  
6 a provisional award for the quite variable effects of  
7 the treatment given for a disease and so on?

8 The amount -- the number of potential disputes you  
9 could invent have, I'm afraid, in relation to what would  
10 be suitable for a provisional award and what wouldn't  
11 be, could occupy a great deal of time both of applicants  
12 and the scheme, and again it's an area where, as I said,  
13 it's a value judgment to be made, I felt that it would  
14 be better for everyone to have a one-off payment and  
15 perhaps realistically with a generous perhaps  
16 over-pessimistic view being made of their prospects in  
17 the future. That was my reasoning, it either appeals or  
18 it doesn't.

19 **SIR BRIAN LANGSTAFF:** As a matter of principle, one may ask  
20 in whose -- who is best placed to decide that it should  
21 be final? Obviously, the scheme designer, but leave  
22 that aside for the moment. You've said that what has  
23 influenced you in this has been the demand, as you've  
24 heard it, for finality in those who have spoken to you.  
25 That is the demand from the infected and affected --

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1 potential multiplicity of circumstance in which, in  
2 theory, such a provisional award could be made and  
3 almost every single case involves the prospect of  
4 changes in people's condition and as opposed to  
5 a situation where if you had a final award the scheme  
6 itself -- I mean, this may be a paymaster point rather  
7 than -- I have to look at both -- the scheme itself may  
8 never close until everyone, including the eligible  
9 affected, are no longer with us. That could be the  
10 scheme lasting a very long time indeed.

11 The resource involved in reassessment in relation to  
12 deterioration would be considerable. Individuals would  
13 be -- continually feel at least they were under  
14 surveillance having to maintain records, have intrusion  
15 into their lives in terms of subjectively in relation to  
16 whether they have deteriorated sufficiently to get  
17 another payment and so on. It introduces a great deal  
18 of uncertainty into people's lives in a way which the  
19 impression I had was people didn't want. But it is  
20 possible, but were it to happen I would firmly urge that  
21 you would have to -- I know we are asking the medical  
22 panel with a great deal but to ask them really to come  
23 up with really quite finite definitions of stages of  
24 deterioration which would make sense in relation to  
25 a provisional award.

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1 **A.** Yes, and I appreciate that it may not be the unanimous  
2 view --

3 **SIR BRIAN LANGSTAFF:** Well, if it's not unanimous, then  
4 those who wish finality would have it, those under this  
5 provisional-type -- a scheme which permitted provisional  
6 award, it -- they don't have to have it, they would have  
7 a final award, and those who wanted to come up against  
8 the later prospects could have the security, if you  
9 like, of the additional insurance policy.

10 The other aspect, of course, to finality is the  
11 paymaster. And I can see attraction -- I don't  
12 altogether know what the paymaster here might say.  
13 I can imagine that there may be two reactions. One is:  
14 well, having a provisional award means we pay less now,  
15 we pay some later, and the scheme is going to be  
16 front loaded so that it is a way of spreading -- making  
17 some of the payments later. Or they may simply say:  
18 well, we prefer a final scheme, we know exactly where we  
19 are.

20 **A.** Yes.

21 **SIR BRIAN LANGSTAFF:** But that is a matter for submissions  
22 to me in due course --

23 **A.** Yes, and obviously I know no more about what the view of  
24 the paymaster would be about that than you. But I think  
25 what worries me about allowing provisional awards is the

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1 **SIR BRIAN LANGSTAFF:** I was going to put that to you, the  
2 answer perhaps to the uncertainty, the idea of a menu  
3 which is never-ending of possibilities, that's  
4 potentially met by saying there are these circumstances  
5 where you could, if you wished, claim a provisional  
6 award and set out a limited number of circumstances,  
7 such as the example I put to you, somebody who has what  
8 is defined cirrhosis on whatever appropriate test is  
9 adopted or for that matter in medical opinion of their  
10 treating doctor requires to be put on a liver transplant  
11 list, and it may be those who have had transplants.  
12 There are three possibilities there.

13 **A.** Of course, that can be done. But I can then envisage  
14 a case where someone has -- isn't in those circumstances  
15 at all but for some maybe extraneous reasons suddenly  
16 their care needs are dramatically different to what they  
17 were before, and if we have these definitions they would  
18 not necessarily qualify for going back to court -- to  
19 the scheme for another slice of the care award.

20 They might feel they were being treated unfairly  
21 where if they couldn't do it but someone who had a more  
22 defined issue could, and that would worry me.

23 **SIR BRIAN LANGSTAFF:** So the question is the advantages --  
24 the question of principle is advantages and  
25 disadvantages of extending choice in this area.

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1 A. Yes. Of course, I recognise what could be done in  
2 theory in civil proceedings. I understand that. I then  
3 draw the distinction that we are talking about a scheme  
4 and in relation to -- I mean, I'm not saying -- if --  
5 the paymaster should be given credit for the fact it is  
6 voluntary because there is a lot of history behind that  
7 which is unfortunate, but I do think that there are  
8 potential advantages on both sides here for finality  
9 and -- but others might feel that those are outweighed  
10 by the justice of being more precise -- which is what  
11 a provisional award does, being more precise about the  
12 difference between awards. That's all I think I can  
13 say.

14 MS RICHARDS: Sir, it has just gone 11.15 and we should  
15 probably take our break.

16 SIR BRIAN LANGSTAFF: Until 11.45 in that case. 11.45 am.  
17 (11.16 am)

(A short break)

18 (11.45 am)

20 MS RICHARDS: I'm going to turn to recommendation 13. If we  
21 could have page 38 of the report. So recommendation 13:  
22 "I recommend that interest be payable on awards for  
23 past financial losses and past provision of care, from  
24 the date of infection to the date of the award, in  
25 accordance with the practice in personal injury damages

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1 rate, you haven't, I think, made a specific  
2 recommendation as to what the interest rate should be,  
3 other than referring to what the position is in personal  
4 injury claims in England, Wales and Northern Ireland.

5 A. Effectively, in personal injury claims, there is  
6 a statutory rate which is applied by reference to  
7 a formulae, which is then applied to it, and I think  
8 that's what I had in mind. But obviously greater minds  
9 than mine might have arguments to make about what the  
10 appropriate interest rate should be. But I think the  
11 principle is that it needs to be either interest or  
12 inflation, one of the two.

13 Q. So that is a decision that would have to be taken by  
14 those setting up the scheme?

15 A. Yes.

16 Q. But the starting point, the principle is that it should  
17 be built in?

18 A. Yes.

19 Q. The starting point would be to look at what the interest  
20 rates are in damages, claims, looking at both England,  
21 Wales, Northern Ireland and Scotland --

22 A. Yes.

23 Q. -- to see whether there is common ground or to the  
24 extent of any differences, and then identify the right  
25 rate.

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1 claims; alternatively, that such awards are uplifted for  
2 inflation during that period."

3 If we just go to page 121 of your report.

4 I'm not going to read aloud paragraphs 9.123 through  
5 to 9.127 but I think it's fair to say you set out there  
6 the position in relation to claims. I think that  
7 reflects the position in England Wales, possibly  
8 Northern Ireland rather than Scotland.

9 A. Almost certainly.

10 Q. You set out the arguments, as it were, for and against  
11 either an uplift or inflation or the payment of interest  
12 in 9.124 and 9.125.

13 Then over the page, at 9.126, you say:

14 "Nonetheless, I consider that the effect of  
15 inflation must be recognised either by an award of  
16 interest, or by an uplift by reference to an inflation  
17 index. This does not, however, apply to lump sums  
18 awards awarded for non-financial losses (apart from the  
19 past value of care), where the award is made at the  
20 value of applicable at the date of the award."

21 So you recommend that either -- and we see in  
22 9.127 -- this is effectively reflected in the terms of  
23 recommendation 13, interest or an uplift for inflation.

24 If the compensation scheme is put into effect and  
25 adopts this recommendation, in terms of the interest

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1 A. I think any differences should be ironed out. The same  
2 interest rate should apply --

3 Q. Yes.

4 A. -- whichever country you live in.

5 Q. So if we then turn to recommendation 14, so we go back  
6 to page 38 -- thank you, Lawrence -- this is "Interim  
7 payments".

8 Now, we looked at that obviously yesterday in terms  
9 of some of the issues of principle, the reason why you  
10 made the recommendation for an interim payment and  
11 a degree of in a sense urgency that underpins it. Can  
12 I just ask you there a little bit why you express the  
13 recommendation in the way that you did in terms of its  
14 scope.

15 So if we go to page 122. You've set out -- again,  
16 I'm not going to read through the pages but they are  
17 there for those who want to read the report or re-read  
18 the report at 9.128 through to 9.137.

19 The recommendation is the making of interim payments  
20 to infected individuals -- eligible infected individuals  
21 who are alive; is that correct?

22 A. Yes.

23 Q. Why does your report not recommend interim payments to  
24 the estates of those deceased? At least those who are  
25 already known to the scheme and, therefore, there's no

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1 eligibility issues?

2 A. I recognise that making an interim payment in advance of

3 the scheme being set up was undoubtedly an exceptional

4 measure and justifiable by reason of the urgent need of

5 a particular group of people, and to my mind those were

6 the eligible living infected claimants. And, of course,

7 again it could be extended. And that was the need.

8 Whereas the calculations required for those who were

9 no longer with us, firstly, I have not extended the

10 suggestion to the living affected --

11 Q. Right.

12 A. -- and again in part that is due to -- I mean, I'm not

13 for a moment saying there aren't people in all

14 categories who have, as it were, an urgent need for

15 money, but part of it is due to how simple or otherwise

16 it is to determine what would be an appropriate amount

17 to award actually. The thing about an interim payment

18 is that you don't want to pay more than -- I mean, in

19 the extreme case you don't want to pay more than what it

20 turns out a person is entitled to because that leads to

21 obvious complications. And in the court setting an

22 interim payment will generally speaking be no more than

23 the very minimum that someone might be expected to get

24 in a particular circumstance, and so there is already

25 a heavy discount involved in that.

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1 leave those who receive no support at all, an example

2 might be parents who's child died or children in some

3 cases died, waiting longer for any form of compensation

4 and that may in fact -- they may never live to see that,

5 bearing in mind that they may be of an older generation.

6 Any reflections on that?

7 A. As in so many areas of this there are lines, it seems to

8 me, one has to draw. The claim made by a parent would

9 be of necessity a less certain claim than one for

10 an eligible infected living person. Therefore, the

11 assessment of that, it would be very difficult I think

12 to identify a common figure which could be awarded to

13 all cases. This has to be a common figure because, by

14 definition, the scheme is not in existence. We haven't

15 gone through the medical panel issues, the legal panel

16 issues, we haven't got assessors, so we are dealing with

17 something that needs to be a very generalised payment in

18 terms of what it is.

19 I'm obviously making a suggestion about the amount

20 but whatever the amount is and the more people you

21 include in the category, the lower the general shared

22 amount is going to be, by definition, I think logically.

23 Q. Might it be said the longer it takes for the government

24 to respond to your report -- and, of course, at the

25 moment there is no response -- and assuming that there

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1 It does seem to me that both for the living affected

2 and the deceased infected, firstly, without wishing

3 to -- understanding the dangers of over-generalisation

4 the needs are not so urgent. The urgency of the need

5 I identify for the eligible living infected is that many

6 of them are worried about dying before they have any

7 idea whether they are going to get compensation or not

8 and not being able to settle their affairs. That is not

9 a need, a shared -- in quite the same way by the estate

10 by someone who has already died or by an affected

11 person.

12 So I start with the point of view that this is

13 utterly exceptional with the idea that you have

14 an interim payment before the scheme is set up and the

15 rules are explored and known, but happily there is

16 a means by which such payments can be made already

17 because there are support schemes. There is

18 an administration. There is an identity available as to

19 who is eligible and, therefore, it's partly the ease of

20 identification and also partly because of the very

21 striking need of this very narrowly defined -- quite

22 narrowly defined group of people.

23 Q. Can I just explore one or two additional points with you

24 arising out of that. By only making interim payments to

25 those infected who are still alive, that may continue to

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1 is ultimately a response which says there will be some

2 kind of scheme, the longer it takes to set up a scheme,

3 the stronger a case might be for a wider range of

4 interim payments precisely so that the kind of

5 categories of individuals who I've given an example of

6 don't die still waiting for something?

7 A. I think you could make a case of varying degrees of

8 compelling -- necessary compulsion for virtually

9 everyone who could make a claim. There's no doubt that

10 everybody who aspires to receiving compensation will

11 want the matter settled as soon as possible. That's

12 part of the underlying reason for many of the

13 recommendations I've made.

14 What I'm seeking to address here is a very

15 particular need. I would agree that the longer it takes

16 for there to be a response, the urgency in relation to

17 the group I've identified gets greater. There's no

18 doubt, by definition. And I'm not sure I could say that

19 applies -- there is an existing need to settle things

20 that everyone else shares, but I'm not persuaded myself

21 that that falls into -- that more people then fall into

22 this category.

23 And, as I said, the wider you draw the category, the

24 less easy it will be for the government, I suspect, to

25 identify what they would consider to be the appropriate

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1 figure to pay. So, actually it might be slightly  
2 self-defeating in the sense that they talk about  
3 complexity, and I acknowledge there is complexity in  
4 everything in this report, as your question  
5 demonstrates, and the idea of this was that it would be  
6 something that -- maybe I'm being naive, it should be  
7 quite simple to make a decision about, can I put it that  
8 way?

9 **Q.** The figure of £100,000 for the interim payment for those  
10 who you've recommended should receive it and, as  
11 I understand it, reflects an assessment of that's  
12 a proportion of what people are likely to get and so  
13 there shouldn't be an issue. If you pay that you are  
14 not likely to have to be in the situation of having  
15 overpaid them?

16 **A.** Yes, and I will be the first to admit that my attempt to  
17 produce a figure was not based on a hugely sophisticated  
18 calculation but I did take into account what looked like  
19 a potential and arguable range of awards for the impact  
20 award and really it is around that and perhaps the  
21 autonomy and so on that we are talking about here.

22 But the idea -- my idea was that it would be  
23 a significant -- an award no one could say was not  
24 a significant sum of money but was likely to be one  
25 which most, if not all, infected applicants would

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1 if the reality is the money will be going to elsewhere,  
2 it may be going to affected people, but not necessarily,  
3 when it goes to the estate, there will be all sorts of  
4 issues arising as to who should receive the money from  
5 an estate, and it would, in my view, be better if all  
6 that were sorted out as a complexity in one go rather  
7 than several goes.

8 **Q.** I anticipate there may be some further questions that  
9 people will want me to ask in relation to that but  
10 I will wait and see, rather than ask you anything  
11 further on recommendation 14 at this stage.

12 Could we go then to recommendation 15, which is  
13 page 38. Thank you, Lawrence.

14 We can go through, I think, some of it pretty  
15 quickly but there are a handful of points I wanted to  
16 just explore further. The first point is:

17 "a) in assessing compensation ... no account should  
18 be taken of any past payments made under the support  
19 schemes or their predecessors."

20 As I understand it, that includes any past payments  
21 made from the Macfarlane Special Payments No. 2 Trust,  
22 which was the amounts paid following the  
23 1990/1991 settlement of the HIV Haemophilia Litigation?

24 **A.** Yes.

25 **Q.** So those are to be excluded -- sorry, no account taken

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1 reasonably expect to get either that or more or  
2 something close to that, and I would hope that there  
3 might be a group of people for whom that would be  
4 sufficient. I mean, clearly it wouldn't be sufficient  
5 for many but for them it would be a start and it would  
6 put money in their hand, which would enable them to make  
7 choices, to increase -- remedy some of the issues around  
8 autonomy and in particular, of course, to enable them to  
9 start thinking in terms of how they would dispose of  
10 their assets to others upon their death, but actually  
11 rather -- even more important than that, what they could  
12 do for themselves was clearly, they say, the first  
13 priority.

14 **Q.** If there were to be an interim payment to the estates of  
15 those who have died, those who were infected and died,  
16 leaving aside what you've said about the difference you  
17 saw in terms of the immediacy of need but if there were  
18 to be, presumably it could, in terms of the magnitude of  
19 it, be along the same lines, because the estate claim is  
20 unlikely to be less than the figure that you have  
21 identified as an interim payment?

22 **A.** I agree with that but then I'm talking here about, as  
23 I repeat, an exceptional measure, and the need of  
24 the injured individual, by definition, sadly, no longer  
25 exists, and therefore, if we are then talking about --

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1 of those either?

2 **A.** Yes.

3 **Q.** Then:

4 "b) the current annual payment under the support  
5 schemes should be continued (or merged into the  
6 compensation scheme) and guaranteed for life, by  
7 legislation or secured government undertaking."

8 Just picking up that point of undertaking, you have  
9 suggested that one way of giving that security is  
10 a formal undertaking by Her Majesty's Government that  
11 these will continue for life?

12 **A.** Yes. I received a very strong message that, firstly,  
13 people wanted these payments to continue, but one of the  
14 things they worried about was the security and assurance  
15 that they would continue. Because there was no -- well,  
16 the difficulty being, governments -- except by this  
17 method -- just because one government has said they are  
18 going to continue something, you might have seen in  
19 a number of other fields, doesn't mean the next  
20 government is going to do the same thing. That is the  
21 feeling of the people. But, for instance, the  
22 periodical payments that are made in damages cases are  
23 secured by a government undertaking, and whether that  
24 requires rules or legislation I will leave to others but  
25 it is possible for that to happen. Clearly,

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1 exceptionally, it should happen here. It doesn't in  
 2 relation to any form of social security, which, as we  
 3 know, the rules can change from government to  
 4 government, but this, it seems to me, is a support  
 5 payment that -- where there should be a guarantee for  
 6 life, in the same way, in effect, there is for our  
 7 pensions.

8 **Q.** When you say the payments under the support schemes  
 9 could be merged into the compensation scheme, does that  
 10 effectively mean the compensation scheme, the arm's  
 11 length body, would take over the administration of the  
 12 existing -- (overspeaking) --

13 **A.** Yes, I have been fairly sketchy by design, if not  
 14 encouraged, I think, really, by the terms of reference  
 15 to go into the weeds of the administration, but it does  
 16 seem to me that if it the support payments are to  
 17 continue and there is going to be a compensation scheme  
 18 and there is going to be a relationship between the two,  
 19 it makes sense for the administration of both to be  
 20 shared.

21 **Q.** We have already, I think, addressed  
 22 recommendation 15(c), the taking into account  
 23 of payments for the future in terms of assessing future  
 24 financial loss or care provision, and I don't propose  
 25 to ask you anything further at this stage about

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1 apply to the annual payments that continue to be made  
 2 under the support schemes, or their equivalent under  
 3 the compensation scheme."

4 Is there a contradiction between paragraphs 9.90 and  
 5 10.10 or have I misunderstood?

6 **A.** I don't think there is a contradiction. This is about  
 7 recognising and accepting the continuation of this  
 8 exemption in terms of the account to be taken of support  
 9 payments, in relation to other state benefit, as  
 10 I understand it.

11 What I'm talking about in the recommendation that  
 12 you looked at is a slightly different issue, which would  
 13 be subject to this exemption I think, that where there  
 14 are other benefits -- so, for instance, income support,  
 15 which is independent of anything to do with infected  
 16 blood, or there are social security issues around that,  
 17 that those should be taken into account in the same  
 18 way -- sorry, there should be a clawback in relation to  
 19 that in the same way as there would be in a personal  
 20 injury claim. So, in other words, we don't take account  
 21 of payments that are being made to do with the infected  
 22 blood but there will be people who receive payments who  
 23 have nothing to do with this at all, they may have been  
 24 on support in any event. So that's what I'm seeking to  
 25 address. Whether I have expressed that sufficiently

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1 (e) and (f), tax, but I do want to ask you a little more  
 2 about the position in relation to benefits.

3 Could we go to page 116.

4 So, at paragraph 9.90 you say -- and this is having  
 5 set out, as we have seen, your recommendation of  
 6 an uplift in the annual support payments and the  
 7 tax-free sum for additional financial issues -- you say  
 8 at 9.90:

9 "I recommend that in exchange for the lifetime  
 10 guarantee of this increased annual sum, uprated annually  
 11 for inflation ... such payments should be taken into  
 12 account in the assessment of entitlement to any means  
 13 tested state benefits. The payments should still be  
 14 disregarded against any entitlement to non-means tested  
 15 benefits such as disability living allowance."

16 Then if we could turn to page 129, you set out in  
 17 paragraph 10.10 the current position, which is:

18 "... a range of means-tested benefits administered  
 19 by the Department for Work and Pensions (DWP) discount  
 20 infected blood scheme payments for the purposes of  
 21 calculating a beneficiary's income or capital ..."

22 Then you set out the DWP benefits to which the  
 23 exemption relates.

24 Then you say that:

25 "[You] recommend that this exemption continues to

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1 clearly is for others to judge, but that's what I'm  
 2 trying to get at.

3 **Q.** Again, it may be --

4 **A.** Can I just explain, where in a personal injury's claim  
 5 an award is made of damages, say for loss of earnings,  
 6 but it is required in every single personal injury case  
 7 that the Department of Work and Pensions is asked for  
 8 a certificate as to what has been received by way of  
 9 defined benefit, and there is a list of them in the last  
 10 I think it's three years, it may be five years, it's  
 11 a period, and then that can be reclaimed by the  
 12 Department and in effect is reclaimed out of the  
 13 damages. So that is what I'm suggesting. But clearly  
 14 in this case it would be subject to the exemption that  
 15 applies to anything that's in these regulations or any  
 16 similar regulations which exempt those being taken into  
 17 account for the purposes of those income support and  
 18 other benefits.

19 **Q.** So in terms of any current exemptions, you are not  
 20 suggesting that should change?

21 **A.** No.

22 **Q.** Can I then move to recommendation 16 through to 19.

23 So page 39, please, Lawrence.

24 Sir, I just to read them out and then I want to pick  
 25 up, again, on a handful of issues relating to them.

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1 Recommendation 16, the recommendation of the:  
 2 "... Arms Length Body ... to administer the  
 3 compensation scheme, with guaranteed independence of  
 4 judgment and accountable directly to Parliament for the  
 5 expenditure of public funds and the fulfillment of its  
 6 terms of reference ..."

7 A. Yes.

8 Q. Then you identify four aspects of process:

9 "a) ... regard to the need of applicants for  
 10 simplicity of process, accessibility, involvement,  
 11 proactive support, fairness and efficiency;

12 "b) ... a review and independent, preferably  
 13 judicially led, appeal process."

14 I'm sorry, a review process and an appeal process,  
 15 I think that means.

16 A. Yes.

17 Q. "c) involve potentially eligible persons and their  
 18 representatives in the review and improvement of the  
 19 scheme, for example, by way of an advisory forum;

20 "d) has access to the records held by or on behalf  
 21 of any previously publicly funded support scheme."

22 So that is the basis for the scheme.

23 If we then just look at 17, you suggest it should  
 24 include provision of support services:

25 "a) an advice and advocacy service, supplemented

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1 Pausing there, are there two features that one draws  
 2 from this and from the contents of your report?  
 3 Firstly, that the compensation scheme, whatever form it  
 4 takes, whatever the levels might be, should be a UK-wide  
 5 scheme?

6 A. Yes.

7 Q. There should be parity between the four nations and none  
 8 of the disparity that we've previously seen?

9 A. Yes, and it follows on from the developments really in  
 10 the support scheme, which has been a move towards --  
 11 although I don't think it's perfect yet -- a move  
 12 towards parity between the nations.

13 Q. And so --

14 A. And it is, to answer your question directly, to be  
 15 a UK government funded scheme.

16 Q. So the same across all parts of the UK, but it may be  
 17 administered locally, so there might be, in terms of the  
 18 way in which -- that then UK-wide scheme is delivered  
 19 and there may be assessors in England, assessors in  
 20 Wales, assessors in Scotland, assessors in Northern  
 21 Ireland, so there is still a degree of local connection  
 22 and support?

23 A. Well, I looked at this really from the applicant's point  
 24 of view, where it seemed to me absolutely essential that  
 25 they have a local -- that service of this compensation

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1 where necessary by discretionary access to independent  
 2 legal advice and representation, to assist and advise  
 3 applicants."

4 Just pausing there. Where there is a necessity for  
 5 discretionary access to independent legal advice and  
 6 representation, that would be funded by the scheme?  
 7 That's how I have read this, but I just wanted to check.

8 A. Oh, sorry, yes.

9 Q. Then:

10 "b) a financial and advice and support services to  
 11 assist recipient in the management of awards and in  
 12 accessing financial services; and

13 "c) facilitation of access to appropriate health,  
 14 care and counselling services."

15 We may want to come back to that.

16 "Recommendation 18:

17 "... the compensation scheme should be delivered  
 18 locally within each devolved nation. Consideration  
 19 should be given by the UK and devolved governments to  
 20 entering an agreement under which either a partnership  
 21 board is created to oversee the compensation scheme's  
 22 ALB, into which the administration of the local support  
 23 schemes be merged, or the ALB commissions or delegates  
 24 the local administration of the compensation scheme to  
 25 the devolved support schemes."

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1 scheme is delivered to them locally and, in many cases,  
 2 as I have already indicated, personally. And I was very  
 3 struck by the value that was placed by many people  
 4 I saw, particularly from Scotland, because there were  
 5 a lot of people from Scotland, but also from Ireland and  
 6 Wales, that they appreciated that local connection and  
 7 the ability of locally-based administrators to  
 8 understand the context in which people were coming to  
 9 them. I think that, therefore, is really important.

10 And, you know, if we are talking about England,  
 11 obviously it is a larger place and one would imagine one  
 12 would have to make a decision, if you were administering  
 13 it, whether you would have more than -- the ability to  
 14 access service from cities other than London, frankly.

15 Q. To what extent, if at all, have you considered whether  
 16 the implementation of this scheme would have to be by  
 17 legislation?

18 A. I suspect that certain aspects of this will require at  
 19 least some form of regulation. I have not, deliberately  
 20 not, considered that in detail. And the reason I have  
 21 done that -- not done so as it seemed to me much more  
 22 important to work out, first, what are the leads of the  
 23 scheme and then to decide what would be required by way  
 24 of legislation or regulatory change to bring that about.  
 25 I mean, obviously schemes demonstrably are brought about

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1 without legislation but many do have it and, of course,  
 2 legislation is one good way of ensuring that something  
 3 stays permanent and doesn't disappear with the next  
 4 government round the corner.  
 5 **Q.** Now, in terms of arm's length bodies, there is more than  
 6 one kind of arm's length body.  
 7 **A.** Yes.  
 8 **Q.** And so -- I mean, I can think of certainly three types.  
 9 There may well probably be more. There is  
 10 a non-ministerial department, an executive agency and  
 11 a non-departmental public body. Would it be right to  
 12 understand that what you are advocating is something  
 13 which is as independent from and institutionally  
 14 separate from government as possible?  
 15 **A.** Yes. I think I'm probably inclined towards the last of  
 16 those.  
 17 **Q.** Yes.  
 18 **A.** Just to give some concrete examples, and I suppose it's  
 19 my own personal experience, a lot of my practising life  
 20 was spent dealing with the General Medical Council.  
 21 I now sit on the board as a non-executive director of  
 22 the Care Quality Commission. Those are bodies which  
 23 are -- one might describe as fiercely independent but  
 24 funded by the government. In the case of the Care  
 25 Quality Commission is potentially subject to government

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1 support service that's a complex operation which I think  
 2 requires an arm's length body.  
 3 **Q.** In relation to some of the history of the schemes, one  
 4 concern that's been raised in the past, for example in  
 5 terms of appointments to the Macfarlane Trust, is the  
 6 extent to which these were appointments of trustees made  
 7 by the Department of Health.  
 8 Would it be important to ensure that the  
 9 appointments that are made to the arm's length body are  
 10 as independent as possible, potentially with the  
 11 involvement of the commission of public appointments or  
 12 something along those lines?  
 13 **A.** Yes, I think it's difficult to conceive of a situation  
 14 where the appointments aren't made by or on behalf of  
 15 the government, but one can certainly have appointments  
 16 that are supervised by the commission, as you've  
 17 mentioned. I mean, in one sense, you know, the judges  
 18 of this country are appointed via a Judicial  
 19 Appointments Commission but the government is involved,  
 20 but I think there's quite a strong history in this  
 21 country of independently minded people being appointed  
 22 to lead both as non-executives and executives this sort  
 23 of operation.  
 24 Of course, the principles of -- the Nolan principles  
 25 and all the rest of it need to be imported into these

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1 direction, but not in relation to its operational  
 2 judgment. So it is that sort of body I would think.  
 3 And, of course, that is -- there is undoubtedly in the  
 4 expense and resource implication to the setting up of  
 5 a body like that, as opposed to having, say,  
 6 a department within the Department of Work and Pensions,  
 7 but it does seem to me that the history of this matter  
 8 and indeed, however hard we try, the complexity of what  
 9 is required here does require that sort of organisation,  
 10 hopefully not overwhelmingly expensive in terms of what  
 11 it does. But it would have a limited remit.

There is often a fear about arm's length bodies that  
 they grow like fungus and start taking over more and  
 more things, but this is a very specific thing, and  
 indeed could be possibly one almost might identify  
 a limited life for it. In other words, it's not  
 something that would necessarily go on forever because  
 the need -- sadly the need for this will at some time  
 stop. And indeed that time could come -- once the  
 assessments are done and everything has been finalised,  
 the actual administration of payments, for instance,  
 might well be -- at that stage be something an arm's  
 length body wouldn't be required to deal with. But at  
 the stage of assessment, determination of awards, the  
 provision of the advice advocacy and other forms of

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1 appointments and they need to be transparent  
 2 appointments, and there needs to be -- in my view, there  
 3 would need to be or should be involvement of, as it  
 4 were, a consumer/customer interest in it as well, in  
 5 terms of the board at least.  
 6 **Q.** You recommend in recommendation 16 the involvement of  
 7 the potentially eligible individuals and their  
 8 representatives, for example by way of an advisory  
 9 forum. Would you support, for example, representation  
 10 from some of the existing bodies who represent the  
 11 infected and affected or at the very least their close  
 12 involvement in the work of the advisory forum?  
 13 **A.** I don't think I would wish to go further than saying  
 14 that it's important that those who have lived experience  
 15 of these conditions and those who advise them should be  
 16 involved and consulted in the design of whatever the  
 17 service is going to be.  
 18 **Q.** In terms of the appeal process, and you've said it  
 19 should be independent, preferably judicially led, and  
 20 I think there may be above some discussion yesterday  
 21 which picked up on the possibility of the Tribunal  
 22 Service performing some function in that regard --  
 23 **A.** Yes.  
 24 **Q.** -- one of the issues again that's arisen with various  
 25 incarnations of previous schemes has been the lack of

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1 an oral hearing. Would you regard an oral hearing as  
 2 an important part of the process to ensure the full  
 3 involvement of the potential --  
 4 A. Are we talking about the appeal?  
 5 Q. The appeal.  
 6 A. Well, if it was an appeal -- I'm thinking of something  
 7 either similar to judicial review or something coming  
 8 through the Tribunal Service, which, unless I'm wrong,  
 9 which I could easily be, would automatically involve  
 10 an oral hearing. The nature of that hearing must depend  
 11 on what the remit of the appeal was. Not all appeals --  
 12 some appeals are about the propriety of a process as  
 13 opposed to looking deeply into the merit. I would see  
 14 the review being at the stage more where there might be  
 15 a rehearsal of the evidence, if you like, as opposed to  
 16 the reasons for the decision, which is what an appeal  
 17 tends to be about.  
 18 What I would like to see avoided if at all possible  
 19 is a process of what would seem to the applicants of  
 20 perpetual litigation before they get to a determination.  
 21 Q. Recommendation 19 I didn't refer to but if we go back,  
 22 page 40 -- thank you, Lawrence, you're ahead of me on  
 23 all of these:  
 24 "I recommend that the proposals for the design and  
 25 administration of the Scheme, contained within this

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1 accountability to Parliament, because this is, frankly,  
 2 something very novel and also, there is no doubt about,  
 3 I'm afraid, expensive in terms of taxpayer's money, but  
 4 as it's novel, as it progresses there is likely to be  
 5 learning about how things could be improved and there  
 6 should be, as it were, a Parliamentary input to that as  
 7 well as input from everybody else, and it seems to me  
 8 that if there's the obligation to report, and I think it  
 9 would be the arm's length body itself doing that report,  
 10 there would be a forum within which, you know, issues of  
 11 where people were dissatisfied could be aired and  
 12 improvements made.  
 13 Q. Then picking up on recommendation 17 again, and the  
 14 reference to support services.  
 15 If we go to page 139, please.  
 16 So this is the issue of legal support.  
 17 Again, this is a matter which, I think for the very  
 18 reasons you articulate here, is a matter of some  
 19 importance, of concern to those present.  
 20 So you say:  
 21 "It is inevitable that the scheme be complex for  
 22 many applicants to understand, to prepare their case for  
 23 compensation and to respond to an offer or assessment of  
 24 compensation. If, as they did, the Home Affairs  
 25 Committee considered the Windrush scandal victims

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1 report, should be reviewed by the Government in the  
 2 light of the findings and recommendations of the  
 3 Inquiry, and thereafter, on a periodic basis and  
 4 reported on to Parliament."  
 5 If we leave aside the findings and recommendations  
 6 of the Inquiry because that obviously triggers -- likely  
 7 to trigger an obligation on the government to consider  
 8 what the Inquiry reports, what did you have in mind in  
 9 terms of periodic review and reporting to Parliament?  
 10 A. Well, in part this is covered by the arm's length body  
 11 recommendation because, as you will recall,  
 12 I recommended it should be accountable directly to  
 13 Parliament, by which I mean rather like the Care Quality  
 14 Commission or indeed the General Medical Council,  
 15 a report is sent annually to Parliament and the  
 16 accountable officers are summoned to give evidence to  
 17 select committees about the performance, sometimes in  
 18 quite robust terms. But it is a safeguard against one  
 19 of the things that I note some people are concerned  
 20 about, which is, as it were, the biased interference, as  
 21 they would see it, of the government or departments of  
 22 the government in the performance of this -- what would  
 23 then be an obligation.  
 24 So I'm really suggesting that in addition to the  
 25 performance, as it were, of the body and the

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1 required legal support, it is difficult to see how the  
 2 same conclusion cannot be reached for the victims of the  
 3 infected blood scandal."  
 4 And you set out a number of reasons why that might  
 5 be the case, and you outline the kind of advice and  
 6 assistance at different stages that individuals might  
 7 need in order to be able to access the compensation  
 8 scheme fairly.  
 9 If we go then to paragraph 12.2, the next paragraph,  
 10 you say it could be provided in one, or both, of two  
 11 ways: "support unit staffed by lawyers and paralegals".  
 12 So part of the scheme but independent of those  
 13 undertaking the assessment; is that right? Is that what  
 14 the first bullet point --  
 15 A. Sorry, could you repeat that?  
 16 Q. The reference there to a "support unit staffed by  
 17 lawyers and paralegals", you say there that's part of  
 18 the scheme but independent of the general scheme of  
 19 administration --  
 20 A. Yes.  
 21 Q. -- so that would be lawyers and paralegals who would be  
 22 separate from those doing the assessment?  
 23 A. Yes.  
 24 Q. So that is one way of doing it. Another way would be  
 25 "independent lawyers".

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1 A. And, I should say, the independent -- the internal unit,  
2 I think, was something that -- again going back to  
3 the 9/11 scheme they had, although I'm bound to say that  
4 was made easier, remarkably, by the fact that no lawyer  
5 charged a fee for what they did, which is one of the  
6 reasons for the success of the scheme.

7 I have no expectation that the lawyers doing the  
8 same thing here and I wouldn't criticise them for not  
9 doing it.

10 Q. And you say in relation the second bullet point, last  
11 sentence, you recommend:

12 "... consideration be given to including all the  
13 RLRs [recognised legal representatives] at the Inquiry  
14 on the panel, but there may be other firms who can  
15 demonstrate appropriate competence."

16 Or:

17 "A combination of the two."

18 A. Yes.

19 Q. The point I have been asked by a number of groups of  
20 Core Participants it's more to emphasise, than as  
21 a question, but picking up on that it's to say that  
22 there are many who have built up a long-standing now  
23 relationship with their legal representatives who have  
24 a knowledge of their own particular circumstances, the  
25 history and the background, which would make securing

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1 things and the investigations required might be much  
2 longer.

3 Q. That completes what I wanted to ask you about the -- for  
4 present purposes in any event -- the recommendations  
5 themselves. I've just got a handful of other points  
6 that have been suggested to me, which I haven't picked  
7 up on along the way.

8 One of the features of the scheme that we've  
9 discussed and that you've referred to in your report is  
10 that for some aspects of the compensation there might be  
11 the tariff payments, but there might be circumstances in  
12 which there should be a more bespoke assessment in  
13 certain respects. Would that be a choice for the  
14 individual, do you think?

15 A. I would envisage that being a choice for the individual  
16 but with perhaps a backstop safeguard that there needs  
17 to be some grounds for moving to a bespoke assessment.  
18 I mean, this scheme is going to be difficult enough as  
19 it is, but it's going to be challenged in its ability to  
20 deliver what it has to do if every claim has to be  
21 bespoke. If that's the position, then there would be  
22 a heightened risk of this scheme not satisfying its  
23 objectives and you might be inclined to go to the  
24 alternative, which is the Republic of Ireland situation  
25 with all the disadvantages that might have in terms of

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1 representation by their existing legal representatives  
2 something of some importance to them.

3 A. I understand that.

4 Q. And presumably, potentially, also of practical  
5 assistance to the scheme, because you wouldn't have  
6 lawyers who were new to this and having to reinvent  
7 the wheel?

8 A. Well, indeed. I -- there is often amongst those who  
9 have to pay out money, whether it be insurance companies  
10 or others, a bit of a distrust about lawyers  
11 representing people who are claiming money off them, and  
12 sometimes that is justified but, actually, more often  
13 than not the intervention of a lawyer assisting  
14 a claimant who is familiar with the background and so on  
15 saves everyone time and can save money.

16 Obviously there need to be safeguards. This is  
17 an area, I'm afraid, where, to protect individuals from  
18 perhaps being exploited by slightly less scrupulous  
19 lawyers, I'm not saying there are many of those but they  
20 do exist, and we have seen that in other fields, so --  
21 but I think this is an area where actually the scheme  
22 itself could well be assisted by someone who is able to  
23 formulate a claim and articulate it in a way the scheme  
24 understands, whereas the claimant acting on their own  
25 might not and, therefore, the time taken to process

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1 the time taken to undertake assessment.

2 I think there would need to be a bit of  
3 a conversation about why you might be better off --  
4 significantly better off with a bespoke assessment.  
5 I think while there may be a choice about raising the  
6 issue, I'm not sure I would advocate that it is -- the  
7 claimant's view is completely determinative.

8 Q. There will be clearly instances in which, whether it is  
9 to establish eligibility or to elucidate the claim  
10 itself for one aspect or other of the compensation  
11 awards, where individuals are going to need to either  
12 collate medical information from their records or  
13 potentially have in some instances medical reports,  
14 although, as I understand, your recommendation, medical  
15 reports are not an integral part of the scheme, indeed  
16 to some extent you are trying to avoid that. But if  
17 there is a need in an individual case to get a medical  
18 report or obtain medical records, would it be right to  
19 understand that your expectation is that the costs of  
20 doing it will be borne by the scheme?

21 A. Well, in terms of expert reports, while obviously one  
22 with the scheme could not stop applicants getting such  
23 reports and then the scheme would be expected to take  
24 those into account, I think I would expect in addition,  
25 as it were, to the medical panel solution it seems

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1 almost inevitable to me that administratively the scheme  
2 would require its own access to ongoing medical advice  
3 in some cases, and I would have thought if we adopt  
4 a genuinely collaborative approach about this that that  
5 might be sufficient and perhaps a more economical way of  
6 dealing with it than a lot of independent experts being  
7 instructed by individual claimants, but I think one  
8 would have to test that by experience.

9 So I think what that boils down to is that the  
10 scheme would have to retain a discretion as to whether  
11 or not it was prepared to fund an independent expert,  
12 given the merits of an individual case.

13 Q. If the scheme or the assessor within the scheme were  
14 accessing medical advice or medical input perhaps from  
15 their own panel or otherwise, would you agree that that  
16 would have to be shared with the applicant?

17 A. Oh, definitely, yes.

18 Q. Again, that is one of the historic concerns.

19 A. Any decision it effectively made or -- would come with  
20 it a need for transparency about the material upon which  
21 that decision was made.

22 Q. Then if we just go back to recommendation 16(d),  
23 page 39. 16(d) provides for the arm's length body to:  
24 "[have] access to the records held by on behalf of  
25 any previously publicly funded support scheme."

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1 would rather not be disclosed would actually be relevant  
2 to the determination of the award, and it seems to me  
3 that I see no particular justification why that should  
4 not be -- the scheme should not have access to that  
5 information should a person elect to make a claim.

6 Q. Then if we go to recommendation 17, paragraph (c),  
7 that's the recommendation that the support services  
8 through the scheme should include:

9 "c) facilitation of access to appropriate health,  
10 care and counselling services."

11 If we could go on to page 137. I have been asked to  
12 ask you a little more about that and I just want to look  
13 at what's said at paragraph 11.32, first of all. Under  
14 the heading "Non-Financial Support":

15 "The scheme should have a support unit which is  
16 available to provide or arrange the provision of  
17 medical, psychological and social support to infected  
18 and affected persons appropriate to the needs caused by  
19 the consequences of the infection. The Archer Inquiry  
20 recommended that the infected should be issued with  
21 a card entitling them to benefits not freely available  
22 under the NHS, including free prescriptions,  
23 counselling, physiotherapy and support services. This  
24 recommendation should be revisited and consideration  
25 given to whether such a scheme or comparable facility

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1 Is it right to understand the rationale for that is  
2 so that the individual applicants don't themselves have  
3 to gather everything that they have already previously  
4 submitted to the support schemes and submit it again?

5 A. Yes, it is a short circuit of what appears to be,  
6 currently, a rather elaborate process. There are  
7 potential issues of consent, I see that, here, but those  
8 records haven't always been made readily available and  
9 they clearly are, where they exist, potentially very  
10 important, as they will show, in my suggestions,  
11 eligibility in some cases.

12 Q. The concern that I have been asked to express, I think  
13 an understandable concern, is that whilst the existing  
14 support schemes might well be able to, for example,  
15 confirm the status of already eligible people or they  
16 might be able to provide specific relevant information,  
17 there is a concern about the entire personal records of  
18 the individual held by any existing support scheme  
19 simply being handed over to the arm's length body?

20 A. I'm afraid I think transparency goes two ways in that  
21 if -- I mean, I appreciate these are sensitive --  
22 sensitive personal information -- but I -- obviously  
23 what the scheme needs is whatever is relevant to the  
24 claim for compensation and nothing else, but one can  
25 envisage that sensitive information that an applicant

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1 should be provided via the administration of the  
2 compensation scheme or otherwise."

3 Just picking up on that latter point, first of all,  
4 the re-visiting of the recommendation of the  
5 Archer Inquiry, is that something you are suggesting the  
6 Department of Health should be doing or something that's  
7 for -- the arm's length body have set up to consider?

8 A. This emanates partly from the Archer Inquiry but also  
9 from my understanding that something similar to that  
10 actually happens in Ireland, and there it is not -- I do  
11 not think it is a matter that the Tribunal Service does  
12 but there is a card which gives people -- and obviously  
13 they have a different system of health care which  
14 entitles people to benefits they wouldn't otherwise  
15 readily get here.

16 What I have an impression of, and I have by no means  
17 looked at all the evidence that might be relevant to  
18 this that the Inquiry will have, is that there are  
19 certain aspects of support currently provided, whether  
20 it be way of actual care or counselling or support  
21 services, which is not coordinated and is difficult for  
22 people in some places to identify. I was also impressed  
23 by the fact that some of the devolved nations do provide  
24 sometimes a bit of, in *ad hoc* way, support to people  
25 about things like financial advice and services and

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1 things of that nature.  
2 What I'm seeking to suggest is there is  
3 a combination of needs that this particular group has,  
4 which is rather different probably from that of other  
5 people who suffer from other illnesses, and there is  
6 a need for an understanding of what it is about these  
7 awful infections and the social consequences of them  
8 that shouldn't have to be repeated every time to someone  
9 in order for them to understand what support this  
10 individual needs.

11 So it struck me there should be an investigation  
12 into whether in effect individuals can be issued with  
13 a card which at least will tell the reader of that card  
14 who provides a service that these are people who are  
15 entitled to it without having to repeat a lot of  
16 distressing history. But also there needs to be  
17 a facilitation of access to the multiplicity of services  
18 that this particular group need. Whether that is  
19 prepared by the Department of Health, NHS England or the  
20 arm's length body or a combination of those, I think is  
21 not for me to say, but all I'm identifying here is  
22 a need for signposting, for coordination of services and  
23 for evidencing eligibility for services which isn't  
24 being met in some cases in some places, and one route to  
25 that could be by way of the compensation scheme

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1 The Inquiry has heard of those placed into foster  
2 care after the death of a parent or incapacity of  
3 a parent due to infection. How does the scheme reflect  
4 that? Is that through the affected person's autonomy or  
5 loss of autonomy and social impact awards?

6 **A.** Well, it is also through the Fatal Accidents Act  
7 equivalent award through a dependency because the loss  
8 of a parent and the replacement of that by an inevitably  
9 less -- I should not in any way disrespect lovely foster  
10 parents -- is an identifiable loss for which I think one  
11 would expect to be reflected in a dependency award, so  
12 all of that, yes.

13 **Q.** The Inquiry has also heard accounts of the position of  
14 those who have lost both parents. Again, would you  
15 expect that would be something that could or should be  
16 captured in some sense through the awards that we've  
17 described, a dependency award?

18 **A.** Again, I would see that as being part of the loss of  
19 a dependency. And the care being provided by  
20 grandparents rather than parents would be something  
21 classically on which a reflection could be made in  
22 an award, so yes.

23 **Q.** Then, I think the final points I wanted to pick up are  
24 arising out of the issues that we have discussed is the  
25 position in relation to Scotland. You, again, quite

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1 organisation.

2 So I emphasise something I think I may have said  
3 yesterday, which is to my mind compensation here isn't  
4 just about money. To put people as near as possible  
5 back in the position they would have been without the  
6 injury involved -- or should involve the state providing  
7 all sorts of care targeted for these people. It may  
8 well be care that is available and should be available  
9 on the NHS or through social security or wherever else,  
10 but it's not getting to everyone because of difficulties  
11 of access and organisation, and this group I believe is  
12 large enough for a coordination, as I believe there  
13 probably is now in relation to the actual treatment of  
14 the diseases.

15 **Q.** We don't need to go to it but you've given some more  
16 background to the recommendation in relation to access  
17 to health and care services and some of the points that  
18 you just developed on page 135, section 11 of your  
19 report.

20 Then, just without going back to the sections of the  
21 report or the recommendations that deal with the  
22 position of the affected, can I just -- we can take that  
23 down thank you -- can I just describe two categories of  
24 affected and ask whether what, if any, consideration  
25 have you given to their situation.

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1 candid that you focused upon the guidance that can be  
2 drawn from, and the approach to, the assessment of  
3 damages in England, Wales and Northern Ireland, as  
4 opposed to the distinct system in Scotland.

5 There are aspects in which the Scottish system is  
6 different. There may be elements of compensation that  
7 are more generous, for example, in Scotland. I am not  
8 going to go through specific details or examples. But  
9 would it be important, do you think, for the legal  
10 panel, who would be potentially populating your grids or  
11 tariffs with suggested amounts or bands of compensation,  
12 to include appropriate expertise from Scotland, almost  
13 certainly Wales, Northern Ireland, England as well, but  
14 reflecting the different nature of the legal system  
15 in Scotland, to ensure that it is not a lowest common  
16 denominator approach necessarily and that appropriate  
17 regard is had to the way in which awards are structured  
18 in Scotland?

19 **A.** No, I'd agree that regard should be had to those  
20 differences and it would be obviously helpful for those  
21 to be identified. While one wouldn't want to go for the  
22 lowest common denominator, you would not necessarily  
23 wish to go for the highest common one either, and  
24 I think one has to come to a fair solution for the  
25 entirety of the UK.

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- 1 Q. But it is a matter that should be at least considered,  
2 should be part of the assessment process?
- 3 A. Yes.
- 4 Q. Then the other point in relation to Scotland in  
5 particular --
- 6 A. Could I just add to that point? We would have to bear  
7 in mind, and the panel would have to bear in mind, this,  
8 and I have said this before, but we are talking about  
9 categories of compensation being awarded, which,  
10 I suspect, are no more awardable in Scotland than they  
11 are in England. So one has to take into account the  
12 rough with the smooth to some extent.
- 13 Q. The other point in relation to Scotland, in terms of the  
14 Damages (Scotland) Act 2011 -- and I think we gave you  
15 a couple of extracts --
- 16 A. You very kindly did.
- 17 Q. I'm no more an expert on Scottish law that, I think, you  
18 are, so I'm very grateful to Mr Dawson(?) for that.
- 19 The short point, without, I think, going through the  
20 detail of it, is that in Scottish law a wider category  
21 of relatives is recognised for the purposes of bringing  
22 what might be the equivalent of claims under the Fatal  
23 Accidents Act. Is it fair to say that you had not in  
24 your report given any consideration to that?
- 25 A. No.

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- 1 less than shadow form, probably, the panels, to start  
2 the work of considering some of the detail, because  
3 I absolutely accept that the work of those panels is  
4 going to be quite complex. It will require consultation  
5 amongst other things, a lot of research, and I don't see  
6 that happening overnight. Frankly, if it'd -- been able  
7 to do that overnight I might have considered doing it in  
8 my own review, but I couldn't. So we need -- and  
9 I don't see that that sort of exercise needs to await  
10 the outcome of this Inquiry.
- 11 But I completely understand it might be difficult to  
12 go beyond that because -- but possibly, and I speculate,  
13 would it be possible to -- having identified, say,  
14 a range of awards potentially for injury, you could  
15 start thinking about that?
- 16 I think when it comes actually to making awards and  
17 determinations though, that is probably the point at  
18 which you have to stop. So the ability of a scheme in  
19 shadow form to actually distribute money, apart from the  
20 interim payment I think would be questionable, and of  
21 course I have not spoken to and wouldn't intend to speak  
22 to the Treasury, but I would be quite surprised if the  
23 Treasury agreed to release money on that rather  
24 speculative basis.
- 25 Q. But getting the panels to start their work now would

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- 1 Q. So that might be something upon which further reflection  
2 might be required by those --
- 3 A. Yes, at the end of the day there clearly has to be  
4 consultation between the governments of the devolved  
5 nations and the UK government anyway, and no doubt that  
6 would be one matter to take into account.
- 7 Q. The last question then just relates to implementation.  
8 If we go in your report to page 122.
- 9 This is in the context of a discussion about interim  
10 payments, but you say in paragraph 9.130:  
11 "... it seems unlikely that the scheme could become  
12 operational until after the publication of the Inquiry  
13 report and a process of discussion and consultation,  
14 although some elements of the scheme could possibly be  
15 set up in advance."
- 16 Leaving aside interim payments, were there  
17 particular elements of the scheme that you thought could  
18 or should be set up now?
- 19 A. Well, if -- and obviously it is a big "if" -- the  
20 principle of a compensation scheme were accepted, if --  
21 and, again, it is a big "if" -- a framework along the  
22 lines of that which I have recommended were considered  
23 appropriate, you could, for instance, consider setting  
24 up, in shadow form, an arm's length body. You could  
25 consider, in shadow form, setting up the panel -- or,

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- 1 mean that, if the decision is then taken to -- us to  
2 green light the scheme, the process of assessing and  
3 paying out money would then be -- would not be delayed  
4 as much as it might otherwise be?
- 5 A. No, and it's -- there are many instances in which -- you  
6 know, in advance of a reorganisation, for instance,  
7 taking full effect, that bodies are set up in shadow  
8 form which will take over that role as and when it is  
9 given to them and be designing what they have to design.  
10 It's a perfectly normal part of government these days.  
11 So, I mean, of course, it runs the risk that at the end  
12 of the day a completely different solution is either  
13 advocated -- is advocated, which turns out to be  
14 a better way of doing it but it should be done in a way  
15 where the work will not be wasted at all possible.
- 16 MS RICHARDS: Sir, that's where I propose to leave matters,  
17 ahead of 1 o'clock, I'm happy to say, notwithstanding  
18 the earlier scepticism about my time estimate.
- 19 SIR BRIAN LANGSTAFF: The scepticism was entirely on your  
20 part.
- 21 MS RICHARDS: As I indicated earlier, if we could take  
22 a lunch break of an hour and a half --
- 23 SIR BRIAN LANGSTAFF: Yes.
- 24 MS RICHARDS: -- because I think there will be a lot.  
25 I know already from those speaking behind me that there

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1 is a lot they want me to consider.

2 **SIR BRIAN LANGSTAFF:** You don't need to go any further

3 persuading me. We will take a break until 2.20 pm.

4 That is no earlier than 2.20 pm, the reason which have

5 applied before, it may be later but it will be at least

6 until 2.20 pm. The purpose of this you will probably

7 anticipate but let me say it anyway. There are a number

8 of Core Participants, a large number who are represented

9 by legal representatives, they are entitled to ask

10 counsel to put questions to you, it's part of the

11 collaborative enterprise which this Inquiry is, and she

12 must then have a chance to look at those questions and

13 order them and arrange them so that they can ask them

14 when you return. I can't promise you how long it will

15 take after 2.20, assuming we start then, we may start

16 later, it depends how many questions are coming through.

17 It will be however long it takes.

18 **A.** I understand.

19 **MS RICHARDS:** Can I just say, I know there are some here who

20 are unrepresented Core Participants or unrepresented

21 infected/affected, they should feel free to approach

22 myself and Ms Scott and suggest questions as well.

23 **SIR BRIAN LANGSTAFF:** That's very kind of you.

24 **(12.52 pm)**

25 **(The luncheon adjournment)**

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1 findings of the Inquiry supported that? For example,

2 the early tests being fallible, all that kind of thing?

3 **A.** Cut-off dates for the scheme or for the support scheme?

4 **Q.** Cut-off dates for eligibility. So the periods within

5 which the infection or the treatment would have taken

6 place?

7 **A.** Well, I think I would expect -- I hoped -- frankly

8 outside my terms of reference -- that if there was

9 a change in the perception of the cut-off dates for,

10 say, the support scheme, that that would be mirrored in

11 the compensation scheme.

12 **Q.** And --

13 **A.** And if there was a change in -- so that it became

14 different dates, then different circumstances, for

15 instance.

16 **Q.** But that would be something that might flow or not flow

17 from the findings and recommendations of the Inquiry

18 rather than from anything you are advocating?

19 **A.** Yes, I have no ability to make that judgment.

20 **Q.** The second point, in relation to hepatitis B. Given, as

21 you indicated yesterday and as I think your report

22 accepts, those who clear hepatitis C with or without

23 treatment would be included within the scheme, even

24 though they may not have suffered extensive symptoms

25 and, therefore, come within the lowest of the

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1 **(3.00 pm)**

2 **MS RICHARDS:** Sir Robert, I've got a range of questions, and

3 because I'm going to ask them as they have been

4 presented to me from representatives of Core

5 Participants, they won't follow, necessarily,

6 a particular topic or a single recommendation, so we may

7 leap around from topic to topic and then come back to

8 some of those topics when I come on to the next set of

9 questions.

10 **A.** I understand.

11 **Q.** The first question regards the issue of eligibility and

12 cut-off dates. Would it be right to understand

13 the effect of what you say in your report and what you

14 said yesterday as follows: the starting point you

15 anticipate would be the current scheme cut-off dates, if

16 any? You are not advocating yourself any changes to

17 those?

18 **A.** No.

19 **Q.** You also, in terms of your underlying principle in the

20 section of your report where you set out principles, set

21 out that claimants should not be worse off than they

22 would be without a scheme. Is it something that you

23 anticipate that, if there was to be an alternative

24 cut-off date or criterion, it might have the effect of

25 extending the present cut-off dates if the evidence and

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1 hepatitis C tariffs, does this not create a disparity

2 with the exclusion of those with non-serious hepatitis B

3 on whom the impact of their infection may be similar or

4 even worse?

5 **A.** I think that depends on, firstly, a value judgment and

6 that depends on a more precise description and

7 understanding of the similarities and differences

8 between the two. And insofar as the assumptions which

9 I describe in my report are changed, then that argument

10 gets either weaker or stronger.

11 **Q.** The third question now moves to issues of calculations

12 of financial loss. Your report does not refer

13 explicitly to pensions but pension losses that can be

14 recovered in Common Law claims. Should that be included

15 in appropriate cases in the calculation of financial

16 loss within the compensation scheme?

17 **A.** I would see no reason why not.

18 **Q.** I think the next question's answer is probably clear

19 from your report and your evidence but, again, for the

20 benefit of those listening, in terms of interim

21 payments, is it right that on your recommendation

22 infected people who are not eligible for the current

23 schemes cannot apply for interim payments?

24 **A.** That would be the effect of my recommendation. I think

25 I would qualify that. When you say not eligible, in

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1 other words, they don't fulfil the test. That's  
 2 different from whether they have in fact been accepted  
 3 on the scheme. If it was possible easily to establish  
 4 eligibility, then that might be a different matter.  
 5 Q. So that I think distinguishes between people who  
 6 wouldn't currently be eligible under the existing  
 7 schemes, for example in hepatitis C because the  
 8 infection post dated September 1991, and then those on  
 9 the other hand for whom they are new applicants but  
 10 might be able to quickly establish eligibility if they  
 11 tried.  
 12 A. Yes.  
 13 Q. The next question is --  
 14 A. I emphasise that because this is something which is  
 15 being, as it were, put upon to the existing support  
 16 scheme, it's got to be something which the assessment  
 17 process of the support scheme can deal with, and that  
 18 they are dealing, as I understand it, with new  
 19 applications, so there is no reason why that shouldn't  
 20 apply to the interim payment.  
 21 Q. My next question is a practical one but  
 22 an understandably important one. What happens if  
 23 an infected individual dies while the assessment process  
 24 is under way? Would the family then have to re-apply as  
 25 bereaved affected individuals and start the process

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1 but you are not suggesting any different approach in  
 2 relation to that --  
 3 A. No, I certainly focused on blood and blood products  
 4 because that's what people were talking to me about.  
 5 I think perhaps I would prefer just to say that's not  
 6 an area I specifically considered or whether there are  
 7 any specific issues arising out of that that would need  
 8 to be taken into account in the scheme. But in very  
 9 general principle I would see no reason why such people  
 10 should not be entitled to compensation.  
 11 Q. The next question looks at the awards that might be  
 12 made, whether to an infected or affected person. The  
 13 point is this, there will be many who have undergone  
 14 substantial personal stress, fighting for decades for  
 15 compensation, for recognition, aside from the effects of  
 16 their own illness or the illness of their loved one.  
 17 Would you anticipate that those kind of factors could be  
 18 reflected in the autonomy award?  
 19 A. I do, because it seems to me that such experiences, to  
 20 the extent that they are established, would be  
 21 an aggravation of the interference with people's  
 22 autonomy, a lack of information given to them and so on.  
 23 So, yes.  
 24 Q. Then, again, picking up on that idea of people having  
 25 fought for compensation for decades, many having died

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1 again?  
 2 A. Well, clearly, if the applicant dies in the course of  
 3 the process then the assessment is going to be different  
 4 and -- but procedurally I would hope that that change,  
 5 as it were, could be made in the least painful way, the  
 6 least burdensome way possible, but clearly different  
 7 information might then be required. So there would be  
 8 a difference in the process. But I don't see -- the  
 9 whole point of it not being a legal process is that you  
 10 wouldn't, as it were, have to go away and issue a new  
 11 writ or court summons or anything like that, so the  
 12 procedure ought to be as flexible as possible.  
 13 Q. Consistent with what you suggested should be the  
 14 underlying principles of the claim and of the practical  
 15 proactive sympathetic approach that should be taken,  
 16 presumably you would expect those administering the  
 17 scheme to gather together the information that they  
 18 already had, they would be able to work out then what  
 19 additional information they needed and ask just for that  
 20 additional information, rather than expecting a bereaved  
 21 family to go through everything all over again?  
 22 A. Exactly.  
 23 Q. The current schemes include those infected through not  
 24 just blood but through transplant, so through tissue.  
 25 That's not I think expressly referenced in your report

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1 without it, might that justify at least consideration of  
 2 a higher rate of interest on past loss?  
 3 A. No.  
 4 Q. And why is that your answer?  
 5 A. Because the -- the payment of interest is there to  
 6 ensure that people receive compensation, as it were, in  
 7 today's values and so the compensation is what it is, it  
 8 is not a means which I would suggest should be used,  
 9 although they could be used in the court system,  
 10 I appreciate that, as a substitute for punitive damages.  
 11 If we're going to have a punitive award for exemplary  
 12 damages or compensation let's have that and let's deal  
 13 with it on that basis, not I would suggest through  
 14 interest, which should be purely about making sure  
 15 people are not under compensated because of the length  
 16 of time that passed if they incurred a loss.  
 17 Q. So if that factor were to be corrected in some way, the  
 18 correct way would be potentially through exemplary  
 19 damages which, for the reason you've already explained,  
 20 would be something that would be -- would have to depend  
 21 upon the findings of the Inquiry?  
 22 A. Yes, and then I think a further consideration of how you  
 23 would import that into a compensation system.  
 24 Q. Next question leaps now to the arm's length body, and  
 25 you've referred to some examples of arm's length bodies

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1 in passing, and some, of course, may have their own  
 2 challenges or have been subjected to criticism.  
 3 A. There was no such thing as an arm's length body which  
 4 has not been subjected to criticism.  
 5 Q. Out of the arm's length bodies that you can think of,  
 6 whether it is those you have already referred to or  
 7 otherwise, are there any that you would say are  
 8 particularly close in terms of scale and form to that  
 9 which you envisage?  
 10 A. I'm trying to think whether the Criminal Injuries  
 11 Compensation Scheme is an arm's length body, I'm not  
 12 sure it is, but an organisation like that, whatever the  
 13 form it takes -- I mean, leave aside whether it is  
 14 an arm's length body -- would, I think, bear significant  
 15 similarities.  
 16 Q. The next point is a point of clarification. I think  
 17 when I was asking you about hepatitis B we touched on  
 18 the question of whether you had received representations  
 19 or information on the question of compensation for  
 20 infection with hepatitis B. I took you, I think, to  
 21 a couple of passages in your report. I wasn't proposing  
 22 to go back to that. Is it right to understand from your  
 23 report -- this is how I read it but I may be wrong --  
 24 that in the oral meetings in -- which you conducted,  
 25 hepatitis B was not raised but it was raised in at least

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1 So paragraph 9.6, I had asked you about the first  
 2 part of it, potentially, but not the second.  
 3 You say fifth line down:  
 4 "... any sum received in the settlement should be  
 5 taken into account as a deduction from any lump sum  
 6 award for past financial losses or provision of care, in  
 7 so far as it can be identified what part of any  
 8 settlement was attributable to such losses or  
 9 provision."  
 10 Is this correct, leaving aside, as I say, all the  
 11 various incarnations of the support schemes and  
 12 ex gratia payments, if there was something that was  
 13 the payment of compensation as part of either a court  
 14 award -- well, sorry, if as part of a court award, it  
 15 would presumably identify what it was referable to.  
 16 A. One would hope so.  
 17 Q. And then could fall to be taken into account against the  
 18 relevant item of compensation under the scheme.  
 19 If it is a settlement, is this right, it would --  
 20 you would envisage it would be taken into account but  
 21 only insofar as you can identify from the settlement  
 22 that it or part of it is referable to a particular head  
 23 of loss?  
 24 A. The very limited information NHS Resolution were able to  
 25 give me about settlements indicated, firstly, most of

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1 one set of -- (overspeaking) -- submissions?  
 2 A. Certainly that's my -- my memory. If it was raised, it  
 3 wasn't raised in a way which attracted my attention,  
 4 I will be honest about that. There were a limited  
 5 number I think of written representations about it and  
 6 in fact I did receive at least one representation about  
 7 it but after the publication of the report.  
 8 Q. Can I then come to the question of the extent to which  
 9 compensation -- well, the extent to which monies  
 10 recovered through the settlement of previous claims  
 11 might be taken into account.  
 12 A. Yes.  
 13 Q. You explained earlier, and we looked at the relevant  
 14 part of your report, that previous payments received  
 15 under any of the support schemes or their precursors you  
 16 would not envisage being taken into account, and you  
 17 explained your reasoning in the report, and they were  
 18 often described as ex gratia payments, they weren't  
 19 compensation as such and so on, and you confirmed that  
 20 that would also apply in relation to payments from the  
 21 Macfarlane Special Payments No. 2 Trust.  
 22 In terms then of any other settlements, your  
 23 statement I think -- sorry, your report I think suggests  
 24 that, if we look at, just by way of example,  
 25 paragraph 9.6. I think it is page 95, Lawrence.

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1 them seemed to be for relatively small sums of money.  
 2 Insofar as they were larger sums of money, they may have  
 3 information about -- well, not that they offered me  
 4 anyway -- as to how that figure was arrived at, and it  
 5 said that it is a potential challenge, obviously, but  
 6 until one looked at the specific case it would be  
 7 difficult to say whether it was possible to determine  
 8 it. For instance, in any case which had been prepared  
 9 with any level of sophistication, with a negotiated  
 10 settlement, there would be likely to have been a pleaded  
 11 claim in which items would have been set out, and it  
 12 might well be possible to reference that in terms of how  
 13 the settlement was arrived at, albeit, no doubt, for the  
 14 reasons I mentioned, a settlement might well have been  
 15 discounted heavily or perceived to be the prospects of  
 16 success and failure in the case.  
 17 I'm afraid that would have to be dealt with on  
 18 a case-by-case basis but I have deliberately said that  
 19 this should be -- it being taken into account should be  
 20 conditional on it being possible to attribute  
 21 the settlement or part of it to any particular head of  
 22 claim.  
 23 SIR BRIAN LANGSTAFF: In general terms, during your  
 24 practice, when you have settled cases --  
 25 A. Yes.

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1 **SIR BRIAN LANGSTAFF:** -- have you, in the process of  
 2 settlement, broken up the settlement figure into A, B,  
 3 C: A, a sum for pain, suffering loss, immunity; B, a sum  
 4 for past loss; C, a sum for future loss?  
 5 **A.** Yes.  
 6 **SIR BRIAN LANGSTAFF:** Or has it largely been a question of  
 7 global figures?  
 8 **A.** Sometimes the latter but more usually, sir, it would  
 9 be -- a calculation would be made as to what the  
 10 claim -- what one anticipated the claim would achieve if  
 11 it was fought out. And then modifications would be made  
 12 for that to calculate the risks and degrees of  
 13 uncertainty of that outcome.  
 14 What makes it more challenging is whatever the view  
 15 might be on one side or the other may not have been  
 16 fully or frankly disclosed to the other side because  
 17 that is privileged information, and so each side might  
 18 have an entirely different concept as to why it was they  
 19 were offering or accepting a particular sum.  
 20 So that's why there is a particular challenge. But  
 21 it would seem to me that in the sort of cases we are  
 22 talking about, and I'm talking about those where -- but  
 23 if it is a very small payment, it's almost certainly  
 24 what we, as lawyers, I'm afraid rather disparagingly,  
 25 call a "nuisance payment", which is to buy off the cost

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1 such as the cost of litigation, the time it might take,  
 2 the uncertainties of litigation, knowledge particularly  
 3 of one party that a witness might be rather more wobbly  
 4 than had been thought, and simply a feeling on behalf of  
 5 some members of the cohort, "Well, I have had enough  
 6 I just really want to get this settled".  
 7 **A.** Yes. All those features, sir, would, of course, lead to  
 8 a reduction in what might otherwise have been  
 9 anticipated would be claimed. That doesn't necessarily  
 10 mean that justice or fairness might not require at least  
 11 to look to see whether it would be right and proper to  
 12 take the payment into account when, as it were, one  
 13 might describe as proper 100 per cent compensation is  
 14 now being offered. But I appreciate -- and, of course,  
 15 there are these difficulties and they could end up by  
 16 being difficulties where proportionality would mean it  
 17 would be actually wiser and fairer and a better use of  
 18 resource not to make the argument at all. But I don't  
 19 think I could properly looking at the -- balancing the  
 20 interests of those claiming things and those paying for  
 21 them not say that it should not be taken into account at  
 22 all.  
 23 **SIR BRIAN LANGSTAFF:** What you've described is seeking to  
 24 find a system which would be quick --  
 25 **A.** Yes.

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1 of litigating something which it is thought the  
 2 defendant would succeed in.  
 3 Such a settlement, in my view, would not be  
 4 something you would take off any particular heads of  
 5 damages in future. But if you had a six figure sum, it  
 6 seems to me it is likely that there will be a document  
 7 somewhere which would enable you to say, well,  
 8 a proportion of the overall claim being made was for  
 9 loss of earnings, or something of that nature, and  
 10 therefore it would be fair to deduct that sum.

11 But I'm afraid it would have to be dealt with on  
 12 a case-by-case basis in accordance with material  
 13 available, which might be very limited.

14 **SIR BRIAN LANGSTAFF:** And if it were a group action, when  
 15 different -- technically it would be a combination,  
 16 let's suppose it were 100 claimants, there would be  
 17 100 individual claims, albeit litigated as a group.

18 **A.** Yes.

19 **SIR BRIAN LANGSTAFF:** And it might then be virtually  
 20 impossible to say what in each individual case the  
 21 amount of damages at Common Law would be recoverable.

22 **A.** Yes. I accept that.

23 **SIR BRIAN LANGSTAFF:** Quite apart from presumably the  
 24 different values which the paying party and the  
 25 receiving party would give to other pressures, pressures

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1 **SIR BRIAN LANGSTAFF:** -- understandable, easy to apply and  
 2 free from some of the difficulties and uncertainties  
 3 which may be thought to be set in litigation.

4 **A.** Yes.

5 **SIR BRIAN LANGSTAFF:** All of those advantages would be  
 6 perhaps rather inconsistent with the need to have a very  
 7 careful look at what was a settlement in order to work  
 8 out how much money should come off the sum now being  
 9 suggested.

10 **A.** So clearly it is a matter of proportionality, in my  
 11 view. You will appreciate that the information that  
 12 I was able to obtain in relation to the nature of  
 13 settlements or the history of them was extremely  
 14 limited, and that may be all the information there is,  
 15 I don't know, but it would seem to me it would be unwise  
 16 of me not to ask the question in effect about that.

17 **SIR BRIAN LANGSTAFF:** So ultimately the decision might be  
 18 a question of finding out what in general terms would be  
 19 a proportional allowance to be made for sums given in  
 20 the past.

21 **A.** Yes.

22 **SIR BRIAN LANGSTAFF:** Without spending too long on the  
 23 assessment.

24 **A.** Well, again, it's an area which ideally would --  
 25 a broad-brush approach, if it could be taken, should be

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1 taken. And, as I say, what appears to me to have  
2 been -- insofar as there were cases, a lot of them were  
3 settled for a very small sum of money, comparatively  
4 speaking, then it might well not be worth anyone's while  
5 looking very long at that.

6 **MS RICHARDS:** Just picking up on that, a specific area  
7 I have been asked to raise with you. I appreciate much  
8 may depend upon the individual case but whilst it might  
9 be proportionate, for example, if there is still  
10 an existing settlement agreement or a court approval to  
11 look at that and see whether you could identify a head  
12 of loss that was comparable to that for which the  
13 compensation was being sought, but you wouldn't in  
14 general expect there, for example, to be an attempt to  
15 interrogate litigation files and look at whether there  
16 were notes of settlement meetings and try to reconstruct  
17 what might have been in the minds of those --

18 **A.** I think that would be almost impossible. You give  
19 the example of an approval by the court, which I think  
20 almost invariably would involve the court having been  
21 shown an advice of a legal adviser analysing why they  
22 were accepting the sum on offer and suggesting to the  
23 court that was a reasonable sum to offer. And similarly  
24 there may be other cases where the court's approval is  
25 not required but such advice exists.

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1 Moving on from that, some infected with hepatitis C,  
2 HIV, hepatitis B have, as I understand it, had compound  
3 damage caused by constant reinfection. Would you  
4 anticipate that those are the kinds of considerations  
5 that the medical panel, the clinical panel, would be  
6 considering when drawing up their different categories?

7 **A.** Oh, definitely. That would go to the severity of  
8 the disease, and that is partly catered for, in my  
9 rather simplistic grid, by the co-infections line, if  
10 you like. But clearly that could be developed.

11 But as I have said, I think, in the report, the fact  
12 that one has more than one disease or co-infection  
13 doesn't necessarily mean you double up the award but you  
14 certainly take it into account.

15 **Q.** My next question relates to interim payments and the  
16 limitation of the interim payments to those affected and  
17 are living, and it in particular concerns the position  
18 of those who are widows or widowers where the infected  
19 partner has died. I'm going to set out a handful of  
20 propositions and then ask for your comment.

21 So one example, and this is not a typical example in  
22 terms of the circumstances of which the Inquiry is  
23 aware, a widow currently getting payments from the  
24 schemes, already registered (so in that sense in the  
25 same position as the infected applicants

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1 Now I appreciate there might be issues of privilege  
2 around that advice, but it would seem to me not  
3 unreasonable to expect an applicant to be able to  
4 explain why a particular sum was accepted in transparent  
5 terms. And if they didn't do that, well, maybe certain  
6 consequences could follow.

7 But as I say, it all depends on the amounts involved  
8 and the proportionality. It is just that I would feel  
9 that some might suggest it would be unfair if  
10 a significantly large sum, and if we are talking in six  
11 figures I would think of that as being a large sum, was  
12 not looked at, because otherwise the risk of double  
13 recovery is really quite substantial.

14 **Q.** The next question is one which I think is completely  
15 answered in your report but perhaps important to deal  
16 with because I didn't ask you, I think, about it  
17 expressly earlier. The question is: can claims in  
18 relation to affected people be brought on behalf of  
19 an affected person's estate? And you answer that in  
20 terms: yes.

21 **A.** I did.

22 **Q.** So I'll -- I haven't answered it for you, effectively,  
23 and we don't need to put the page up, but I will just  
24 read the paragraph number. It is paragraph 2.20 on  
25 page 19 of your report.

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1 administratively), and whom we have recommended  
2 an interim payment, a husband lost the opportunity to  
3 sort out his affairs before death, lost the opportunity  
4 to settle the estate and make provision for their  
5 children, which was the factor that you identified as  
6 being one of the factors in support of an interim  
7 payment, that widow or widower, bereaved partner, now  
8 has exactly the same desire to sort out family affairs  
9 for their children, her children, his children, the  
10 children of the deceased infected individual, and age is  
11 not in their favour, why is there any less urgency in  
12 alleviating their suffering is the question for your  
13 comment --

14 **A.** My sympathies are entirely with such people but actually  
15 the issue you raise could be said to exist in relation  
16 to any eligible affected person as well. And there will  
17 be many in that category who are elderly or would like  
18 to sort out their affairs. But I'm dealing -- or  
19 seeking to address a situation unfortunately where there  
20 is no compensation scheme in existence, where the level  
21 of assessment available without the scheme to assess who  
22 should get what is very limited indeed.

23 What I have suggested, and I repeat it, is  
24 an exceptional measure to recognise a group of people  
25 who are alive, who have been personally directly

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1 infected, and I think that is something which separates  
2 them from even widows and widowers of infected people  
3 who have died, who are, I believe in this sense, and  
4 maybe this sense only, in the same category as any other  
5 eligible person who understandably, and I am sure  
6 virtually everyone in these categories whatever they  
7 are, want to sort things out as quickly as possible so  
8 they can dispose of the -- sort out their own lives and  
9 indeed sort out everyone else's lives as well.

10 Unfortunately a line, in my view, has to be drawn  
11 somewhere and -- just in terms of the practicalities of  
12 it, and I sought to suggest something which is simple,  
13 entirely in line with -- in effect, just asking the  
14 people who run the support scheme to sign another  
15 cheque, notionally, and I'm not sure that is the case in  
16 relation to anyone other than the category I've  
17 mentioned.

18 Q. And again --

19 A. And also what you are suggesting, suggests to me a level  
20 of assessment would be required in order to assess the  
21 merit and urgency of the individual cases, which then  
22 gets you into the territory of someone having to make  
23 that judgment in what may well be, at that stage,  
24 a significantly large number of people.

25 Q. I think the suggested extension for the purposes of

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1 completely fair, but to be fair to those who have to put  
2 in place the arrangements for these schemes, which  
3 include the funding for them, may require a certain  
4 degree of certainty and ease of administration without  
5 which support schemes themselves might become  
6 overwhelmed. More sophisticated arrangements might need  
7 to be put in place to administer it. And the more that  
8 is likely to be the case, the less easy those who might  
9 otherwise agree to this might find it. That would be my  
10 speculation, I don't know.

11 And of course it would be open to any government to  
12 say, "No, Francis is wrong about that, we could very  
13 easily accommodate the people you have mentioned", and  
14 I would be the first to welcome that. But it is just  
15 simply in terms of what I feel it is pragmatic to  
16 recommend and it is by no means through a lack of  
17 sympathy on my part for these people's needs.

18 Q. The next topic is in relation to the absence of  
19 a recommendation that affected people could claim  
20 financial loss awards.

21 I'm reminded that you describe one of the  
22 difficulties of such an award is needing -- in terms of  
23 some of the policy matters that underlie the approach at  
24 Common Law -- needing to ask unpleasant questions about  
25 why a person gave up their career and didn't simply pay

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1 these questions to the scope of the recommendation is  
2 an extension not to all those affected or --

3 A. No, you asked me about widows and widowers.

4 Q. And the particular reason for pressing that point or  
5 being asked to press that point is really twofold. The  
6 first is that that's not a category where it is likely  
7 to be particularly difficult to investigate the  
8 position. If you've got those who are already  
9 registered with the scheme, their circumstances are  
10 known, the existence of the relationship is known, they  
11 have already been accepted as someone eligible, for  
12 example, for support payments, so you don't have any  
13 problems there?

14 A. That applies to a number of other categories as well,  
15 I would think.

16 Q. But the second factor that may apply to the bereaved  
17 partner is that of age and potentially their own ill  
18 health.

19 A. Everything you say attracts a huge amount of sympathy  
20 from me. The problem, if you like, is caused by the  
21 absence of a scheme. Some have suggested it should have  
22 been put in place many years ago. That hasn't happened.  
23 What I'm therefore faced with is trying to find or  
24 identify pragmatic, easy-to-apply solutions which, to be  
25 fair -- I know it's difficult to -- some people -- to be

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1 for the care so that they could continue with their  
2 careers. The question is this: that essentially  
3 reflects a concept of mitigation of loss. No other  
4 element of your recommendations appears to consider  
5 an obligation to mitigate loss, so why should affected  
6 claimants be burdened with it?

7 A. Well, I think what I'm seeking to reflect is not  
8 actually a mitigation of loss but the effect of a policy  
9 which is in legal cases applied to provide some line to  
10 define what is thought to be fair to require a paying  
11 tortfeasor, wrongdoer they have to pay for and what not,  
12 and there always has to be such a line. It is by no  
13 means -- to say it is mitigation would be to suggest I'm  
14 implicitly seeking to criticise those who care for their  
15 loved ones and, of course, I'm not doing any such thing.

16 But the legal logic that regards care costs is to be  
17 valued on the costs of -- the notional costs of the  
18 care, rather than the financial loss is where a line is  
19 drawn. As a barrister, I would be very happy to go to  
20 court in such a case and seek to argue that the line  
21 should be drawn somewhere else, and I suspect people do  
22 that all the time, but I'm not aware that they have yet  
23 succeeded, but it does seem to me that what I'm looking  
24 at here is the need for a degree of parity between  
25 those -- in an area where it is directly comparable

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1 between those who have a claim for negligence against  
2 the whole service in a more routine way and someone who  
3 has a claim for compensation here in relation to  
4 something they are getting free of the obligation to  
5 litigate.

6 **Q.** The premise underlying the next question is this, that  
7 there is for some at least of those infected through  
8 treatment with blood products a generation where because  
9 of the effects of haemophilia, but possibly also the  
10 effects of infection, the affected partner may have been  
11 the primary earner in the household.

12 And the question is this: in such cases would it be  
13 equitable to permit substitution of the infected  
14 person's loss of earnings for the affected person? In  
15 other words, you're not advancing a claim by  
16 the affected person for their loss of earnings, but  
17 looking at it as a household you are allowing the claim  
18 to be based upon the higher earner.

19 **A.** That's, I think I would be right in saying, a novel  
20 concept, and it is seeking to compensate something  
21 different to that which the principle of compensation is  
22 for. In other words, you compensate an injured person  
23 for the consequential loss to them of what they would  
24 have earned themselves. It is -- again, I would hazard  
25 a guess, and I'm happy to be shown to be wrong by

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1 because the infected person needs care.

2 And then what is the -- how does one assess that  
3 loss? What actually has been incurred? Answer: the  
4 loss of, let's say, £30,000 a year earnings for care  
5 which could be supplied, on one view, for £20,000 by  
6 someone employed off the market to do it.

7 And it would then be the question whether the --  
8 this I think comes back to the -- I follow the logic of  
9 the litigation of loss question I think by saying, well,  
10 is it unreasonable, because I think that's probably the  
11 test, is it unreasonable for someone to claim £30,000  
12 a year rather than 20 when you could have got it down  
13 for 20? Is it reasonable to do it? As to which lots of  
14 considerations might come in, might they not, such as  
15 the degree of love and affection which is necessary, the  
16 sheer difficulty of having someone employed to provide  
17 care which might be needed at all times of the day or  
18 night, in a particular situation dealing with night  
19 sweats, et cetera. You can picture the situation quite  
20 easily. Plus the sheer horror at the idea of asking for  
21 someone to come and cater for somebody who has, let's  
22 suppose, HIV because of the stigma that applies to HIV.

23 All those considerations would, arguably, form  
24 a case. I mean, you can put a case the other side, and  
25 I'm just demonstrating how it might be argued.

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1 cleverer lawyers than I, but that that would not be  
2 admitted as a claim in an ordinary litigation claim for  
3 the reasons, really, largely that I have explained.

4 **SIR BRIAN LANGSTAFF:** If I may, I'm not really sure it would  
5 actually create any practical difference for this  
6 reason, that the earning capacity of the infected person  
7 would be what would be subject to compensation. So let  
8 us suppose somebody with haemophilia has the added  
9 disadvantage, huge disadvantage of HIV or hepatitis C or  
10 hepatitis B or a combination and that means they can no  
11 longer pursue the career they would otherwise  
12 reasonably, it is assessed, have followed. They would  
13 be compensated for that. Albeit there is an element of  
14 guesswork about what it would have been. That would be  
15 part of your award, the loss of earnings to date.

16 **A.** Yes.

17 **SIR BRIAN LANGSTAFF:** The individual who is the higher  
18 earner would presumably be capable of earning those  
19 higher earnings anyway.

20 **A.** Yes, subject to the care point obviously.

21 **SIR BRIAN LANGSTAFF:** And that's where care comes in.

22 **A.** So it is the same point really.

23 **SIR BRIAN LANGSTAFF:** And really the question then is the  
24 theoretical approach to care, as to which might be said  
25 that the approaches, is there a loss? Answer: yes,

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1 **A.** I'm not in any way, sir, seeking to suggest that that is  
2 not theoretically a way in which one could approach  
3 this. What I was seeking to do was to point to what  
4 I believed to be the legal position with the recovery of  
5 damages, that cost of care is, generally speaking,  
6 limited to the commercial cost, for reasons of --  
7 in effect for reasons of policy, and if it not be the  
8 case, then the answer to your question is much easier.  
9 But if it is the case, then there is an issue whether  
10 parity requires us to follow the same approach in  
11 a compensation case scheme such as this.

12 Not to do so would mean, if one went along the loss  
13 of earnings route, that there would be considerable  
14 disparity between what individuals in this scheme would  
15 receive for -- in relation to exactly the same care each  
16 of them has had.

17 So anyone who needed five hours care a week, it  
18 doesn't matter what it is, some will find it is limited  
19 to commercial rate because their carer wasn't in work,  
20 whereas others might be receiving very large sums of  
21 money indeed because, for the reasons you mention, it  
22 was not unreasonable for them to give up their job. So  
23 that brings with it its own set of problems.

24 **SIR BRIAN LANGSTAFF:** Yes. At Common Law -- I mean,  
25 I appreciate we're talking about a scheme not Common Law

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1 but you are using Common Law as the comparison --

2 A. Yes.

3 SIR BRIAN LANGSTAFF: -- it comes down to what the principle

4 actually is when it comes to --

5 A. Yes, and I would accept that probably the principle is

6 not immutable, let's put it that way. But my

7 understanding would be where it is at the moment.

8 MS RICHARDS: The next few questions deal with aspects of --

9 arising out of how things are approached in Common Law

10 claims.

11 Where individuals are claiming ongoing future

12 financial losses using multiplier and multiplicand, how

13 would you propose the scheme would look at life

14 expectancy? Would there have to be bespoke medical

15 expert evidence for each applicant or consistent with

16 the more rough and ready broad-brush approach, would it

17 be a question of really taking the statistical average

18 life expectancy?

19 A. I would have thought the latter.

20 Q. The second question was the extent to which there might

21 be scope for a "lost years" claim in the scheme.

22 A. Yes. I have not included such a recommendation. Of

23 course it would be possible. It is -- I think it always

24 has been -- somewhat controversial -- I mean,

25 it's accepted in damages claim. It, by definition, is

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1 The reference at the top to "5% above national

2 median earnings". The question is this: do you mean

3 people should get median earnings plus 5% or the

4 55th centile of national earnings?

5 A. Could I go back -- could you just remind me of --

6 Q. Yes, absolutely.

7 A. -- the beginning of this sentence, please.

8 Q. It is about increasing the regular payments under the

9 support scheme.

10 A. Thank you.

11 Well, I've said 5% not the 55th centile and I think

12 that's what I meant. The purpose of it, which is

13 perhaps more important than the precise figure, would be

14 to seek to be generous in relation to those cases where

15 it was necessary to take or advisable to take, as it

16 were, a standardised figure and might reflect yet again

17 another example of something which is going towards the

18 aggravation, if you like, of this. And also because,

19 certainly in the 9/11 scheme there was a big -- and that

20 was a case involving a lot of very high earners -- sadly

21 many of the victims were very high earners -- and it was

22 thought right to take an average there more comparable

23 to what they were earning but above that, and part of

24 the reason for that was to provide sufficient

25 satisfaction to make it most unlikely that people would

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1 not something which is for the benefit of the infected

2 person. It is a sum of money which, if awarded, would,

3 by definition, be distributed to the dependents of the

4 infected. And I didn't put this in the report but,

5 I mean, I confess I did consider that, the "lost years"

6 issue, and I felt that, in relation to a scheme, it was

7 probably a step too far and probably, in the whole,

8 unnecessary, bearing in mind it is actually quite

9 a complicated calculation and it is probably an area

10 which involves a degree of speculation about all sorts

11 of things, including someone's earnings in their later

12 years and so on, and often actually produces

13 a surprisingly small amount of money.

14 So I think for those reasons it seemed to me one of

15 those areas where not having it would reinforce the

16 benefits of speed and simplicity, because the advantages

17 of being able to claim that are probably somewhat

18 limited in the scale of what we are talking about here.

19 Q. So those factors would militate against its inclusion in

20 the scheme, but militating in favour of its inclusion

21 might be reflecting the Common Law approach and what

22 might be awarded by the court?

23 A. Exactly.

24 Q. Next question. If we just go to the report, please.

25 Page 116, please, Lawrence, top of the page.

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1 want to sue. And so a similar approach here, perhaps

2 rather less mercenary, in my view, would be to provide

3 people with assurance that this -- a rough and ready

4 approach was one which provided them with a sufficiency

5 without them feeling the need to go the extra mile of

6 demanding much more.

7 Q. And then if we go --

8 A. Sorry, let me finish that. What that figure is, whether

9 it is 5% or a 55th centile or whatever, it seems to me

10 might be a matter for economists to debate.

11 Q. If we go to the next page, please, page 117. The

12 question is this, looking at paragraph 9.99 where you

13 say in the second sentence:

14 "The assessed future loss of earnings would be

15 calculated by multiplying the predicted annual loss by

16 the number of years the loss is expected to last

17 discounted for acceleration of receipt."

18 That envisages future loss of earnings paid as

19 a lump sum.

20 A. Yes.

21 Q. Were you meaning to suggest that that could be the only

22 way it was paid?

23 A. No.

24 Q. So periodical payments would be --

25 A. But it would be -- as it happened, for reasons I have

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1 never quite understood actually, the practice of  
 2 awarding -- asking for periodical payments in personal  
 3 injury cases, it is usually about anticipated costs such  
 4 as care rather than loss of earnings, and I think the  
 5 reason for that is largely that many people and their  
 6 advisers prefer to have the compensation for loss of  
 7 earnings as a lump sum because they are then free to  
 8 invest it and use it in ways which provide more benefit  
 9 to them, because the loss of earnings aspect is that  
 10 discretionary part of life where you need the freedom of  
 11 how is it you spend your earnings. Whereas care costs,  
 12 equipment costs and the like tend to be things you know  
 13 you're going to need, therefore -- and you know you're  
 14 going to need them on a regular basis, so it's an aspect  
 15 of autonomy but it is a matter of choice.

16 All I'm saying here is if you are providing it as  
 17 a lump sum, then the well trodden methods of calculating  
 18 those in personal injury cases should be used.

19 Q. Then if you have those who claim a higher amount for  
 20 loss perform earnings on the basis that they would  
 21 indeed have received more by way of earnings than they  
 22 are able to establish that to the satisfaction of the  
 23 scheme, would you envisage if at some date in the future  
 24 their annual income would have reduced perhaps because  
 25 of retirement that it would be structured so that they

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1 A. Yes.

2 Q. 344,640.

3 A. It may not be that now.

4 Q. No, exactly. The point is it's now, I'm told, 403,990.  
 5 If you upgraded that further by RPI to today, it would  
 6 be 441,000-odd. So that's a point I think rather than  
 7 a question.

8 A. No, that would be perfectly correct, yes, but I can't  
 9 re-write the report every week.

10 Q. No.

11 The next question looks at the way in which there  
 12 might be an assessment of the awards in relation to  
 13 stigma. So the social impact award.

14 One of the factors that you identified was the  
 15 length of time that people were subjected to stigma.  
 16 Might it also be relevant to look at the intensity of  
 17 the stigma and also the particular period of time during  
 18 which individuals experienced stigma. So the daubing of  
 19 houses in the '80s, for example, might not be reflected  
 20 in terms of what people have experienced in the 2010s.

21 A. I think that would be difficult. Part of the reason  
 22 I have already mentioned, a stigma is inflicted and  
 23 suffered, if you like, in very different ways by  
 24 different people but is serious nonetheless. I accept  
 25 that there will be a specific cases where very specific

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1 would then transfer back, as it were, to the regular  
 2 support payments?

3 A. Well, obviously if that's -- the calculation would be  
 4 done as you say, it should be responsive to predicted  
 5 either increases or decreases in salary at today's  
 6 values, and -- but that figure, the loss of earnings  
 7 figure, essentially would have a -- whether you were  
 8 going to go down the periodical payments route or the  
 9 lump sum route, you would work out on an annual or  
 10 periodic basis what the loss was for each year, for  
 11 instance, you would then deduct from that, at that  
 12 stage, the support payment, which might either be the  
 13 same or less than. If it was more than, then the award  
 14 is nil. You would then take that as a figure to which  
 15 you would apply the discount for acceleration of receipt  
 16 if you were providing a lump sum, or if it's a periodic  
 17 payment it would be the balance that you would be  
 18 awarding. I don't know how clear that is, but I think  
 19 the situation.

20 Q. The next point is in fact not a question but a point, so  
 21 I will just make the point, if I may, as I have been  
 22 asked to.

23 Your report -- I don't think we need look it up --  
 24 it's paragraph 9.28, page 101, gives the maximum general  
 25 damages award as currently being a particular figure.

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1 awful things have happened to people, but there are also  
 2 cases where those things haven't happened, where,  
 3 firstly, they may fear them happening and, secondly,  
 4 where their experience of stigma is very deep indeed.  
 5 Some people, on the other hand, may be more resilient to  
 6 that sort of thing than others -- they shouldn't be  
 7 penalised for that.

8 It is an area, if I may say so, like bereavement.  
 9 To distinguish between the various types of stigma  
 10 people had would be highly distressing, in any event  
 11 come to a figure which everyone would think of as  
 12 artificial, and that's why I rather thought it would be  
 13 better -- it is a strong case here for having  
 14 a standardised figure of -- albeit reflected by the  
 15 length of time. I appreciate that means that some  
 16 people may feel the sort of awful situation you  
 17 described hasn't been taken into account, but I just  
 18 feel that's the justice of it.

19 I think this isn't something that a court would ever  
 20 have to grapple with -- no doubt judges will be grateful  
 21 for that -- but there are potential comparators because  
 22 damages are awarded for unlawful discrimination, for  
 23 instance. But I think this is an area where, in  
 24 a sense, the community as a whole might feel, and  
 25 I can't obviously speak for them, that this is a shared

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1 experience, admittedly -- covered a little, somewhat, by  
 2 the length of time they suffered the stigma. That's my  
 3 view.  
 4 Q. Loss of chance to have children, which you've identified  
 5 as something that could be part of the social impact  
 6 award, is that a loss which could, in principle, could  
 7 be claimed by an estate?  
 8 A. Yes.  
 9 Q. And the evidential basis then would really depend upon  
 10 what information was available about the family  
 11 circumstances?  
 12 A. Yes.  
 13 Q. The next question reflects the accounts of individuals.  
 14 Diagnosed with hepatitis C, said to have cleared it or  
 15 not to have much to worry about, their liver function  
 16 tested normal, but then they are in due course  
 17 discovered to have liver cancer. The first question  
 18 arising out of that: does that not support the right of  
 19 the individual to choose a provisional award?  
 20 A. It does. I think we discussed the pros and cons of  
 21 that.  
 22 Q. Yes. But the second is this, would it suggest that the  
 23 amount -- and you suggested a figure of 10,000 per annum  
 24 that would reflect a range of different costs -- but  
 25 that an express element of those costs the scheme could

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1 A. Well, I think the effect of childlessness would be  
 2 reflected by whatever the award might be for the loss of  
 3 opportunity to have children.  
 4 Q. Then the next is again a reflection of an experience of  
 5 an individual but not a unique reflection, so someone  
 6 who is themselves infected and who lost siblings to  
 7 infection. The question -- and I'm going to read it out  
 8 as given to me because I think it is powerful -- is  
 9 this: why is there no category for as an adult watching  
 10 your adult brother die horribly of the same infections  
 11 you have and having to wonder why him and not me and  
 12 when will it be me and I don't want to die like that?  
 13 That's the first question. And the follow-up is: should  
 14 that be a specific factor that could be taken into  
 15 account in the injury award for an infected person?  
 16 A. Well, what you describe there is the effect of suffering  
 17 of an infected person is having on another member of the  
 18 family, a sibling, and they are affected by that and  
 19 I would have thought that that would -- they may well  
 20 have an entitlement in relation to their own infection,  
 21 they are also an affected person, so that --  
 22 Q. This is in adulthood --  
 23 A. It could still come within (f). I mean, subject to the  
 24 evidence and fulfilling those requirements. But the  
 25 reason for having (f) on my list was to cover

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1 compensate might be the cost of private precautionary  
 2 regular six-month liver scanning?  
 3 A. It might. I personally would be concerned if such  
 4 scanning, if it is clinically necessary, was not being  
 5 provided for on the NHS.  
 6 Q. Unfortunately that is a narrative the Inquiry has heard.  
 7 A. Well, maybe the Inquiry might wish to make  
 8 an observation about that. Because I have said --  
 9 I mean, clearly, clinically necessary treatment and  
 10 screening should be made available free of charge to  
 11 this group of people. Then if that's not done  
 12 generally, then it should be done as part of the  
 13 compensation scheme.  
 14 Q. If as a consequence of infection, in order to be able to  
 15 have a family, families had to go through IVF and incur  
 16 the costs of IVF privately, is that something which  
 17 should be recognised and compensated for under the  
 18 scheme?  
 19 A. Assuming that case is made out, I would see that as  
 20 being a financial loss, yes.  
 21 Q. In relation to again the stigma element of the social  
 22 impact award, would a factor that might fall to be  
 23 considered as part of that, a recognition of stigma  
 24 surrounding childlessness where that has resulted from  
 25 infection?

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1 a multitude of cases. The one thing I think people  
 2 probably ought to understand, it is quite impossible,  
 3 even if I had had two years to do this, or, if I may say  
 4 so, as long as Sir Brian has to do, to describe every  
 5 single circumstance that might cover compensation or  
 6 might be covered by compensation. One has to have, in  
 7 any event, broad categories. The choice you then have  
 8 to make is whether you have a bespoke assessment in  
 9 every single case or you put these together to provide  
 10 some sort of broad justice and -- but certainly the  
 11 example you provide, I would expect that suffering to be  
 12 recognised as being the suffering of someone who is  
 13 an eligible affected person, probably in category (f).  
 14 Q. In the case of two parents who have lost children, would  
 15 each be able to claim the full amount of the appropriate  
 16 award? If we leave aside -- bereavement would be  
 17 a single award.  
 18 A. The bereavement would be a single award. The Fatal  
 19 Accidents Act equivalent would be one award which would  
 20 be distributed to dependents in accordance with  
 21 a process, which can lead to dispute. But there is one  
 22 award arising out of the death of the individual. How  
 23 the proceeds of that award are divided then becomes  
 24 a matter either of the Fatal Accidents Act or the  
 25 dispositions made under the will or an intestacy.

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1 Q. But would it be right to understand that each parent  
2 might be able to make a claim as an affected person for  
3 the injury, social stigma and autonomy awards?  
4 A. Yes, exactly.  
5 Q. How should the scheme deal with the situation where  
6 parents have divorced and may no longer be in contact  
7 and there may be a degree of acrimony perhaps because of  
8 the appalling experiences that they have suffered?  
9 A. Are we talking about a living infected person or  
10 a deceased infected person?  
11 Q. I'm afraid I was asked the question in those general  
12 terms.  
13 A. Where they have their own potential claims as  
14 an affected person for whatever time they were in  
15 contact with their child, they have a potential claim as  
16 bereaved parents, for instance. And -- but again, and  
17 it's unhappily not uncommon in the personal injury world  
18 where parents have separated, there can be a bit of  
19 a dispute about who gets what. But that has to be  
20 sorted out and there is a limit I think to how far the  
21 scheme can intervene in adjudicating on what are in  
22 effect matrimonial or other family disputes.  
23 Q. That would militate in favour of I think the point we  
24 touched on earlier, which is where there is a scheme  
25 arising out of -- sorry, where there is an application

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1 I imagine every single person who received blood or  
2 blood products, whether infected or not, has been  
3 deprived of that degree of autonomy because they were  
4 not warned of the risks. I'm not sure that of itself is  
5 a reason for including them in the category.  
6 Q. The next question is this: should the scheme reflect the  
7 particular difficulties for those infected as children  
8 to reflect the inevitable consequences for them of  
9 infection on the entirety of their lives, growth,  
10 development, education, social development and so on?  
11 A. I would hope the scheme would do that. I mean, there  
12 are a variety of circumstances in which infected people  
13 will have been suffering for various lengths of time  
14 but, clearly, someone infected in childhood by  
15 definition will be infected for a very long time and  
16 that is something which, in my understanding of it,  
17 would play into how severe the condition is.  
18 Q. Can I then just go back to the issue of vCJD, and  
19 recognising you were not suggesting that risk of vCJD  
20 alone should qualify for an award, as I understand it.  
21 A. No.  
22 Q. We discussed yesterday the particular significance of  
23 being told that you were at risk or might be at risk of  
24 vCJD for those already infected, who may of course have  
25 received previous assurances that risks to them were

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1 and there may be other family members --  
2 A. Yes.  
3 Q. -- who might also have a claim or where there may be  
4 questions of allocation in terms of a dependency or --  
5 A. Yes, it's best to deal with them all at once, so far as  
6 is possible.  
7 Q. And important for the scheme trying to be proactive in  
8 then that regard?  
9 A. Yes. And I think it would be very important, wouldn't  
10 it, for when someone comes forward with that sort of  
11 claim that every step is taken to ensure so far as  
12 possible that all potentially interested people are  
13 contacted so that there is a full set of information  
14 and, you know, one would expect whatever the  
15 circumstances, for instance, of a separation that  
16 a separated spouse would draw attention to the fact that  
17 there is separate -- another spouse in the background.  
18 Q. Next question relates again to hepatitis B but in  
19 a slightly different way. A person who has contracted  
20 hepatitis B from blood products or blood, not in the  
21 serious category that you've described but someone who  
22 was not informed about the risks of transfusion or  
23 products, would they not -- should they not qualify at  
24 least for the loss of autonomy award if nothing else?  
25 A. I have a little difficulty with that on the basis that

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1 small, so for them it is a potentially more problematic  
2 issue because they have a unique experience of risk.  
3 I'm asked to suggest to you that that, combined with  
4 the way in which people were informed about the  
5 existence of the exposure to vCJD, and I appreciate you  
6 may not yourself have seen the evidence in relation to  
7 that, coupled with the fact that many patients, as the  
8 Inquiry has heard, were told that they were regarded as  
9 high risk, they had operations cancelled, put to the end  
10 of the operating list, treated in a different manner,  
11 would you accept that those kind of factors could and  
12 should be taken into account through the existing awards  
13 that you have identified: the injury, social impact,  
14 loss of autonomy awards? Perhaps in particular the loss  
15 of autonomy awards?  
16 A. I think I have said that the sort of appearance over the  
17 horizon, if you like, of the vCJD risk in relation to  
18 those who are infected with hepatitis C or HIV can be  
19 dealt with in that way.

20 But if you are suggesting or it is being suggesting  
21 that there is some freestanding entitlement for someone  
22 who has been warned of such a risk but has no other  
23 injury, then I would not be with that.

24 Q. No.

25 A. But I think that if -- I mean, the experience that

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1 people have of not having symptoms then being diagnosed  
2 and then informed often late in the day of hepatitis C  
3 or HIV and then on top of that being told about vCJD is  
4 actually an element of the suffering they are getting  
5 from the first two, and I think to try to separate out  
6 and discount the vCJD bit would be artificial.

7 Q. Thank you.

8 The next topic, services that would otherwise have  
9 been rendered by an infected person to an affected  
10 person but which by reason of the infection they cannot,  
11 and that might be parenting services or it could be  
12 a range of other services, we touched on that in the  
13 context of a dependency claim but should such an award  
14 be available also where in life the infected person has  
15 been unable to render those circumstances?

16 A. Well, I would say part of the consideration generally of  
17 the injury impact award will be a consideration (screen  
18 freezes) includes an inability to enjoy and provide  
19 parenting, that's something that I believe should play  
20 into that of the injury element of the award. I mean,  
21 if you are suggesting that there are then financial  
22 costs, in terms of replacing parenting, and I imagine --  
23 I would imagine not many cases, there are some that may  
24 be so, it may be that could be a financial loss but  
25 I think it has to be one or the other. Most of it will

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1 funded.

2 Q. Yes.

3 A. And my issue around that is the extent to which that is  
4 a reasonable thing to expect the fund to do, and I have  
5 given my answer there. It is a reasonable thing for the  
6 fund to be expected to do in cases where it is proper  
7 for a -- complicated and requires a lawyer. But I'm  
8 rather hoping a lot of this will be sufficiently simple  
9 for people to understand. They might need lawyers at  
10 a point but not, as it were, continually. I do  
11 understand it all depends on a scheme like this being  
12 fairly run, collaboratively run and having the support  
13 services available within it that I have described.

14 Q. And then --

15 A. Can I just add to that? And I think the proof that  
16 something like that can be done is actually potentially  
17 provided by not the English support scheme but by what  
18 I have heard about some of the other schemes.

19 Again, I'm not suggesting I have heard they are  
20 perfect in any way but I was struck how, in some cases,  
21 there appeared to be a level of trust and confidence in  
22 the people running those schemes which made it much  
23 easier for things to be done in a collaborative way.

24 Q. A further question about support services or what might  
25 be available. Where significant lump sums might be

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1 be the impact on the individual of being unable to enjoy  
2 and provide parenting -- and I have seen descriptions of  
3 that -- in the normal way.

4 Q. Next question is about the operation of the scheme. You  
5 said today it must be a scheme that people trust. You  
6 said that was a feature essential to the scheme. Given  
7 what you and the Inquiry have learned about the  
8 scepticism the infected and affected have in terms of  
9 trusting in officialdom, is the idea of a collaborative  
10 approach whilst understandable in principle somewhat  
11 unrealistic for this community without at least the  
12 involvement of trusted lawyers?

13 A. Well, I'm sorry, choices have to be made I think here,  
14 and I appreciate any scheme has to earn that trust from  
15 a pretty low starting point, but I have sought to  
16 propose a means by which that can be done. I mean,  
17 inevitably apply trusted lawyer or no, there will be  
18 arguments about entitlement, whoever is running the  
19 scheme and there will be incidents of complaints being  
20 made. That's why there needs to be an appeal system.

21 I don't think it automatically follows that every  
22 individual needs to have, as it were, their legal  
23 adviser at their side at all points, as it were, in this  
24 process, and that may be a matter of choice, but what  
25 you are really asking actually is whether that should be

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1 awarded, do you consider a recipient should have access  
2 to independent financial advice to manage their  
3 investment?

4 A. I don't think that would be unreasonable. I mean, it is  
5 quite near the borderline. I simply say because in  
6 personal injury litigation, as you will know, sir, the  
7 cost of investment advice and so on is only usually  
8 recoverable on the part of claimants who are mentally  
9 incapacitated or children, where there are particular  
10 responsibilities for ensuring the safety of the fund.  
11 Generally those who receive a large award of damages do  
12 not get an extra element for financial advice.

13 But part of the issue in many of the cases I have  
14 heard about, the infection itself and the injury caused  
15 by it has in itself caused a challenge in obtaining even  
16 financial services of any description and so I think  
17 there may be a case here of a degree of financial advice  
18 to be provided.

19 Whether that should be as it were a constant advice  
20 may be a different matter, but I think you are right in  
21 principle that some recognition of the need for support,  
22 at least in the first instance, "What am I going to do  
23 with this large sum of money?", would not be  
24 unreasonable.

25 Q. Then returning to an issue I raised earlier today about

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1 aspects of the law in Scotland.  
 2 If the purpose of the scheme is, as you indicated,  
 3 in part at least the need for an applicant to go to  
 4 court, wouldn't it be necessary for the highest common  
 5 denominator approach be taken to damages, as otherwise,  
 6 for example, Scottish claimants might still need to go  
 7 to court to get the full amounts that might be available  
 8 to them at law?  
 9 **A.** If it's my opinion that matters, no. I believe the  
 10 fairness of -- the parity between all these people who  
 11 have been injured by -- in an avoidable way by an agency  
 12 of the UK government should receive compensation based  
 13 on the same criterion.  
 14 **Q.** The suggestion is not, I think, that those in Scotland  
 15 should receive a higher amount but that the amount  
 16 should be set by reference to the highest amount?  
 17 **A.** Well, I think, as I said, those setting the amounts  
 18 should have regard to what happens in Scotland, but  
 19 I think they also need to have regard to the fact that  
 20 this scheme, if it follows my recommendations, would be  
 21 awarding items that can't be awarded in Scotland or in  
 22 England, so there is some give and take involved here  
 23 about what is reasonable.  
 24 **Q.** Lastly, I'm asked to illustrate and invite your comment  
 25 on what might be said to be the importance of

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1 **A.** Well, what you say is obviously a very serious case, and  
 2 I appreciate that. I have heard such cases. The  
 3 difficulty is at what point again do you draw a line  
 4 around this, and the thing is if this scheme encompasses  
 5 every single hard case, when you talk about hard cases,  
 6 we might as well go to the Republic of Ireland scheme,  
 7 and the trouble with that would be some of this would  
 8 just not be recoverable at all. So you either -- this  
 9 is a scheme which is -- I'm trying to produce something  
 10 which does its best to cross the whole range of people  
 11 here. I may have failed. I may have failed. But I'm  
 12 trying to create something or suggest something which is  
 13 completely new, which is going beyond in some ways what  
 14 people aspire to get in legal proceedings, and at some  
 15 point -- fortunately it is not me that has to make the  
 16 decision -- a line has to be drawn, if you -- those who  
 17 listen to this and say what you say, a line has to be  
 18 drawn there, well, then a whole range of financial  
 19 losses suffered by people who have not been infected  
 20 themselves could conceivably come in. Where that stops  
 21 makes it quite difficult to know where this fund stops.

22 I think, difficult though that is, we may be  
 23 exposing some of the, as it were, gaps in our legal  
 24 system generally in terms of damages, but it is not  
 25 every form of loss that is recoverable in Common Law,

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1 a financial loss claim for an affected person who might  
 2 have suffered diagnosable psychiatric injury.  
 3 Here I'm going to just read out the description. It  
 4 is a description of an individual case but, again, it is  
 5 not alone, based upon the Inquiry's knowledge.  
 6 Will there be any recognition or recompense for the  
 7 financial losses of parents caused by the impact of  
 8 their child being infected and dying, the need to have  
 9 to move to escape stigma, loss of job, change of working  
 10 patterns to enable them to cope with caring, marriage  
 11 break-up caused by stress and strain of caring for  
 12 an infected child and loss of child?

13 I think your answer, in terms of your  
 14 recommendation, is that there is no recompense for such  
 15 financial losses. Is that fair? Is that just?

16 **A.** Sorry, I ask, is that the result of my recommendations?  
 17 We are talking about parents who are -- of children?

18 **Q.** Yes.

19 **A.** Who have been directly -- sorry, affected by --

20 **Q.** We are talking about the financial loss claims. So  
 21 obviously they would be able to claim injury awards,  
 22 social impact awards, autonomy award. But their child  
 23 died, in some cases children died, but no financial loss  
 24 that they would be able to bring, leaving aside the  
 25 possibility of care claim.

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1 and I'm not sure this would, although -- so that's the  
 2 way I put it. I can't put it any -- but please I hope  
 3 no one believes that I lack sympathy with the point you  
 4 make.

5 **MS RICHARDS:** Sir, those are the questions I'm proposing to  
 6 ask from those that have been suggested to me.

7 **SIR BRIAN LANGSTAFF:** Yes, well, I just have this one area  
 8 to ask you about.

9 Let us assume for the purpose of this question that  
 10 the government does not respond as it might to the  
 11 interim payment suggestion, nor does it respond to the  
 12 suggestion made in the course of today's proceedings  
 13 that there might be a shadow legal panel and a shadow  
 14 medical panel and some form of shadow administration  
 15 ready to go.

16 **A.** Yes.

17 **SIR BRIAN LANGSTAFF:** If there were not, then it would take  
 18 some time presumably to have those panels be chosen,  
 19 meet, come to decisions and have the government consider  
 20 and then accept those decisions, if the government was  
 21 still involved and hadn't divested itself of its --  
 22 hadn't created a fully independent scheme already.

23 Then you have the problem of the fact that the  
 24 door's open but there is a huge crowd of people, all of  
 25 whom, let us suppose, have been recipients of the

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1 support schemes thus far, together with a group who have  
2 not. And all are seeking an award which, to some  
3 extent, is set out in accordance with your scheme on  
4 a tariff basis but, on the other, is assessed with  
5 the possibility of internal review should the assessment  
6 not satisfy the claimant and appeal should it still not  
7 satisfy the claimant.

8 How long would such a process generally take?

9 I'm going to ask you in a moment to compare it with  
10 how you think, from your knowledge of the Irish scheme,  
11 the same number of people will be dealt with under that  
12 scheme. These have to be very broad-brush estimates.

13 A. One reason it's not possible fully to answer your  
14 question, sir, is I certainly don't -- have not been  
15 able to establish, and I don't know if it is possible to  
16 establish, how many -- the base point, which is how many  
17 infected people there are. I am sure it is known how  
18 many infected people there are who have been eligible to  
19 the scheme, to one or other of the support schemes,  
20 which would be a starting point, but what I don't think  
21 is establishable -- it may be by your Inquiry, I don't  
22 know -- is even an estimate of how many others there are  
23 out there who are unknown about.

24 But it may be possible to produce a figure and --  
25 with a bit of estimation as to how many primary

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1 to another issue about, in addition to the immediate  
2 interim payment I'm suggesting now, whether there should  
3 be a process of interim payment further down the line.  
4 Which there could be. I haven't suggested that but  
5 there's no reason why you couldn't do that. But that in  
6 itself then adds another layer of process to what you  
7 do, and so it will take time.

8 But one has to consider the alternatives, and the  
9 alternative is no scheme at all and leaving people to  
10 their own devices, and that is, no doubt, even less  
11 desirable in terms. Some might have litigation  
12 prospects, some might not. Whatever those are, that  
13 would undoubtedly be a longer process than any  
14 compensation scheme would offer.

15 So I think -- I haven't answered your question  
16 directly as to how long because the simple answer is  
17 I don't know because it depends on the number of  
18 variables, but it is undoubtedly going to take a long  
19 time.

20 SIR BRIAN LANGSTAFF: Well, you've, I think, given a sense  
21 which, coupled with the way I put the question, suggests  
22 it would not be a particularly short period.

23 If that is right, then that would seem to argue very  
24 strongly, if one wants to achieve results quickly, and  
25 I throughout this Inquiry have wanted to achieve what

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1 claimants, whether alive or now deceased, there are and  
2 from that it might be possible to make an estimation.  
3 Again, it would have to be averages on how many eligible  
4 affected people there are.

5 I did give the example from the vCJD trust where  
6 there was one case reported by the trustee where they  
7 were looking at 88 eligible people in relation to one  
8 claimant and one -- that impressed me sufficiently in  
9 relation to having -- feeling there needed to be some  
10 care about the drawing up of who is eligible as  
11 an affected person.

12 So I think it might be possible, but beyond my  
13 knowledge, to still come up with a number, roughly. The  
14 experience of the Irish scheme is that -- and it  
15 affects -- several hundred cases a year are processed  
16 out of some thousands, and the scheme has now been going  
17 really quite some time. Obviously it is a question of  
18 what resource was put into the scheme, how quickly one  
19 does this. But it would seem to me that any sensible  
20 administration setting this out would need to understand  
21 that this has to be a front loaded event. The staff and  
22 the resources you need at the beginning are going to be  
23 considerably greater than they will be later on.

24 But, certainly there will have to be a queue and  
25 that does give rise -- well, firstly, it does give rise

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1 can be done as fast as is reasonably possible,  
2 consistent with being sufficiently thorough, if it is to  
3 be done quickly, then that would argue quite strongly,  
4 would it, in favour of the interim payment scheme, quick  
5 to administer scheme, as you tend to suggest, and also  
6 the establishment of arrangements in readiness, if I put  
7 it broadly like that, for whatever scheme the government  
8 thinks it ought to adopt?

9 A. It also suggests I think the need for -- so far as is  
10 possible being consistent with fairness, to have -- to  
11 minimise the amount of assessment required in individual  
12 cases and the application of broad figures. In other  
13 words, to make it as easy as possible, therefore as  
14 quick as possible, for a determination to be made for  
15 those who want that determination to be made quickly,  
16 both not just as a matter of interim payment but also  
17 a more final one.

18 SIR BRIAN LANGSTAFF: You said earlier, I think in the  
19 course of your answering questions, that if you wanted  
20 to explore every complexity to get it absolutely right  
21 and be sure that you had, you would take two or three  
22 years -- I think you intended to say three, but you said  
23 two --

24 A. I did say two, but as I -- I may have said three as  
25 well. But I have said this is, personally, I find,

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1 extraordinarily difficult, because only one has to  
 2 listen to the stories I've heard and the ones that  
 3 counsel has just put, and of course you think: where do  
 4 I fit that into a scheme? Should it be fitted into  
 5 a scheme? But every such case and the detail it brings  
 6 with it, insofar as it brings another complication to  
 7 the picture, may deprive loads of people and others of  
 8 a simpler and slightly more generous solution.

9 I'm afraid I can't see a way round there being  
 10 a degree of trade-off in any solution we come up with.

11 **SIR BRIAN LANGSTAFF:** So what you are saying is there is, as  
 12 you see it, an inevitable compromise between the need to  
 13 get things done quickly in order to deliver a just  
 14 solution and the desire for complete accuracy in  
 15 individual cases, which inevitably would take longer?

16 **A.** Yes.

17 **SIR BRIAN LANGSTAFF:** I see. Thank you very much.

18 **A.** Thank you.

19 **MS RICHARDS:** Sir Robert, is there anything further that you  
 20 wanted to add?

21 **A.** Well, only to reflect on and express my gratitude for  
 22 the help I received from so many people who are here  
 23 today and may be listening and who are not. And, as  
 24 I said in my report, the cost to them of co-operating  
 25 with yet another Inquiry, as they would see it, into

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1 Rowena Jecock tomorrow at 10 o'clock.  
 2 **(4.31 pm)**  
 3 **(The Inquiry adjourned until 10.00 am on Wednesday,**  
 4 **13 July 2022)**

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1 something which might raise expectations which they  
 2 have -- probably wonder whether they will be met or not,  
 3 and I have every sympathy with that and, of course, with  
 4 the tragedies that so many have suffered. And I hope  
 5 that nothing I have said indicates anything other than  
 6 I have the deepest respect for everyone involved and  
 7 their dignity and their willingness to help and, of  
 8 course, for the suffering they have had.

9 **SIR BRIAN LANGSTAFF:** If I'm not much mistaken, I think you  
 10 have earned the dubious distinction of being the person  
 11 for whom Core Participants' questions have taken the  
 12 longest time yet to assemble. I think the right way to  
 13 look at that is actually that is a reflection of the  
 14 interest which your evidence has given and your work,  
 15 and I think anyone who has listened would have  
 16 understood the great care, and difficulty, of the task  
 17 which you undertook and which you have explained and  
 18 which myself -- you have given me quite a lot to ponder,  
 19 as I suspect you have given all of us quite a bit to  
 20 ponder, and I just want to thank you very much indeed  
 21 for coming to do that.

22 **A.** Not at all, it has been a privilege.

23 **MS RICHARDS:** Sir, tomorrow we have the evidence of  
 24 Rowena Jecock.

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

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(52) general... - heard



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(53) heard... - I perhaps

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(54) I personally - include

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<b>include...</b> [5] 69/24 87/8 92/12 102/23 119/3	<b>indicates</b> [1] 154/5	146/12 147/19 149/17 149/18	144/6 144/14 146/2 146/21	<b>interference</b> [5] 25/9 25/18 41/14 78/20 103/21
<b>included</b> [5] 24/24 43/16 99/23 100/14 125/22	<b>indication</b> [1] 39/10	<b>infected/affected</b> [1] 97/21	<b>injury's</b> [1] 68/4	<b>interim</b> [28] 56/6 56/10 56/19 56/23 57/2 57/17 57/22
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(56) investigation... - length

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(71) victims... - where

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			<b>year</b> [5] 38/6 123/4 123/12 130/10 150/15 <b>years</b> [10] 21/7 68/10 68/10 118/22 125/21 126/5 126/12 128/16 136/3 152/22	

(72) where... - years

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(73) yes - yourself