

1 Friday, 15 July 2022
 2 (10.00 am)
 3 **SIR BRIAN LANGSTAFF:** Mr Burnham, welcome to the Aldwych.
 4 In a moment or two I'm going to ask Mary to invite
 5 you to take the oath and after that Ms Richards will ask
 6 you some questions.
 7 But first let me set the scene for you. You are
 8 talking not just to those who are directly in front of
 9 you, who are a mix of the public and participants, core
 10 and other participants, those to the left who are
 11 lawyers, there are some more at the back, and
 12 representatives of the press in the far left-hand corner
 13 as you look, but in particular you will be addressing
 14 a greater audience, those who are watching online,
 15 either live stream or YouTube, and that today I expect
 16 will number in the hundreds of people.
 17 But before you start and before Mary takes the
 18 oath I have something quite important to say, so will
 19 you bear with me for a moment?
 20 **THE WITNESS:** Of course.
 21 **SIR BRIAN LANGSTAFF:** It is this, I have been reflecting, as
 22 you might expect, on the evidence which the Inquiry
 23 heard on Monday and Tuesday this week from Sir Robert
 24 Francis QC. As part of the fulfilment of the task he'd
 25 been set by Government to give independent advice

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1 bodies, the opportunity to make submissions to me about
 2 whether I should exercise my powers to make
 3 a recommendation that as soon as is practicable interim
 4 payments should be made and, if so, the scope of those
 5 interim payments.
 6 Now, the issues are well known to us, so
 7 I consider that ten days is a sufficient time for
 8 submissions to be considered by those who wish to make
 9 them. Those submissions should address (a) whether
 10 I should make a recommendation about interim payments
 11 and (b) if so, what the scope of the recommendations
 12 should be.
 13 Any submissions should be received by the Inquiry
 14 by close of business. It is something of a movable
 15 feast, as you will have known from the experience of
 16 this week, so let us say 5 pm on Monday, 25 July.
 17 That's Monday week.
 18 That's all that I have to say before Mary asks you
 19 to take the oath.
 20 Mary.
 21 **MR ANDREW MURRAY BURNHAM (affirmed)**
 22 **Questioned by MS RICHARDS**
 23 **MS RICHARDS:** Mr Burnham I'm going to start with a short
 24 overview of your career in political terms. You became
 25 an MP in 2001.

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1 regarding the design of a workable and fair framework
 2 for compensation, he identified what he regards as
 3 a strong, moral obligation on Government to give
 4 compensation irrespective of the conclusions of this
 5 Inquiry.
 6 He felt compelled by what he had heard to urge
 7 that significant sums should be paid as an interim
 8 measure. He told us that the sooner compensation gets
 9 into people's hands, the more effective it is. And as
 10 we have always known in this Inquiry, time is not on
 11 their side.
 12 As his evidence was explored two things became
 13 clear. First, the interim payments he suggests could be
 14 made quickly through existing administrative routes.
 15 Second, and by contrast, if whatever compensation scheme
 16 such as he suggests were to be introduced by the
 17 Government following the Inquiry's report, it could well
 18 take appreciable further time before the final sums due
 19 to each eligible person covered by the scheme would be
 20 determined.
 21 In these circumstances, it seems to me appropriate
 22 to consider whether I should exercise the power that
 23 I have to make recommendations and exercise it now.
 24 Fairness demands that I allow Core Participants,
 25 especially on this point, Governmental and public

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1 **A.** I did.
 2 **Q.** And you remained an MP until you stood down in 2017.
 3 **A.** That's right.
 4 **Q.** Between 2001 and 2003 you were on the Health and Social
 5 Care Select Committee?
 6 **A.** I was.
 7 **Q.** Then your First Ministerial role was as a Parliamentary
 8 Under-Secretary of State in the Home Office between 2005
 9 and 2006?
 10 **A.** Correct.
 11 **Q.** In May 2006 you moved for the first time to the
 12 Department of Health. You were there until June 2007 as
 13 Minister of State. Your title I think, at one point at
 14 least, was Minister of State for Delivery and Reform?
 15 **A.** That's right.
 16 **Q.** You then moved in June 2007 to the Treasury and you were
 17 the Chief Secretary to the Treasury for a comparatively
 18 short period of time until January 2008?
 19 **A.** I was.
 20 **Q.** You then became Secretary of State for Culture, Media
 21 and Sport. That was from January 2008 until June 2009.
 22 **A.** That's true.
 23 **Q.** On 6 June 2009 you became the Secretary of State for
 24 Health.
 25 **A.** I did.

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1 Q. You continued in that role until the May 2010 election.
 2 A. That's right.
 3 Q. Obviously we know what happened in the election, so you
 4 ceased to be Secretary of State for Health, but in the
 5 years since that time before you stood down as an MP you
 6 were the Shadow Secretary of State for Health between
 7 May and October 2010 and then from October 2011 to
 8 September 2015?
 9 A. That's right.
 10 Q. We will come on later in your evidence to pick up upon
 11 some of the interventions and contributions you made in
 12 Parliament and whilst in opposition.
 13 If I can ask you first a little about your role in
 14 general terms and the role of other ministers. First of
 15 all, in that first period when you were Minister of
 16 State for Health. You have explained that in terms of
 17 responsibility for blood and blood products, that wasn't
 18 something for which you had any particular allocated
 19 responsibility at that time?
 20 A. It wasn't. It was the primary responsibility of the
 21 Public Health Minister, who at the time was
 22 Caroline Flint. To the extent that I had any
 23 involvement, it would be when there were ministerial
 24 team meetings and the issue might come up, or when
 25 Members of Parliament might raise an issue with you, as

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1 A. Correct.
 2 Q. Also, in relation to dealing with matters in the Lords,
 3 it would be Baroness Thornton?
 4 A. That's right.
 5 Q. During the time you were Secretary of State for Health,
 6 the Permanent Secretary was Hugh Taylor, the NHS Chief
 7 Executive, David Nicholson, and the Chief Medical
 8 Officer, Liam Donaldson?
 9 A. Yes.
 10 Q. To what extent did you have meetings with those three
 11 senior officials either individually or en masse?
 12 A. I would say either every day or every other day, because
 13 the three were very important figures, not just within
 14 the department but within the NHS more broadly, and
 15 I would consult them regularly on any major issue.
 16 Because Hugh would bring the Civil Service perspective,
 17 David would bring the operational NHS perspective, and
 18 Professor Sir Liam Donaldson would bring the wider
 19 population and public health consideration. So it was
 20 quite important, often, to hear the three of them in the
 21 room giving their perspective on any issue, and I did
 22 work with them in that way.
 23 Q. When you took up a role at a department, whether it is
 24 the Department of Health or any of the other departments
 25 where you were minister, was there any process when you

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1 they would with any Health Minister, and you would pass
 2 that back.
 3 But I didn't have any substantial involvement.
 4 I was initially Minister of State for Delivery and
 5 Quality, and I did have responsibility for inquiries at
 6 that time, but that was principally the Shipman Inquiry
 7 led by Dame Janet Smith. And, as I say, blood and
 8 issues arising from infected blood were dealt with by
 9 Caroline Flint.
 10 Q. In terms of ministerial meetings, what were the
 11 arrangements, as far as you can recall at that time, for
 12 ministers to meet on any regular basis?
 13 A. A weekly meeting led by the Secretary of State where all
 14 the ministers, likely parliamentary private secretaries,
 15 would be present to discuss upcoming issues the week
 16 ahead. So a regular round-up meeting.
 17 Q. That, presumably, would be an opportunity for any
 18 minister to draw to the attention of ministerial
 19 colleagues any particular issue that they wanted others'
 20 views on?
 21 A. Exactly.
 22 Q. In terms of your time as Secretary of State for Health,
 23 is this right, the responsibility for blood and blood
 24 products and issues relating to infected blood primarily
 25 rested with Gillian Merron?

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1 began training, briefing, introducing you to the work of
 2 the department, or was it a matter of being thrown in at
 3 the deep end and learning on the job?
 4 A. I would say it is very much a question of the latter.
 5 You would often arrive and there would be lever-arch
 6 folders of the kind that I have been given by the
 7 Inquiry, but they would be on your desk and it would be,
 8 "Welcome to the department and here's everything that
 9 you need to know related to your brief and wider issues
 10 to do with the department", but no, you were in at the
 11 deep end.
 12 And in my case, on arrival as Secretary of State
 13 for Health, I think I'm correct in saying that it was
 14 three days later that a global pandemic was declared,
 15 which at that time was the H1N1 pandemic, swine flu.
 16 So, yes, that was very much an in at the deep end
 17 moment.
 18 Q. Would it follow from that that, as a minister but
 19 probably particularly as a Secretary of State for
 20 Health, with the breadth of responsibility that that
 21 role brings, you will be very dependent upon the
 22 information and advice that you receive from officials?
 23 A. Of course. And I think that's right and proper in the
 24 British system of government and parliamentary
 25 democracy. It is right that that expert advice is

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1 provided and it is right that, in the end, ministers
2 decide on the basis of that advice and it is why it is
3 so fundamentally important that that advice is
4 comprehensive and truthful, and I will maybe come on to
5 that later in my evidence today.

6 But, yes, absolutely. Ministers can only
7 really -- given the kind of speed with which things
8 happen, as I have just described, and the way in which
9 you are in there and doing the job from the moment you
10 walk in, you have to rely on that information that comes
11 up and is presented to you being as comprehensive as
12 possible. Not partial: comprehensive, truthful,
13 insightful. And many times it is but as I'm going to
14 come on to say today, sometimes it is not.

15 Q. It is a theme we will certainly return to in the course
16 of your evidence. In terms of the allocation of
17 ministerial responsibilities, so whether it is who has
18 responsibility for blood or who has responsibility for
19 waiting times or whatever it might be, how was that
20 allocation determined?

21 A. It is in the gift of the Secretary of State, of course,
22 to change the briefs of the ministerial team but they
23 were largely there, if you like, as an ongoing structure
24 where there would be a -- obviously when my party came
25 into government in 1997 it created a Public Health

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1 the Department of Health or Culture, Media and Sport,
2 you would have had dealings with the Treasury, that
3 would have been an important part of your role. What's
4 your recollection of the relationships between the
5 Departments, particularly the Department of Health and
6 the Treasury and your experiences of trying to get money
7 from the Treasury?

8 A. So it is important to say that the Department of Health,
9 I think, has a different relationship with the Treasury
10 than perhaps the Department for Culture, Media and
11 Sport -- or certainly from the Department of Culture,
12 Media and Sport because it is often knocking on the door
13 but not being heard, if you like. And it's also true of
14 the Home Office, which has a substantially lower budget,
15 because of the size of the NHS budget, because of the
16 complexity of what it deals with and sometimes the
17 urgency with which it needs funds.

18 The communication, Department of Health to
19 Treasury, is much more regular and ongoing, I would say.
20 NHS finance or finance related to health is never a kind
21 of thing that's completely settled by the Spending
22 Review, where it would be for other government
23 departments, and that's the type of relationship that
24 certainly existed between the Department of Health and
25 the Treasury in my time.

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1 Minister. That position didn't exist before and it
2 remained and remains today, it is a position that became
3 clear in the Department and well established, and
4 I think it was the Department's view around, this wasn't
5 an inquiry's issue at the time, it was the implications
6 of infected blood, and that was seen as a public health
7 issue.

8 There's discussions as to whether that was right
9 or wrong but that is how that was done. There were then
10 a kind of further set of issues around quality and
11 regulation and that was the role that I initially held
12 when I came into the Department of Health and then
13 issues around NHS performance, NHS finance, that was the
14 role that I came on to hold when I came in as
15 a minister.

16 But it is always within the gift of the Secretary
17 of State to say, you know, I'm going to ask this
18 minister to lead on this now and take that from that
19 brief and put it there and that process was a sort of
20 process that was ongoing but the substantial focus of
21 the roles didn't change.

22 Q. As we mentioned a moment ago, when going through the
23 main elements of your political career in government,
24 you were Chief Secretary to the Treasury for a period of
25 time and, obviously, as Secretary of State, whether in

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1 Q. Wearing your hat as Chief Secretary to the Treasury,
2 albeit for a shorter period of time than some of your
3 other governmental roles, how did you approach the job
4 of Chief Secretary to the Treasury?

5 A. It wasn't my sort of natural habitat, if I can put it
6 that way, the Treasury. Although I did actually find my
7 time there fascinating, with respect to the implications
8 that the Treasury has for public policy. They are huge
9 and that was revealing to me. In terms of how
10 I approached the job, in my short time I was responsible
11 for the 2007 Comprehensive Spending Review. That
12 brought me into direct contact with all government
13 departments and, in the end, I was the person doing the
14 departmental spending deals, if you like.

15 And my approach was one of really kind of
16 understanding how, at the setting of those funding
17 allocations, you have the chance then to really set the
18 priorities of the Government to create clarity, in terms
19 of what was seeking to be achieved. So, yes, that was
20 the approach.

21 Q. In terms of the relationship between Scotland, Wales and
22 Northern Ireland on health-related matters, whether
23 during your time as Minister of State or your time as
24 Secretary of State for Health, what was the relationship
25 and the extent of regular interactions?

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1 A. My time, as I said before, was unusual, indeed
2 exceptional, given that there was a pandemic, and that
3 required a huge amount of engagement. I chaired the
4 weekly COBRA meeting that we had, at that time, and we
5 involved all the English regions, the Regional
6 Authorities but also Scotland, Wales and Northern
7 Ireland. We would have had calls at least once a week.

8 At the time, it was Nicola Sturgeon who held the
9 health portfolio in Scotland. So it would be
10 Nicola Sturgeon, Edwina Hart, who was the Welsh Health
11 Minister. The Northern Irish Minister, I can't recall
12 now, I will later maybe. But there was a four-way
13 ministerial phone call, once a week at least, during
14 that time. And those worked very well, actually. The
15 arrangements through swine flu, I think, were well
16 managed from that perspective.

17 Q. In broad terms, was there an expectation that, in terms
18 of health policy, the lead would be set by England or
19 was it very much a relationship of equals?

20 A. I think there was a degree of acceptance of that, given
21 that some of the UK functions were still held within the
22 Department of Health, and there was a sense of if the
23 judgement was in the Department that we needed to go in
24 this direction, there wasn't, you know, unnecessary sort
25 of, "Oh, because you are doing that we are not", or

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1 Health. I just wanted to flag up a handful of comments
2 you make and ask you a little more about it.

3 In the first paragraph, you say this:
4 "The job as I see it is to get the best possible
5 health care -- the safest, highest quality health
6 care -- for the people of England. And to protect them
7 from health risks. I guess that's it really."

8 That's a fairly powerful summary of, essentially,
9 what you saw as the primary responsibility of the
10 Secretary of State for Health?

11 A. Yes. I would stand by that. Perhaps I would probably
12 rephrase it a little today to say to promote population
13 health is something that I think should be more, kind
14 of, embedded in the role, around -- it is about
15 improving the state of people's homes, workplaces.
16 Health is built in those places and I think the pandemic
17 has shown that. So I would probably point more to
18 a population health role than that paragraph does. But,
19 no, I absolutely would stand by that.

20 Q. Then, if we go over to the next page. If we pick it up
21 at the bottom of the left-hand column and then top of
22 the right. So towards the bottom of the left-hand side
23 of the page, you are talking there about issues relating
24 to Mid Staffordshire Trust and obviously we know there
25 were inquiries in relation to that?

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1 trying to fight it.

2 To be fair to Nicola, and Edwina particularly, we
3 got on well in that period. They did decide to do some
4 things differently but that was their prerogative to do
5 that. But, overall -- there was the odd issue that
6 caused some concern but, overall, the arrangements
7 worked pretty well. I wouldn't necessarily say that
8 they would have always worked as well in non-pandemic
9 times but, in my experience, they did, in that period.

10 Q. I'm going to ask you to look at a document now.
11 Coincidentally it is a document Mr Milburn made some
12 reference to yesterday. It is called
13 *Glaziers & Window Breakers*. It is RLIT0001140.

14 We can see the title there:

15 "The role of the Secretary of State for Health, in
16 their own words."

17 It is a publication of The Health Foundation. It
18 contains observations from a series of Secretaries of
19 State for Health. Obviously, the one I want to go to is
20 the one relating to you.

21 I think the electronic pagination is probably
22 page 73.

23 We can see here reference to you and then we can
24 see a first-person narrative containing various
25 observations about your time as Secretary of State for

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1 A. Yes.

2 Q. We see in the penultimate paragraph, you record you
3 saying:

4 "... why haven't we got the best in the NHS in
5 that hospital now?"

6 "The answer was, 'Oh well, [it is] Monitor -- they
7 don't want to put anybody in. And you set up Monitor
8 and it's your foundation trust reform.'"

9 Then you say this:

10 "I basically at that point realised that it just
11 doesn't work in that scenario. You have to be able to
12 override systems, and the requirements for public safety
13 and good governance means that politicians will
14 occasionally have to step in."

15 I'm not asking you specifically about the Monitor
16 or Mid Staffs issue. It is the more general point you
17 make in that last sentence I read out there.

18 A. Absolutely and, again, I would stand by that. And in
19 some ways, at this point when I was giving this
20 interview and since, I was having my doubts about the
21 reforms that had been brought through in that period
22 around kind of taking responsibility out of the
23 Department of Health and leaving it at local level and
24 creating bodies like Monitor that became assertive in
25 their own right, and where was the accountability,

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1 particularly in a situation like Mid Staffordshire.
 2 So, yes, I had cause, actually, to intervene quite
 3 a lot to overturn departmental policy in that period
 4 dealing with that. When I arrived in the Department
 5 there was the issue with Monitor that has just been
 6 described and I did just -- I'm not making an apology
 7 for it -- I did say no -- they had an interim chief
 8 executive, so I said "That just isn't good enough, you
 9 need somebody full time to help the hospital recover".
 10 So that was a change that I made.
 11 There had been some inquiries into Mid
 12 Staffordshire that were very localised and small-scope
 13 inquiries and, actually, I had to overturn the official
 14 advice of the Department, which was to have no further
 15 inquiry, and I appointed Sir Robert Francis to begin the
 16 first stage of independent inquiry into what happened,
 17 and that was a decision I had to take.
 18 As I will come on, I can point to something in
 19 relation to infected blood, where I had come to the view
 20 that the Departmental line was -- well, I didn't know it
 21 then but I came to know -- I know now it was wrong and
 22 I had to begin the reopening of what had been done
 23 following the Archer Report.
 24 So, I guess what I'm saying to you is, as the last
 25 Secretary of State of the Labour Government, I was

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1 this:
 2 "That goes back to my very first comment about
 3 responsibility to protect the public, arguably that's
 4 the primary duty, before you get good health care for
 5 everybody."
 6 If we then go -- before I ask you about it -- to
 7 the next side of the page. The one beginning:
 8 "When the Lansley reforms came along ..."
 9 You say this:
 10 "The beauty of the secretary of state's power is
 11 that it's there. Yes, in ordinary times you would
 12 expect an individual to use it with a very light touch
 13 and permissive feel. That would be the ideal. But
 14 there will be moments where, because it's there, you can
 15 use it to its full benefit to protect the public."
 16 Then you explain that's what was done in relation
 17 to swine flu. So those two passages seem to bring
 18 together the two points you made earlier in this
 19 interview: the obligation to protect the public from
 20 harm as Secretary of State for Health and the Department
 21 of Health, and then the ability as Secretary of State to
 22 step in and use that power for that purpose, is that
 23 fair?
 24 A. Yes, I think it's tremendously important.
 25 And obviously this was a comment made in the

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1 inheriting lots of things that were unresolved policy
 2 issues that just had been building, building and
 3 building, and this way of doing things, where you just
 4 say "Well, that's Monitor's job I'm not interested" --
 5 the issues become of such significance where your role
 6 as a minister, representing the people of this country,
 7 is to make a judgement and say "No, in my view" -- you
 8 don't defend the policy, you don't defend the line, you
 9 are the only person in that Department who can change
 10 the line. The only person. And if you don't -- maybe
 11 a minister but they would still need the Secretary of
 12 State's permission -- so if you don't do that, in my
 13 judgement you are failing in your public responsibility
 14 to the people of this country.
 15 And, in my reflection on my time in government,
 16 you know, I think there is too much of the system saying
 17 "No, this is it and you can't" -- and I was, I guess,
 18 what you are rightly picking up, is I was pushing back
 19 against that.
 20 Q. Again, we will come on to the specifics of that in
 21 relation to infected blood.
 22 If we just go over the page, please, Lawrence.
 23 If we pick it up at the bottom of the left-hand
 24 column, last paragraph, you refer there to the pandemic
 25 that you were dealing with, swine flu, and then you say

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1 context of what was the Health and Social Care Bill that
 2 became the Act of 2012, the Lansley reforms, which
 3 removed the Secretary of State's duty to provide
 4 a comprehensive health service. And I was commenting in
 5 relation to that. It is almost like the backstop power
 6 of the Secretary of State to have that kind of far
 7 reaching power of intervention, not because you are
 8 power crazy or anything like that, it is just -- it's
 9 simply that, as I come back to my theme, if you hand the
 10 system too much power, you, in my judgment -- my
 11 experience tells me that doesn't secure the public
 12 interest. The accountability has to be there at every
 13 level of the system. And if you don't have that, you
 14 risk a situation where poor cultures emerge, where you
 15 cannot secure the public interest over the vested
 16 interest of the element of the system that isn't doing
 17 what it should be doing.
 18 And I have observed through -- it happened in my
 19 time in government, it certainly went to another level
 20 with the Lansley reforms, this kind of offshoring of
 21 responsibility. I thought the decision to outsource
 22 test and trace during the pandemic would be another
 23 example of this. You know, it is just not good
 24 governance or good government to do that, because the
 25 public require -- they only have you. They only have

20

1 you. And if you are kind of just saying, "Well, nothing
2 to do with me", how do you secure the public interest?
3 **Q.** Then I just want to touch on the next page, just in
4 passing really, a comment you make about the Treasury.
5 It is the second paragraph you say this:
6 "All departments have a very different feel, they
7 really, really do. The feel of the Treasury is, "We
8 don't have to listen to anybody. This is where it's at.
9 Who are these people out there?"
10 **A.** Bit harsh maybe. There are some very good people, by
11 the way, working in the Treasury, I wouldn't wish to
12 besmirch all of them. In fact many fine people. But
13 there is a little bit of, "We are the Rolls Royce of
14 Government, you know, we will invite somebody in if we
15 want to hear from them, but, you know ..."
16 And that -- yes, I mean, that's how it works.
17 **Q.** I want to just turn now to the period when you were
18 Minister of State for Health. I'm going to ask you to
19 look at a couple of documents. They're documents and
20 themes we will need to pick up in more detail with
21 Caroline Flint as the responsible minister in due course
22 but I just wanted to ask for your observations with the
23 benefit of perhaps your later experience, both as
24 Secretary of State and in opposition.
25 So, if we pick the documents up at

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1 any wrongful practices were employed and does not
2 consider that a public inquiry is justified. Donor
3 screening for hepatitis C was introduced in the UK in
4 1991 and the development of this test marked a major
5 advance in microbiological technology, which could not
6 have been implemented before this time."
7 Now, two observations about that that I wanted to
8 then invite you to comment on.
9 That last sentence contains a statement which
10 I think we can fairly confidently say is factually
11 inaccurate, to say that screening introduced in 1991
12 could not have been implemented before this time. Not
13 least because Mr Justice Burton in a case several years
14 previously had found it could have been introduced
15 earlier than 1991. So there's at least an arguable,
16 possibly an uncontroversial inaccuracy there.
17 The previous sentence is a recitation of a line to
18 take that we have seen in a lot of materials, both from
19 this time and earlier, and indeed later:
20 "... does not accept that any wrongful practices
21 were employed ..."
22 First of all, in your experience, this kind of
23 letter, and we will see some examples that go out under
24 your name later, they would be drafted by officials,
25 would they, for the minister to sign?

23

1 MACK0001606_002.
2 This is a letter written by Caroline Flint,
3 12 December 2006 to Michael Moore MP, and it has
4 obviously been triggered by a letter sent on behalf of
5 a constituent and Ms Flint is replying, as she says in
6 the first paragraph:
7 "... as the Minister responsible for this policy
8 area."
9 The MP having written to you in the first
10 instance.
11 Just to put it in context. December 2006, the
12 Archer Inquiry was announced February 2007. So it is
13 shortly before that.
14 **A.** Yes.
15 **Q.** We see set out reference to sympathy in the second
16 paragraph. There is then set out a brief chronology in
17 terms of establishment of the Macfarlane Trust and then
18 the Eileen Trust and then the Skipton Fund.
19 It is the paragraph over the page I just wanted to
20 ask you about.
21 It says this:
22 "I am aware of the Early Day Motion ... tabled by
23 Pete Wishart MP calling for a public inquiry into the
24 issue of contaminated blood products. However, as
25 previously stated, the Government does not accept that

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1 **A.** They would. Ministers can always amend the letter, but,
2 the letters come in in large numbers, often in a red
3 box, that has to be done often at the end of the working
4 day, and I would say most ministers will probably just
5 sign. I'm not saying that's -- you know, they will
6 read, I'm not saying they won't, but it is hard, if you
7 like, to -- but occasionally ministers will send letters
8 back, and, you know, I'm sure Caroline would have done.
9 I did.
10 I'm glad that you have picked this paragraph out
11 because, as I'm going to come on to say today, as
12 Secretary of State, as a ministerial team, in my view we
13 were given a number of inaccurate lines by Departmental
14 officials in this particular period, lines that I now
15 know to be false.
16 And I do think, Sir Brian, that does actually go
17 to the heart of your Inquiry: that ministers coming into
18 a Department are being -- assertions are being made of
19 the kind that "Government does not accept that any
20 wrongful practices were employed".
21 Now that's a very big statement, isn't it?
22 I don't believe that is a justified statement.
23 And that was something that the Department had
24 held to -- not just under our Government, by the way --
25 fiercely, as far as I understand, for decades. And that

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1 had a real impact on people, a real impact on people.
 2 And MPs like Pete Wishart, but there were --
 3 I would say pretty much every MP who came into the House
 4 of Commons in the period from, let's say, the late
 5 1970s, '80s onwards would have been making this kind of
 6 representation and was get -- that was the response and
 7 that was the sort of deadlock that there was all the way
 8 through. But the deadlock was created by lines that
 9 were not justified in my opinion.
 10 **Q.** As a matter of general principle, general observation,
 11 if a department -- and whether it is this department and
 12 this line or another department and another line -- is
 13 going to say something as forthright as this, "does not
 14 accept any wrongful practices were employed", would you
 15 expect, as a matter of basic good government and
 16 transparency, openness, integrity, that that kind of
 17 assertion is only made if there has been some form of
 18 proper investigation, interrogation of the facts, so
 19 that those who are making it can have a degree of
 20 confidence in its accuracy and in the extent to which it
 21 is comprehensive and fair?
 22 **A.** So I would say that's what normally happens, and in my
 23 experience civil servants are very careful about those
 24 considerations before giving lines to ministers. And
 25 I would say in sort of, you know, over 90 per cent of

25

1 **MS RICHARDS:** Yes.
 2 **SIR BRIAN LANGSTAFF:** So only five years before, and had
 3 been the subject, as we have seen this week, of quite
 4 a lot of discussion internally in the Department of
 5 Health, discussion with ministers at the Secretary of
 6 State level as to whether there should be an appeal, and
 7 the decision not to do so. So, it is surprising, very
 8 surprising to me that whoever drafted this, as a civil
 9 servant, had no memory or would appear to have had no
 10 memory or had forgotten something that happened only
 11 five years before.
 12 Can you help why and how a civil servant, who,
 13 after all, is there rather more permanently than
 14 a minister, would be likely to do that?
 15 **A.** I guess, Sir Brian, you are asking me to speculate to
 16 a degree --
 17 **SIR BRIAN LANGSTAFF:** I'm asking you, really, to use your
 18 experience in government in your various different
 19 offices and how civil servants worked and how corporate
 20 memory, if you like, was developed, whether this is
 21 simply sloppy or whether it is something which -- how
 22 did it come about? How would it have come about?
 23 **A.** I will give you, from my experience, how I think that
 24 came about and I think, again, it gets to the heart of
 25 your Inquiry, and it is this: I think embedded deep

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1 the times those lines are considered, they are accurate,
 2 they are truthful. But I think on this particular issue
 3 there is evidence that that wasn't the case.
 4 I mean, I will come on, I hope, at some point
 5 today, to talk about a letter that I sent -- maybe you
 6 are coming to it -- to David Tonkin, a campaigner that
 7 I am sure many people in this room or watching today
 8 will know and will respect for the way in which he just
 9 relentlessly pursued these issues for many, many years.
 10 I believe now that a letter that I sent, in my name, to
 11 him contained a statement that I didn't know then but
 12 I now believe to be inaccurate on a fundamentally
 13 important issue, and I don't believe the Department of
 14 Health had grounds to put a statement of that kind in
 15 a letter to me.
 16 **Q.** We will undoubtedly come on to that letter, Mr Burnham.
 17 **SIR BRIAN LANGSTAFF:** What surprises me a little about the
 18 last sentence and its assertion that the screening
 19 couldn't have been done before 1991, when it was done,
 20 is this, that, as counsel had pointed out there had been
 21 a judgment -- it wasn't several years before but I think
 22 five years, wasn't it, before --
 23 **MS RICHARDS:** 2001.
 24 **SIR BRIAN LANGSTAFF:** Exactly, five years before -- this
 25 letter is December 2006.

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1 within the Civil Service psyche, over not just a few
 2 years in question but a number of decades, I would say,
 3 the response to this particular issue was primarily
 4 driven by a fear of financial exposure.
 5 That, in my judgement, describes all of the
 6 experience that you might -- all of the responses, the
 7 lines, everything, kind of came from that feeling
 8 originally. And so these letters, I think, are drafted
 9 with that primarily in mind. Not with the kind of needs
 10 of people who were -- through absolutely no fault of
 11 their own, had their lives utterly ruined. In fact, if
 12 you look through the paperwork and the letters there is
 13 very little reference to that. Instead, it is always
 14 this -- I think the kind of sense that any lines that
 15 veer into that issue and could open up the Government on
 16 this issue are problematic.
 17 And I think that explains, to me, anyway, why the
 18 UK Government has comprehensively failed the victims of
 19 infected blood, I would say, over five decades and that
 20 is hopefully what your Inquiry may finally correct.
 21 **SIR BRIAN LANGSTAFF:** Thank you.
 22 **MS RICHARDS:** The second document from your time at the
 23 Department of Health as a Minister of State is at
 24 DHSC0041193_054. Again, it is not a document that you
 25 would have seen at the time and it is, again, one that

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1 we are likely to need to explore with other witnesses,
 2 but it is really seeing whether you can help us
 3 understand some of the thinking that may lie behind it.
 4 First of all, it is a handwritten note which is
 5 directed to Caroline Flint:
 6 "This is the redrafted proposal reply to
 7 Lord Archer. It falls short of agreeing to give
 8 evidence but agrees to share documentation.
 9 "[Secretary of State] is also considering this
 10 draft reply and is likely to sign the letter herself
 11 [the Secretary of State at the time being
 12 Patricia Hewitt].
 13 "Hugh Taylor has agreed the wording."
 14 Then, if we go over the page, what we see -- so it
 15 is 28 March 2007, so you are still at the Department
 16 here as Minister of State --
 17 A. I am.
 18 Q. -- but you are not the Minister of State for Public
 19 Health or the Secretary of State to whom this minute is
 20 directed. I don't think it is copied to your office.
 21 I don't know whether you can just cast your eye down the
 22 copy recipients.
 23 A. No, I don't believe any of the people listed were in my
 24 private office at the time.
 25 Q. We can see it is from William Connon and "Lord Archer
 29

1 there is considerable scope for embarrassment for the
 2 department if officials are asked to appear before the
 3 inquiry."
 4 The next bullet point refers to Lord Archer's not
 5 being a public inquiry, a statutory inquiry, and the
 6 suggestion in the last part of that bullet point:
 7 "... unclear exactly what departmental involvement
 8 may entail."
 9 There is then concern expressed about the amount
 10 of preparation that would be required if officials were
 11 called to give evidence. The next bullet point says:
 12 "If it is agreed that officials should give
 13 evidence, this may in turn raise the possibility of
 14 ministers themselves being asked to give evidence.
 15 "We will inevitably be pressed to release
 16 documents without any redaction -- and to release
 17 submissions. While none of these policy documents give
 18 rise to any real concerns over liability, some are
 19 sensitive in respect of potential for criticism or
 20 embarrassment of former ministers and senior officials.
 21 It may be much harder to maintain the line that we are
 22 only prepared to release documents under FOI principles
 23 if officials are asked to defend this line publicly in
 24 front of the inquiry."
 25 "Sol [that is the solicitor's team] have pointed
 31

1 letter to [Secretary] of State: Public inquiry on
 2 Haemophiliacs Infected with Hep C" is the title.
 3 It refers in paragraph 3 to an earlier email and
 4 concerns, regarding this Inquiry. Just again, to put it
 5 in context, the Archer Inquiry had been announced the
 6 previous month, February 2007.
 7 If we go to the bottom of the page, we can see
 8 paragraph 6 says "These plans", and the plans are
 9 described in the previous paragraph. I don't think
 10 I need to read that:
 11 "... have obviously now been overtaken by the
 12 announcement of this inquiry and ministers' natural wish
 13 to be helpful. However there remain a number of
 14 significant questions and concerns amongst officials
 15 including solicitors branch, regarding any departmental
 16 involvement in this inquiry, which I would just like to
 17 flag up to you again. They mainly arise from
 18 a suggestion that officials should agree to appear as
 19 witnesses ..."
 20 Then we have the assertion in the first bullet
 21 point:
 22 "There is no evidence of any negligence or
 23 wrongdoing on the part of the department during the
 24 period in question (1970-1985). Nevertheless, given the
 25 subsequent destruction and loss of a number of files
 30

1 out that the inquiry will not have any statutory powers
 2 therefore civil servants, ministers or others could not
 3 be compelled to attend or provide evidence."
 4 The next bullet point refers to the question of
 5 whether there would be legal indemnities to officials
 6 against the possibility of legal proceedings being
 7 instituted against them. Then the last bullet point:
 8 "Sol's view is that we should avoid becoming in
 9 any way directly involved."
 10 The top of the next page, the "Recommendation" is:
 11 "For all these reasons, we think it is not
 12 advisable to offer in the reply that officials would be
 13 willing to give evidence to the inquiry."
 14 Then there is the offer of a meeting.
 15 Again, in terms of the detail of this and what the
 16 actual involvement of the department was with the
 17 Archer Inquiry, is a matter we will pick up with other
 18 witnesses. But one of the themes that might be said to
 19 emerge from this letter, in terms of casting some light
 20 on the position of civil servants and officials, is
 21 concern about criticism, either of themselves or of the
 22 Department. Was that something that you are aware of as
 23 being something, again, embedded within the Civil
 24 Service: the fear of being criticised?
 25 A. Oh, sure. But I think this note is so revealing of the
 32

1 problem. If you go back, if I could, to the first page
 2 or the second page that you showed us.
 3 Q. I think it is page 3, Lawrence. Go to the next page.
 4 A. And then the next one. That first bullet point:
 5 "There is no evidence of any negligence or
 6 wrongdoing on the part of the department during the
 7 period in question ..."
 8 That is a false statement. So that's where it
 9 starts, with a false statement and, then beneath it you
 10 get a series of bullet points piling the pressure,
 11 basically -- I'm not making excuses for ministers, by
 12 the way, because you are there to resist that pressure,
 13 if you believe it is wrong. But you are given a blanket
 14 statement of that kind and then that is pretty
 15 considerable pressure, I would say, when you add all of
 16 those things.
 17 And, yes, it is about departmental reputations but
 18 it's also that (inaudible) it might be embarrassing to
 19 ministers, "Oh, you might have colleagues". I don't
 20 read that innocently, if I'm honest with you. I think
 21 that is very revealing of what goes on but particularly
 22 went on on this issue. And it is hard to sometimes sit
 23 there in a room full of all the people who have written
 24 it and say "No, you know what, we are not doing this, we
 25 are going to call you all to give evidence".

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1 that line, and then the decision-making about how to
 2 interact with the non-statutory private inquiry being
 3 established by Lord Archer.
 4 As you have told us, your ministerial allocation
 5 of responsibilities during this period of time included
 6 inquiries in investigations but you weren't involved in
 7 the decision-making on those two issues. Is that
 8 surprising?
 9 A. I don't know, and I don't think it would have been
 10 keeping me away from it in any way. I was at a very
 11 different stage of my career at that point and
 12 I probably wouldn't have spoken in the way that I'm
 13 speaking today. I was learning. I was on a kind of
 14 journey of understanding how all this worked and, you
 15 know, I'm not sure how I would have reacted as a junior
 16 minister to that note at the time. Obviously I know
 17 a lot more now.
 18 I think it is possibly revealing that this issue
 19 was put within the Public Health Minister's brief, in
 20 that it is firmly not an issue of regulatory or inquiry
 21 significance. So the Department I think probably was
 22 parking it there, it is just an ongoing issue of
 23 supporting people and you know, that approach. I think
 24 it does reveal that.
 25 I don't think it probably reveals more than that.

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1 But that is I would say very revealing of how the
 2 Department, a department for which I have a high regard
 3 in many ways and many of the people who work within it
 4 but, on this issue, I believe it got things
 5 fundamentally wrong; you know, inhumanely wrong. No
 6 mention of the suffering of thousands and thousands and
 7 thousands of people who might have a reason to be given
 8 answers as to why they are infected and why their lives
 9 are ruined and why their partners have had to give up
 10 work. Where's the mention of any of that?

11 But there wasn't any mention of any of that. You
 12 got this incorrect line and then a kind of whole heap of
 13 financial pressure, reputational pressure, media -- why
 14 it shouldn't go any further.

15 And, yeah, I think you are absolutely right to ask
 16 me to comment on that document. I think it is a very
 17 revealing document, and I think it kind of explains why
 18 departmental lines can hold, even if they are
 19 inaccurate, for much longer than they should.

20 Q. During the time you were Minister of State, during this
 21 period, there are two things happening relevant to
 22 inquiries into this issue. The first is that the
 23 maintenance of the refusal to set up a public statutory
 24 inquiry and then the -- which had been a line long
 25 before this administration, but it was a maintenance of

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1 Q. Can we turn then to your time as Secretary of State for
 2 Health and again just to give some dates.

3 The Archer Report was published on
 4 23 February 2009.

5 The Government response to the Archer Report was
 6 published on 20 May 2009 or thereabouts. We will look
 7 at that, but the reference, just for the transcript for
 8 present purposes, is DHSC0015670.

9 Now, you became Secretary of State on 6 June 2009.
 10 So you became Secretary of State after the Archer Report
 11 had been published and shortly after the Government's
 12 response to the Archer Report had been published. And
 13 you had had, as I understand it, no involvement --
 14 unsurprisingly, because you were at a different
 15 department -- with the process up until that point in
 16 time?

17 A. Correct.

18 Q. Do you -- we will look at a briefing you received in the
 19 course of June which made reference to the Archer
 20 Report. Doing the best you can, do you think that at
 21 that point in time you read the Archer Report in the
 22 response or do you think that's something you probably
 23 read later?

24 A. I have a recollection of looking at the conclusions,
 25 perhaps looking through it because Lord Alf Morris

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1 somebody for whom I had a great deal of respect, was
 2 banging on my door asking for a meeting about the
 3 Archer Report pretty much from the day I arrived in the
 4 Department. And I couldn't work out why, if I'm honest,
 5 because -- I kept saying, "Well, it's been -- it was
 6 dealt with. You know, what can -- how can I reopen it?
 7 You know, this thing was signed off by the Treasury and
 8 everybody". Because they would have done a write round
 9 about it, I'm sure. And in some ways that's how it
 10 works, you know: where issues have been dealt with,
 11 re-opening issues is not easy, particularly if they have
 12 recently been concluded.

13 But, I wouldn't want to say that I kind of read
 14 every word and read it cover to cover, I was aware of
 15 it, and I was aware of its findings, and I subsequently
 16 did meet Alf. I think my statement says September 2009.

17 So obviously I was aware -- you know, I was very
 18 aware of the controversy about it but as -- I think it
 19 goes back to what I said to the Chair. Because this
 20 assertion had been made so strongly, firmly and, might
 21 I add, incorrectly, that nothing wrong was done, there
 22 was no fault, the issue in Parliament was always
 23 therefore about finance. Do you see what I mean? It
 24 didn't open up -- that question was boxed off. And
 25 actually Archer didn't open that question. So that is

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1 equivalent of those payable under the Scheme which
 2 applies at any time in Ireland."

3 That is part of the Archer recommendation.

4 A. Yes.

5 Q. The response -- and again, obviously, as already
 6 indicated, a response finalised before you took up
 7 office -- that's at DHSC0015670.

8 So this is the Government response. And if we go
 9 to page 11, this is part of the response to the
 10 recommendation about financial relief. There is
 11 a reference in the first paragraph to the existing
 12 provision with the Macfarlane and Eileen Trusts. The
 13 second paragraph then explains that there's going to be
 14 increased funding to the Macfarlane and Eileen Trusts to
 15 allow them to move to a system of annual payments. So
 16 that would be for those infected for HIV.

17 Then, in relation to the Skipton Fund, which was
 18 the only scheme covering those with hepatitis C, the
 19 only response essentially is that in the second
 20 paragraph on screen, which is there will be a review in
 21 2014. So five years into the future Skipton Funding
 22 would be looked at again.

23 If we then go to ARCH001160.

24 Now, this is a brief for your immediate
 25 predecessor, so it is a brief for Alan Johnson, who was

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1 kind of how Parliament was always dealing with the
 2 issue. And I think that is a big part of the problem.
 3 You know, how could I open a financial question when the
 4 Treasury had signed it off? And that was the context in
 5 which I was thinking about the Archer Report.

6 Q. Then, if we just look very briefly, because I'm not
 7 going to go through the content of the Archer Report,
 8 but just look at one of the recommendations so that we
 9 can contextualise some of the documents that then
 10 follow.

11 Lawrence, it is ARCH0000001.

12 There we have the front page of the report. If we
 13 go to page 108, we have the chapter on recommendations.
 14 And if we go to the next page, we can see, picking it up
 15 at the bottom of the page, page 6, this is the issue of
 16 financial relief, which then does become the subject
 17 matter of submissions to you in due course:

18 "Direct financial relief should be provided for
 19 those infected, and for carers who had been prevented
 20 from working. We propose the scheme should have the
 21 following characteristics ..."

22 Then I'm not going to read through the detail of
 23 what's set out here, but if we go to the top of the next
 24 page, (h), it says:

25 "We suggest that payments should be at least the

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1 Secretary of State for Health before you, 27 May 2009,
 2 so it is shortly before you take up your post.

3 What is a PLP brief? What does that tell us?

4 A. That's Parliamentary Labour Party brief. So what exists
 5 within Parliament is something called a PLP Resource
 6 Centre. So this is a room right in the heart of the
 7 main building of Westminster where any Labour MP can go
 8 and find a brief on an issue that they are receiving
 9 constituents' letters about. And often, particularly
 10 when the Party is in Government, that will be the lines
 11 that the Civil Service would produce. And this brief
 12 would summarise the main issues in the Archer Report and
 13 why the Government had responded in the way that it did.

14 Q. We can see that -- if we go to the next page, we can see
 15 the first paragraph explains:

16 "The Government has issued its response ..."

17 The second refers to a written ministerial
 18 statement by Dawn Primarolo, who by this time had been
 19 the Public Health Minister.

20 The key message is perhaps just worth noting,
 21 picking up a theme of what we have looked at already,
 22 the fourth bullet point says:

23 "In addition, every reasonable step to minimise
 24 risks from blood transfusion has been taken, and robust
 25 screening measures are in place to protect patients."

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1 So that may be that that is looking to the future.
 2 Then reference to the last bullet point:
 3 "We will look again at the help offered to
 4 individuals affected by hepatitis C in 2014."
 5 Then if we go to the next page there's some Q&As.
 6 We don't need to look at the detail of them, but there
 7 is one, over on page 4, that I wanted to draw to your
 8 attention, Mr Burnham.
 9 The question that's posed towards the top of the
 10 page. It is the first in bold print:
 11 "The Republic of Ireland has made significant
 12 payments to those affected - why hasn't the UK done
 13 likewise?"
 14 The reason set out is:
 15 "The situation in the UK was different. Action
 16 was taken as soon as possible to introduce testing and
 17 safety measures for blood and blood products as these
 18 became available."
 19 Then there is reference to the introduction of
 20 heat-treated product in 1985 and an attempt to
 21 distinguish the position in relation to Ireland.
 22 So we have the positive assertion of essentially
 23 action being taken as soon as possible -- I paraphrase
 24 there -- and Ireland not providing a model.
 25 Although this is a Parliamentary Labour Party

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1 "MS(PH) carefully considered the additional cost
 2 of increasing the financial relief and amending
 3 eligibility criteria. Her recommendation, agreed by
 4 your predecessor (that would have been Mr Johnson), was
 5 to increase payments for those affected by HIV but to
 6 make no change for financial relief for hepatitis C at
 7 this stage, essentially because of affordability."
 8 So it might be said an upfront acknowledgement
 9 there that the reason is money.
 10 A. Yes. It goes back to what I said to Sir Brian a moment
 11 ago. This was the kind of prism through which the whole
 12 issue was considered. I think it shaped the whole of
 13 the response from the start. And that is the problem.
 14 In any case of an injustice like this you have to start,
 15 in my view, with what has happened: what's happened to
 16 people? What is the impact on their lives? What do
 17 they need?
 18 That was never the way this was done. That
 19 blanket assessment, always, of nothing -- you know, what
 20 a statement! You know, nothing -- everything
 21 possible -- effectively earlier on, you were saying in
 22 that summary, "everything possible was done". That is
 23 not true, is it? Well, I don't believe that to be true.
 24 But that's what the Department was saying: everything
 25 that could have been done was done.

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1 brief, would this essentially be reflecting what
 2 Departmental officials were saying to ministers, because
 3 presumably the PLP wouldn't have any independent source
 4 of information?
 5 A. You could argue that maybe it should have done but, no,
 6 it would have been the Civil Service lines.
 7 Q. Then, if we then move to what I think is the first
 8 briefing you receive on the issue once you became
 9 Secretary of State for Health.
 10 It is at DHSC5172177.
 11 It is a briefing from Rowena Jecock to you,
 12 19 June 2009, headed "Government's response to
 13 Lord Archer's recommendations for further financial
 14 relief".
 15 Paragraph 1 refers to Lord Archer's
 16 recommendations, including the recommendation
 17 essentially to pay at the higher level made in Ireland:
 18 "... where the Blood Transfusion Service was found
 19 to have been at fault (not the case here)."
 20 Then reference in paragraph 2 to a recommendation
 21 in relation to the eligibility criteria of the
 22 Skipton Fund, to allow payments to surviving spouses of
 23 those who died before the scheme was announced.
 24 Paragraph 3, under the heading "Government
 25 response ...":

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1 Well, it wasn't.
 2 So they have got an incorrect line. But then that
 3 is almost like kind of boxing off any conversation about
 4 liability.
 5 Then they come to finance. They say, "Well, we
 6 did nothing wrong, and anything we are doing is out of
 7 the goodness of our heart", that is effectively the
 8 government's -- it is what they tried to say. So it's
 9 a few scraps here and there, you know, "It's what we can
 10 afford", you know, "We'll just give ..."
 11 And that is -- yes, again, you have correctly
 12 zoned in on the problem.
 13 Q. Then the document then continues just informing you of
 14 the position in relation to Macfarlane and Eileen Trust
 15 in paragraph 4.
 16 Then if we go over the page, in terms of the
 17 Skipton Fund, you are given the costings, you are given
 18 what the costs would be, for example, in paragraph 3, to
 19 provide payments to where people had died before the
 20 Skipton Fund had set up, and then, paragraph 6,
 21 reference to the review --
 22 A. Yes.
 23 Q. -- in five years' time.
 24 Now, you have described this in your statement as
 25 a briefing submission with no request for any specific

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1 action to you. I mean, was that a term of art,
 2 a "briefing submission", there'd be documents that might
 3 come to you saying, "We want you to decide to do X, Y
 4 and Z", and ones that would come to you for information
 5 only?
 6 A. Could I go back to the first page and the first
 7 paragraph?
 8 Q. Of course.
 9 A. Yeah, I think this is not -- this wasn't something that
 10 I'd sought. I think this was -- how would I describe
 11 this? The date of it was?
 12 Q. 19 June. Two weeks in.
 13 A. So I think it was anticipating that the Archer Report
 14 was not well received at all and -- sorry, the
 15 Government's response to it was not well received at
 16 all, that the ministerial team would come under pressure
 17 and that this was, I think, an assertion of the
 18 Government's position and I think, making it all about
 19 finance, I guess, was a way of saying this is all
 20 difficult. And you can see in later submissions that
 21 came to me in my time as Secretary of State, that
 22 language sort of intensified.
 23 But, yeah, I think this is what this submission
 24 would be.
 25 Q. I want to come on and look with you at some documents

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1 minister to reply. Letters from the public would be
 2 designated "TO", "treat official", and what that means
 3 is they go into that correspondence unit and then are
 4 dealt with, with an official reply that ministers would
 5 never see.
 6 Q. If we can then just look at a handful of letters, or
 7 probably just one before the break. It is
 8 HSOC0011228_002.
 9 Now, this isn't from an individual member of the
 10 public, this is from the Chief Executive, then
 11 Chris James, of The Haemophilia Society to you. He
 12 offers you congratulations in the first paragraph. He
 13 says:
 14 "... and hope we are able to construct a positive
 15 relationship with you which sadly we were unable to do
 16 with your predecessor.
 17 "The Haemophilia Society is extremely disappointed
 18 with the Government's recent response to the
 19 Archer Report to the contaminated blood and blood
 20 products disaster. While we are pleased that the
 21 government has recognised that the state has a moral
 22 responsibility regarding this issue we do not believe
 23 that the action the Government has already announced
 24 comes even close to discharging that moral
 25 responsibility."

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1 that are letters written to you as Secretary of State
 2 for Health, from those infected or affected but which,
 3 for the most part, at least, your evidence, your
 4 statement tells us you wouldn't have seen at the time.
 5 Before we look at any individual examples, could you
 6 just explain what the process was in terms of letters
 7 coming into the Secretary of State and why it was that
 8 they were answered by others and usually did not come
 9 across your desk?
 10 A. Obviously, the Secretary of State for Health receives
 11 thousands of letters, emails and enquiries in the course
 12 of any given week, that would be, I think, handled by
 13 the correspondence unit of the Department. The
 14 convention in the Department at the time -- but I think
 15 is a convention that was common across government and
 16 probably still is -- was that the Secretary of State,
 17 who has limited capacity, in terms of time, answers
 18 letters from Privy Counsellors, senior parliamentary
 19 figures, the Royal Family, in my case, a few times,
 20 which were letters which had hit the public domain, but
 21 can't answer every letter that comes in.
 22 And those letters -- if it was an MP, a letter to
 23 the Secretary of State would often go then to the
 24 relevant junior ministers, so it would go into the
 25 Secretary of State, but then be passed to a junior

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1 Then there is a request for you to meet urgently
 2 with a delegation to discuss the moral responsibility to
 3 implement the Archer reports in full.
 4 Now, as I understand it, you don't know and I do
 5 not think the documents, I'm afraid, tell us one way or
 6 another whether you saw this letter. But is it the kind
 7 of letter that you would have expected to get to your
 8 private office?
 9 A. Yes, I think a letter of this kind, I would have
 10 expected to see in a file in my red box that would say
 11 "to note", or something like that. So that would be the
 12 kind of letter that you would expect to see,
 13 particularly because there is some personal
 14 congratulations. That is what you would expect to see
 15 but, obviously, it then it might have had advice on it
 16 as well, "We don't recommend you meet at this time", or
 17 something like that. But, yes, I probably did see it,
 18 I would imagine.
 19 Q. So, in any event, whether you did or didn't see it
 20 personally and, as I say, I don't think the documents
 21 tell us one way or another, this would have alerted
 22 someone within the Department to the fact that
 23 The Haemophilia Society was profoundly disappointed with
 24 the Government's response --
 25 A. Yes.

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1 Q. -- and would have put on the record, as it were, this
 2 idea of moral responsibility and how to respond to
 3 a moral responsibility?
 4 A. Yes.
 5 Q. So it ought to have been considered by someone within
 6 the Department?
 7 A. Yes. I think the clue to the letter and its handling
 8 might be in the smaller print towards the bottom, where
 9 it records the president as being Lord Morris of
 10 Manchester. As I said before, Alf was knocking on my
 11 door. So it is possible, from my perspective, that
 12 I had this letter in that kind of place in my mind, that
 13 you know, because I was clear I would always meet Alf
 14 and I did meet Alf, but that is probably where I had
 15 this in my mind.
 16 I think -- I don't know whether you want to come
 17 on to discuss that but you will see some of the kind of
 18 exchanges around my meeting with Alf Morris in terms of
 19 the briefing and other things. So it is clear that this
 20 letter would have signalled that that might be an issue,
 21 let's say, for the Department.
 22 Q. I will certainly pick that up. We will pick that up
 23 after the break but if I can just ask you about one more
 24 letter and its response before we break. So if we go to
 25 WITN1056098. Now, this is an example of a letter from

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1 a letter like that and -- and say "What's going on?" It
 2 is painful for me to read -- what are we now -- 13 years
 3 later. You know, I would want to apologise to this
 4 person who sent this letter. It is not an acceptable
 5 way of dealing with public concern and I had similar
 6 with Mid Staffordshire. So I'm not making a kind of
 7 comment in relation to this letter.
 8 I wouldn't for a second say the Secretary of State
 9 can see every letter but I guess there were many such
 10 letters of this kind coming in and you would expect, in
 11 a situation where the public interest was being first
 12 and foremost considered, that if the Department receives
 13 a lot of letters -- "We have had this many letters now
 14 minister on this issue, if you want to see it", but no
 15 such service in that respect. But it is painful to read
 16 it now, yes.
 17 Q. Then if we just look at the response which was sent to
 18 this letter, it is at WITN1056099. So the response is
 19 22 June 2009 and it is from the Customer Service Centre
 20 at the Department of Health. So that is the unit, is
 21 it, that would answer these types of letters.
 22 A. It is worse than insulting, isn't it? Those lines that
 23 are just cut and paste into that letter, and they are
 24 cut and paste, aren't they, because we have seen those
 25 lines, haven't we, in the PLP brief and in other things

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1 a member of the public.
 2 A. Yes.
 3 Q. It is 16 June 2009, it is addressed to you and it says
 4 "For the personal attention of Secretary of State for
 5 Health [Right honourable] Andy Burnham", there is
 6 a request for you to answer it personally. Then there
 7 is a narrative set out. It is from the husband of
 8 a woman infected with hepatitis B and C. It details the
 9 consequences, both in family terms and financial terms,
 10 for them of that infection and sets out a number of
 11 matters, including reference to the Archer Inquiry, and
 12 there is an appeal at the bottom of the page to take
 13 action.
 14 Now, you say, consistent with what you described
 15 about the "treat official" process, you can be fairly
 16 certain that you didn't see this letter?
 17 A. I would go further and say I am 100 per cent certain,
 18 because once it was designated as "treat official", as
 19 I think this one was, then you wouldn't see it. But
 20 I have to say, in terms of seeing it in the paperwork
 21 and following the section 9 request that you sent,
 22 I found this painful to read.
 23 It is painful, actually, to see that these letters
 24 were coming in and I would have wanted to do
 25 a personal -- I would always want -- I wouldn't get

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1 that you have shown. It's a meaningless letter, isn't
 2 it? For something that was deeply and personally felt
 3 by the person who wrote in to me has got a reply that
 4 has no -- absolutely zero response to the particular
 5 issues that he was talking about, around potential
 6 homelessness and the impact on his family. It is
 7 appalling, to be honest.
 8 Q. The fourth paragraph. It begins "The Department is
 9 committed" but it is just the last sentence I want to
 10 ask you about or the last part of that sentence:
 11 "The Department gave very careful consideration to
 12 Lord Archer's recommendations to see what more it could
 13 do, and has made as positive a response as possible."
 14 Do you have any observations on that assertion?
 15 A. Well, I wasn't in the Department so I don't know how
 16 careful the consideration was but it may have been. But
 17 I don't feel they could say "as positive as possible".
 18 There was no rationale, in my view, for the decision on
 19 the Skipton Fund to separate people infected with HIV
 20 with people from hepatitis C, in the way that --
 21 I didn't see a proper rationale for that.
 22 So, no, again -- well, to the extent that
 23 I suppose the Government and the ministers could assert
 24 that, but it is clearly not, in my view, a true
 25 statement.

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1 **MS RICHARDS:** Sir, I note the time. Perhaps we could take
 2 our morning break now?
 3 **SIR BRIAN LANGSTAFF:** Yes. We will do that and we will come
 4 back at 11.45 am.
 5 Now, this is the first break in your evidence. At
 6 this and any break what you must not do, because you are
 7 giving evidence under oath, is discuss your evidence
 8 with anyone, whether the evidence you have given or the
 9 evidence you may yet be asked to give. You can talk
 10 about anything else you like.
 11 11.45 am.
 12 **(11.20 am)**
 13 **(A short break)**
 14 **(11.45 am)**
 15 **MS RICHARDS:** Mr Burnham, before the break we had looked at
 16 a letter sent to you and we saw how it had been
 17 answered. I just want to follow the chain of
 18 correspondence through two further documents.
 19 WITN1056100.
 20 This is a further letter from the same individual,
 21 again addressed to you, and picking it up in the first
 22 main paragraph, the observation is:
 23 "Your reply via Paul Larkin at the Department of
 24 Health does not answer my questions!"
 25 Then it goes on to make reference to the

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1 **A.** It is important for me to say today to -- that may help
 2 the rest of proceedings today, that we were at a time
 3 where unresolved issues during our period in Government,
 4 as I said before, not just in the Department of Health
 5 but more broadly, were kind of coming right up.
 6 I say the question is a fair question for sure.
 7 But before arriving at the Department of Health I had
 8 been working on the Hillsborough issue. I had attended,
 9 people may recall, Anfield on the 20th anniversary of
 10 the Hillsborough disaster and had made a speech as
 11 Culture Secretary and had kind of stepped outside of
 12 Government, if you like, collective responsibility to
 13 make an individual call, alongside Maria Eagle MP, for
 14 disclosure of all Hillsborough documents.
 15 I don't say this to defend individuals but, even
 16 though I had done that, Gordon Brown backed me on that.
 17 I mention it here because your question is very, very
 18 fair, but I was in that kind of position, if you like,
 19 at that point in time, where I was beginning to put
 20 pieces together and think, why are so many people in
 21 this country crying for justice of some kind? Is there
 22 something wrong with the way in which we are governed?
 23 Basically. And I was kind of -- the cogs were kind of
 24 churning on that particular question.
 25 So I just think that's relevant because that

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1 Archer Report. The next paragraph talks about it being:
 2 "... vital that you should acknowledge the damage
 3 to their health and the financial effects to their
 4 lives, because of government policy."
 5 If we go further down the page, it talks about the
 6 plight of his wife, the impact on the family. The last
 7 paragraph on this page:
 8 "For God's sake do something about this awful
 9 scenario. 2000 haemophiliacs have died in horrific
 10 circumstances, and 2,500 will die in the same way
 11 including my wife."
 12 Over the page:
 13 "The present government are only interested in
 14 their loss of political position. Gordon Brown has lost
 15 his political high ground and his moral compass ...
 16 "I want a response from you quickly please."
 17 Now, again, this would not have come to you for
 18 the reasons you have already described.
 19 **A.** I don't believe so. But, again, it is extremely painful
 20 to read and I wouldn't disagree with the statement that
 21 was made towards the end of the letter.
 22 If I could, just to introduce something that --
 23 I mean, it does relate to what was said there, if
 24 I could look again at the second page?
 25 **Q.** Of course.

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1 was -- you know, I just think it's important in
 2 an inquiry like this not to think about, "Okay, we're
 3 very much focused that issue", but the wider context
 4 here to this was I had already gone through a process of
 5 seeing something that was fundamentally wrong and
 6 undermining of the Government's position on
 7 Hillsborough, which was amended police statements, and
 8 I had initiated a call for disclosure there, and I was
 9 kind of bringing that experience, if you like, to -- as
 10 we will go forward, to this particular issue.
 11 **Q.** Just to complete the picture in terms of this particular
 12 chain of correspondence, if we go to DHSC6696667.
 13 If we pick it up on the second page first of all,
 14 bottom half of the page. There is an entry that says:
 15 "Hi there
 16 "Please see the [correspondence] below for this TO
 17 case."
 18 As you explained, that is the treat official:
 19 "You will also wish to see earlier
 20 [correspondence] ... where he was given the 'standard'
 21 lines on the Gov't's response to Archer's
 22 recommendations. I would be grateful for a contribution
 23 that I can use as the basis of my response."
 24 If we go to the first page. Bottom of the page
 25 there is a response here:

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1 "I promised to come back to you. Unfortunately
 2 the CJD policy lead is on leave for another week.
 3 However, I have found some useful information on the
 4 vCJD case ..."
 5 Then this:
 6 "I suspect we have not heard the last from Mr or
 7 Mrs Wintle. Presumably, if they continue to ask similar
 8 questions [those are the questions we have looked at in
 9 some of the correspondence I have just taken you to] we
 10 ought to tell them that we do not intend to reply to
 11 their letters."
 12 Do you have any observations on that?
 13 A. I mean -- they talk about sort of lines, don't they, and
 14 defensive lines. I mean, the other way of putting it is
 15 "stonewalling lines", aren't they? That's what they
 16 are. The same lines being given in response to very,
 17 very personal letters.
 18 I'm not going to sort of blame the individual who
 19 wrote this. I think, again, my answer to the Chair is
 20 relevant, that the whole of the kind of Government
 21 response to this issue kind of began from a position of
 22 don't open up because of the financial exposure. And
 23 I think that was the whole climate I think around this,
 24 and hence I think civil servants at this level were
 25 being -- that's where they were, I guess, from

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1 constituency office on 19 June -- I will come back to
 2 the protest outside your office.
 3 A. Yes.
 4 Q. "... about contaminated blood and blood products,
 5 delivered with a number of other letters from people
 6 affected by these very sad events. We will be
 7 responding to each of these separately enclosing a copy
 8 of this reply.
 9 "First, may I put on record against that this
 10 Government is deeply sorry for what happened in the
 11 1970s and the 1980s. I understand the significant
 12 distress, severe debilitation and the stigma that
 13 chronic infection with hepatitis C and HIV can cause.
 14 I appreciate the concern of haemophilia patients about
 15 their increased risk of vCJD compared to the general
 16 population. The lessons learnt from the tragedy of
 17 contaminated blood are important ones and I hope
 18 the steps we have taken to minimise any impact of vCJD
 19 demonstrate our ongoing commitment to securing
 20 treatments that are as safe as possible.
 21 "As Lord Archer acknowledges, there is no evidence
 22 that individuals were knowingly infected with
 23 contaminated blood and blood products. Although there
 24 was recognition at the time among the medical community
 25 that there was some degree of risk, it was not possible

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1 somewhere, being told to do.
 2 Q. Is it right to understand it is a cultural or
 3 institutional issue, as you say, rather than -- not the
 4 individuals sending these particular messages?
 5 A. I don't know for certain. So I don't know whether there
 6 was a sort of reputational fear within the Department of
 7 Health as well. Because there could well have been.
 8 You know, "We don't want individual" -- you know,
 9 I think it probably was, to a degree, probably part of
 10 if, a reputational concern, a reputational concern for
 11 individuals, for the reputation of the Department
 12 possibly. But I think the thing that was overarching
 13 was this financial exposure concern, which is
 14 fundamentally the wrong way in which to address an issue
 15 that has caused such devastation to British families.
 16 How could the British Government react in a way -- this
 17 is the heart of it, isn't it? How could it treat
 18 citizens of our country in that we just won't reply --
 19 we will send them stonewalling lines and then we just
 20 won't reply. But that basically is what was happening.
 21 Q. I want to come now to a letter that you referred to
 22 earlier, which is the letter that went out from you.
 23 PMOS0000191.
 24 16 July 2009, and we can see, in the first
 25 paragraph, thanks for a letter delivered to your

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1 to test donors for these infections. The overwhelming
 2 consensus amongst the experts was that the risks were
 3 outweighed by the benefit that these new treatments
 4 brought."
 5 I will come back to that. I'm just going to go
 6 through the --
 7 SIR BRIAN LANGSTAFF: If you just pause there for a moment.
 8 The line, "there is no evidence that individuals were
 9 knowingly infected with contaminated blood and blood
 10 products", could be read in one of two ways. One is
 11 that those infected didn't know, but I suspect -- and
 12 you can confirm if you would, that what you meant or
 13 what those words that you used were intended to mean was
 14 that the person infecting them, by giving them
 15 contaminated blood or blood products, or the system that
 16 was giving that to them, didn't know that the products
 17 could transmit infection.
 18 A. So, Chair, that's the sentence that stands out in this
 19 letter. And I didn't know it at the time but I now
 20 believe that to be a highly misleading sentence or,
 21 indeed, a false sentence and it is very difficult for
 22 me, 13 years on, to see a letter that is in my name but
 23 which I now believe I have evidence to say that that is
 24 false.
 25 What I think it is saying is that there is no

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1 evidence that -- you could read it two ways, as you
2 rightly said -- but I think what it is saying, or is
3 certainly heavily implying, that the system, for want of
4 a better word, had no evidence, that there was no
5 knowledge that people were being infected.

6 Now, the reason I say I believe that to be a false
7 statement is because I believe there is -- I believe
8 I could point you now to a document to disprove that or
9 at least cast a serious question on that assertion and
10 if you would like me to I can or if you would like to
11 come to it later that's fine as well. But it is
12 a letter, a circular letter, I believe initially
13 unearthed by Carol Anne Grayson, who I believe has given
14 evidence to the Inquiry, dated 11 January 1982, from the
15 Oxford Haemophilia Centre on headed paper of the
16 Oxfordshire Health Authority, which is relevant,
17 I believe, because that takes the link to the Department
18 of Health, "To all Haemophilia Centre Directors" and
19 this letter, and it has a reference, if --

20 **MS RICHARDS:** It is HCDO0000252_042, so that we can look at
21 it.

22 **SIR BRIAN LANGSTAFF:** You should know that there is
23 a substantial argument put to me in respect of that
24 letter, that the date should be '83 and not '82, but
25 I suspect that what you have in mind is not the accuracy

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1 pool concentrates. Those patients are few in number but
2 a study along those lines is being carried out at Oxford
3 to determine the infectivity of factor VIII concentrates
4 produced by the Plasma Fractionation Laboratory, Oxford
5 and Blood Products Laboratory, Elstree."

6 It goes on later in the letter, Sir Brian, to talk
7 of an exemption from a clinical trial certificate on the
8 second page, which implies a departure from, let's say,
9 normal procedures. You can see that in the paragraph
10 under paragraph 3. You can see the reference to
11 an exemption from a clinical trials certificate.

12 I would say, maybe not conclusively, but this
13 casts, I would say, serious doubt on the letter that
14 I sent to Mr Tonkin saying that -- "no evidence that
15 individuals were knowingly infected". I think this does
16 provide evidence that individuals were knowingly
17 infected. Those who wrote the letter may say "but there
18 was a balance of consideration because we had no other
19 product but" ...

20 **SIR BRIAN LANGSTAFF:** Indeed, I think if we go back to that
21 letter --

22 **MS RICHARDS:** To Mr Burnham's letter, PMOS0000191.

23 **SIR BRIAN LANGSTAFF:** -- if we just look at the paragraph
24 beginning:

25 "... there is no evidence that individuals were

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1 of the date, so much as the contents?

2 **A.** Correct. I wouldn't know now whether there was
3 a significance if it was '83 not '82 but it would be
4 very odd for somebody to put '82 on a letter like this
5 if --

6 **SIR BRIAN LANGSTAFF:** Well, it is shortly after '82 ended.
7 It is the same effect, perhaps --

8 **A.** I see.

9 **SIR BRIAN LANGSTAFF:** -- as people writing letters early in
10 the new year.

11 **A.** I understand now, yes.

12 There is a long first paragraph that I could read,
13 and this is talking about Factor VIII products and the
14 commercial companies involved in them. If we go to
15 halfway down:

16 "Although initial production batches may have been
17 tested for infectivity by injecting them into
18 chimpanzees it is unlikely that the manufacturers will
19 be able to guarantee this form of quality control for
20 all future batches. It is therefore very important to
21 find out by studies in human beings to what extent the
22 infectivity of the various concentrates has been
23 reduced. The most clear cut way of doing this is by
24 administering those concentrates to patients requiring
25 treatment who have not been previously exposed to large

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1 knowingly affected by contaminated blood and blood
2 products."

3 What I'm going to ask you is whether you saw at
4 the time any tension between those words and the words
5 which then follow, that it was recognised there was risk
6 and, in context, presumably that means risk of
7 infection. Then the next sentence, which suggests that
8 the risks were outweighed by the benefit that these new
9 treatments brought.

10 In other words, it may be thought that this letter
11 is saying that individuals were exposed to a risk of
12 infection which the medical community knew about at the
13 time and individuals may not -- unless one interprets
14 knowingly in a different way -- may not have known
15 themselves?

16 **A.** I think you have correctly explained what this letter is
17 saying. But, in my judgement, those risks would have
18 had to be very clearly explained to anybody who was then
19 in the receipt of a product which the Oxford letter says
20 they had not previously been in receipt of, and that
21 they were entering a trial. From what I know, there
22 is -- and bear in mind this went to every Haemophilia
23 Centre Director. I think this does make --

24 Something comes together for me here, which is the
25 number of people who weren't consulted about treatments.

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1 They were not told about diagnosis. This letter says to
2 me they were intending to use people as guinea pigs.
3 They could have potentially justified it but not without
4 patient consent. But, from what I know in this period
5 and in this issue, there is a massive issue with regards
6 to lack of patient consent, lack of proper patient
7 information and I think that explains a large part of
8 the problem.

9 But it absolutely, for me, says to me anyway --
10 I can only -- for me it is personal, isn't it? There is
11 a letter here in my name that I wrote as Secretary of
12 State for Health and, knowing what I know today, would
13 I feel in any way confident about putting my name to
14 a statement "there is no evidence that individuals were
15 knowingly infected with contaminated blood and blood
16 products"? No, is the answer to that, because I think
17 that document casts serious doubt on that statement.

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

19 **MS RICHARDS:** If we go back to the full letter, please. The
20 letter continues referring to the schemes and then, at
21 the bottom of the page, the response to the
22 Archer Report. If we go over the page it deals with the
23 Skipton Fund, the Archer Inquiry and then the
24 Westminster Hall debate. The last paragraph is this:

25 "I hope this reply shows you that this Government
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1 this individual would have been -- again, it would have
2 been -- put it in the bin, I guess.

3 I think through the correspondence there is, like,
4 faux sympathy and commitment to high principles that
5 were just not justified by the actual behaviour and the
6 treatment of distressed individuals in this instance.

7 **Q.** There is one further letter I wanted to ask you about,
8 which was sent from Gillian Merron, which is at
9 WITN1056106. It is sent around the same time,
10 July 2009. This is to Colette Wintle. It is just the
11 last paragraph.

12 Again, we have the expression of sympathy, and
13 then it continues:

14 "If doctors and medical experts had known then
15 what they know now, the tragedy could have been
16 prevented, but the fact is that they did not. I want to
17 reassure you that we take our responsibility to guard
18 the safety of the blood supply extremely seriously and
19 that the lessons have been learned from these tragic
20 events."

21 What lessons had been learnt, to your knowledge,
22 by the Department from what had happened as at 2009? It
23 is a very easy statement to make.

24 **A.** It is a phrase that we hear a lot, isn't it, these days?
25 "Lessons learnt", very easy to say. In how many

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1 does take this issue seriously and we are committed to
2 openness and transparency in every respect."

3 Do you have any observations, Mr Burnham, now on
4 that last part of that last paragraph, the commitment to
5 openness and transparency, which you are here
6 articulating as Secretary of State for Health, in light
7 of your current understanding?

8 **A.** I don't have a problem with putting my name to that
9 because I have tried to operate to those principles in
10 my time as a public figure. And I guess other ministers
11 in the Government that I was in would have said the same
12 but, in practice, was that the reality and I think this
13 session is drawing out that it wasn't. We have
14 a picture here of incomplete government lines, let us
15 say -- but I would go further and say inaccurate
16 government lines -- that were then being kind of held to
17 rigidly.

18 So while I would have been able to write that and
19 sign it in good faith, it took me longer from the point
20 I wrote this -- because obviously I wrote this letter
21 before I had started to pull away at the threads, if you
22 like, and understand more about it. So it is obviously
23 a difficult kind of letter for me to see when I now
24 believe it to be -- well, it is a letter I never would
25 have sent now and I could understand how the effect on
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1 instances has it actually happened? I would say there
2 was really very -- this, again, is not aimed at Gillian,
3 by the way, because I think she was given false lines to
4 say about Ireland, as well, actually.

5 **Q.** We will come onto that.

6 **A.** It is not just -- it wasn't just me the Secretary of
7 State was signing what I now consider to be -- let's
8 call them inaccurate statements, misleading statements.
9 I think we can all agree on that, I hope, Chair.

10 Other ministers were being asked to sign something
11 of the same. And it is this thing:

12 "If doctors and medical experts had known then
13 what they know now, the tragedy could have been
14 prevented, but the fact is that they did not."

15 Again, as I understand it, there is a letter from
16 a senior figure of Stanford University --

17 **Q.** Dr Garrott Allen.

18 **A.** -- to the Department of Health in 1975 about the major
19 risks of blood products coming from the United States,
20 where donors were paid, where commercial companies often
21 went to prisons and other places to secure that plasma,
22 that was understood and that is why David Owen, the
23 Secretary of State for Health, put in place a major
24 drive to secure the UK self-sufficiency in blood
25 products.

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1 That was meant to be the policy of the Department
2 of Health and it had to be done urgently because of the
3 risks to the British public from imported blood
4 products, particularly products where donors were paid.

5 So that statement, if we had known then what we
6 know now -- I'm sorry, that is not justified by the
7 facts because the facts were very well known and,
8 actually, there is a minute somewhere in the mountain of
9 paperwork that I have read where a very clear decision
10 was taken to carry on using imported blood products,
11 I think with a financial consideration in mind.

12 So, these statements in these letters don't stack
13 up, I'm afraid to say. And it is a very serious matter
14 when ministers of the Crown are being asked to put their
15 name on letters, on an issue of this seriousness, that
16 matters so much to so many people; it is serious.

17 Q. For the record -- we don't need to put it up,
18 Lawrence -- the 1975 letter from Stanford, the reference
19 is CBLA0000249.

20 It is around this time, June 2009, not long after
21 you have taken up the role of Secretary of State, that
22 there was a gathering of campaigners outside your
23 constituency office. You described that in your
24 statement as something which planted a seed in your
25 mind. Can you just tell us a little about that?

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1 involved.

2 So I was said "Avoid the office." But anyway,
3 I said no. I came back. I think, from memory, I came
4 back in through a back entrance to the office. And,
5 yeah, it was something of a shock. I think the
6 paperwork shows that my constituency office had been
7 making fairly urgent enquiries to the Department saying
8 "There is a protest", and again it is quite revealing
9 that some of the messages that came back were, "Tell him
10 not to meet the protestors, we will send strong
11 defensive lines", I can't remember, but there was
12 something of that kind. I could comment on it if it
13 came up.

14 Now, here, I'm not sure I can be absolutely -- my
15 memory -- I'm just going to be honest, I can't
16 100 per cent say for sure that this is what happened but
17 I had -- I have a memory of going outside towards the
18 end when it was dispersing. Because I had come back
19 anyway.

20 I had missed, I think, the main gathering. I had
21 come towards the end of the afternoon. But I know that
22 other people said I didn't and I didn't go outside. But
23 my memory was that I did and one of my former members of
24 staff had a memory that I did but it was at the end when
25 there was only a couple of people, I think, left and the

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1 A. Yes. This was a Friday, I think a fortnight after I had
2 been appointed, and I'm just going to be honest today.
3 You know, infected blood, contaminated blood was not on
4 my mind, I'm just going to have to be honest about that.
5 It really wasn't. Swine flu was certainly very much on
6 my mind. In fact, everything I was doing, the phone was
7 just ringing constantly in relation -- Liam Donaldson
8 was ringing me repeatedly on that issue because we were
9 in the first two weeks of the declaration of the
10 pandemic, as well.

11 Mid Staffordshire, to a degree, was on my mind
12 because I had signalled early that I was minded to have
13 a further Inquiry on that, so that was a live issue.
14 And I had been out and about in Leigh, my former
15 constituency, and I had a message there was a protest
16 outside my constituency office. Sometimes as
17 a politician you could probably guess what the protest
18 would be about because you know the things that are
19 controversial around you. But I just, to be honest,
20 I didn't.

21 I kind of didn't have a kind of sense, at that
22 point, why there would be a protest on the issue outside
23 my constituency office and, you know, as often in these
24 instances, the staff who were there, they got a bit
25 concerned and Greater Manchester Police had been

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1 protest, in retrospect, was really important because of
2 that shock of the protest. Why? You know, why?
3 I didn't know why so many people would come to my --
4 make such an effort to travel to my constituency office
5 said something.

6 But also because letters were handed in and there
7 is a reference somewhere to a letter was handed to me in
8 one of the papers somewhere. And that is my
9 recollection, although I know that some people who were
10 there say I didn't come outside.

11 But, anyway, the main thing I think is that is why
12 Mr Tonkin got a direct reply because the letter that he
13 had brought with him had been given either to me or to
14 my constituency office staff. And I am certain that,
15 because of that -- I was thinking -- you know, I'm
16 normally somebody who would engage with people,
17 I remember saying to them, "Well, give me those letters
18 that the protest brought and I'm going to ask the
19 Department for me to reply to those letters" and I think
20 that is the only thing to me that explains why I replied
21 to Mr Tonkin and that, Chair, is the letter we were
22 discussing a moment ago.

23 Otherwise, if he had posted it, it would have been
24 "treat officially".

25 Q. I want to pick things up then with a briefing from late

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1 August 2009.
 2 DHSC004137_002.
 3 This is a briefing sent to you from Debby Webb.
 4 It is in anticipation of a discussion you are going to
 5 have with Gillian Merron about the ongoing issue of
 6 response to the Archer Inquiry, and I think the
 7 meeting -- there is a reference to it is being to be on
 8 2 September. I think another document suggests it got
 9 put back a little. But the date of your actual meeting
 10 with Gillian Merron I think is not material:
 11 "The purpose of this submission is to acquaint you
 12 with the key issues arising from the Government's
 13 response to Lord Archer's independent inquiry ..."
 14 Under the heading "Handling" it is described as
 15 a "sensitive issue". There is a reference to
 16 parliamentarians, particularly Lord Morris. There is
 17 a reference in that paragraph to:
 18 "... notice of an application for a judicial
 19 review ..."
 20 That's a case we will come on to, but that's the
 21 Andrew March judicial review.
 22 A. Yes.
 23 Q. The recommendation is:
 24 "... Ministers [to] maintain the position set out
 25 in the Government's response published on
 73

1 Next paragraph deals with issues in relation to
 2 self-sufficiency, loss of documents.
 3 Then we go to the section:
 4 "Liability, financial relief and litigation.
 5 "Successive Governments have not accepted
 6 liability for these events, but set up three financial
 7 relief schemes ..."
 8 Then there are details of the Macfarlane and
 9 Eileen Trusts and the Skipton Fund.
 10 If we go to the top of the next page we can see it
 11 says:
 12 "Those affected have lobbied for many years, both
 13 for more money (comparable to the significantly higher
 14 payments made in Ireland, where, unlike in the UK, the
 15 blood transfusion service was found to have been at
 16 fault), and for a public inquiry. Ministers have
 17 resisted both."
 18 We then see reference to Lord Archer's Inquiry.
 19 Second sentence says:
 20 "Successive Governments have resisted calls for
 21 a public inquiry on the grounds that the causes of
 22 infection had been identified and remedied, and there
 23 was now little more to be learnt."
 24 There is then the reference to the Archer Report,
 25 to the Government response.
 75

1 20 May 2009 ..."
 2 So that is the response that had been cleared by
 3 your predecessor, Mr Johnson. We see then under the
 4 heading "Background", "Summary of key events":
 5 "Some 4-5,000 people with haemophilia and other
 6 bleeding disorders were inadvertently infected with
 7 hepatitis C ..."
 8 I'm just flagging up the word "inadvertently",
 9 Mr Burnham, because it is a word we have seen in
 10 a number of earlier documents.
 11 "... during the period 1970-85 ..."
 12 Then there is reference in the last sentence to
 13 transfusion of whole blood and people being infected
 14 through that route.
 15 If we go over the page. I'm not going to read it
 16 out in full but there are some matters of background set
 17 out.
 18 The third paragraph reads:
 19 "Internationally, experts were divided in their
 20 views about the infection risk. The prevailing opinion
 21 was that the risk was low, and most experts, together
 22 with patient groups, did not want to stop
 23 importation ..."
 24 Then there is reference to the introduction of
 25 heat treatment and screening tests for HIV.
 74

1 Then if we go towards the bottom of the page, we
 2 see the issue of Lord Archer's recommendation about
 3 payment picked up and mirroring the payments in Ireland.
 4 It is asserted at the bottom of the page:
 5 "in Ireland, the State did not explicitly admit
 6 liability, but contrary to the position in the UK, the
 7 Irish Blood Transfusion Service ... was found, by
 8 a judicial inquiry, to have been responsible on two
 9 occasions ... for failures which resulted in the
 10 large-scale contamination with hepatitis C ..."
 11 More detail is given about that.
 12 Then there is then various things set out: "Views
 13 from stakeholders", "Parliamentary background". I don't
 14 think I need to read any of that.
 15 Then if we go to the next page:
 16 "Key developments going forward
 17 "Lobbying is likely to continue, particularly for
 18 increased payments to those affected."
 19 The first paragraph sets out in more detail the
 20 anticipated judicial review which has now begun, and
 21 then reference in paragraph 2 to the Penrose Inquiry
 22 having begun in Scotland in January 2009.
 23 That's the background briefing that you received.
 24 I just want to pick up on those two items set out on
 25 that page. The Andrew March judicial review. It
 76

1 doesn't sound like you had much by way of direct
2 involvement in the judicial review. I will have
3 a handful of questions about it later. Is that
4 surprising, that as Secretary of State you weren't more
5 directly involved with litigation against the Government
6 which could have significant financial implications if
7 it was successful?

8 A. Possibly. I just think it is the case that there are
9 lots of judicial reviews that are launched against
10 Government departments. But given the significance of
11 this one, yes, I think it probably is in this case given
12 how high-profile and controversial that statement was
13 around the Ireland comparison.

14 I think just -- if I could comment on what you
15 have shown us?

16 Q. Absolutely.

17 A. I think this is a partial account that's riddled with
18 inaccurate or misleading statements. I mean, not just
19 one, numerous. You quoted earlier a statement about
20 experts were divided and, was it, the consensus that the
21 risk was low. Why then did David Owen initiate
22 a massive drive to increase capacity at British
23 laboratories? It is not the case that opinion was
24 divided. I think there was a very real understanding
25 that the risk was high.

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1 beginning of this memo -- there was in my writing the
2 word "yes", underlined, in relation to would I still
3 want to meet Lord Archer. And I think there was a lot
4 of comment in the Department: do you really want to?
5 Well, yes. I kept having to ...

6 So, this was -- this comes at a time when there is
7 a little -- I think there was a sense that we were
8 beginning to question the line a little. And that's the
9 background context to this note. It is quite a long
10 discursive note, which isn't kind of common, but I think
11 it was thinking -- I don't know. I would -- what lay
12 behind this was a sense of this is still a reasonably
13 new ministerial team, we need to take them through
14 every -- you know. But, as I say, partial and
15 misleading.

16 Q. Then, if I can ask you to look at DHSC5803265, and it is
17 page 3 we need to go to.

18 So the bottom half of the page is an email,
19 11 September 2009. It says:

20 "As you are aware, [Secretary of State] met with
21 MS(PH) [so that would have been Gillian Merron] and
22 Baroness Thornton yesterday to take stock on where we
23 are in terms of contaminated blood. A number of issues
24 were raised including the following ..."

25 The first is a reference to you inviting

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1 So, there is a whole question of Dr Owen's papers,
2 isn't there, from that period, and how they disappeared.
3 But I don't think this -- that's accurate again. So --
4 I need to say this because obviously this is going to
5 a Secretary of State. And I don't believe in my time as
6 a minister I would have been routinely served up with
7 something this incomplete or this sort of misleading.

8 Q. Then the second reference on this page is in relation to
9 the Penrose Inquiry. Again, the documents don't suggest
10 that being something with which you had, in terms of
11 what the Department of Health's response or involvement
12 would be, any particular active role.

13 Do you recall whether the fact that a public
14 inquiry was now happening in Scotland, whether that
15 caused you or Gillian Merron to doubt the correctness of
16 the continuing line in England not to hold a public
17 inquiry?

18 A. Well, I think throughout this period those concerns were
19 growing.

20 Could you remind me of the date of this?

21 Q. This is 28 August 2009.

22 A. So, I think this is at the period where -- obviously
23 the protest outside the office, bear in mind that
24 Members of Parliament would be routinely coming up and
25 mentioning these things. I think I had written on the

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1 Paul Goggins to explain proposals for example about
2 access to NHS services.

3 We will come on in due course to a meeting you had
4 with Paul Goggins in January 2010. Then:

5 "- Ministers were keen for some work to be done on
6 the smaller points we can address such as working with
7 DWP on the benefit forms."

8 If we go over the page:

9 "- Possible links to the announcement of the
10 outcome of the prescription charges review."

11 Again, I think that was looking at the question of
12 whether those infected would not have to pay
13 prescription charges.

14 It is the next paragraph I wanted to ask you
15 about. It says this:

16 "- Generally speaking, Ministers wanted the
17 Department to be more on the front foot and take credit
18 for the things the Government had done in this area
19 (eg the setting up of the Skipton Fund in the first
20 place). They wanted better handling plans, putting out
21 positive messages/finding good new stories to announce
22 on this issue, rather than being passive and defensive.
23 Action point - A note should come up to Ministers - for
24 MS(PH) to comment on before going to SoS - setting out
25 some sort of short to medium term communication plan (by

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1 end of the month)."

2 Do you have any thoughts or reflections on that?

3 A. It made me go "ugh" a bit, when I read it. I don't

4 think we would have worded it in that way. I'm not sure

5 that's what we -- what we were doing here was beginning

6 the process of saying to the Department, "This can't say

7 where it is", is what we were doing. I'd said

8 to Gillian, "This is just not -- something is not right

9 here."

10 Now bear in mind, up until this point we had been

11 told the previous Secretary of State, the previous

12 ministerial team had dealt with this issue and it was

13 signed off by Government, therefore it is dealt with.

14 And you're -- effectively: the line is this, and that's

15 it.

16 And this was us beginning to say, "This isn't it".

17 You know, "This line is not holding for us."

18 And that was the purpose of that meeting. What

19 can we do? More front foot -- what does it say? Rather

20 passive and defensive? We were already telling

21 the Department that's what we were feeling they were,

22 you know. So those words I would pluck out there.

23 Front foot, get on with it, what are we doing? What

24 more can we do?

25 It was hard -- as I said earlier, you know, it was

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1 jabbing my chest, I think if I remember it correctly,

2 "You will do something on this", you know, "This is

3 disgraceful", you know -- it was a fairly memorable

4 meeting.

5 Q. You put it in your statement this way:

6 "Whilst I cannot recall the precise detail of our

7 discussion, I do have a clear recollection of the nature

8 of it. Lord Morris was more direct than I had expected

9 and the meeting left an impression on me. He made

10 a passionate case that Labour, of all parties, could not

11 leave this issue where it was and that the treatment of

12 the victims was in breach of natural justice."

13 You have said in your statement this, added to the

14 constituency process, was, as it were, the next stage of

15 the seed beginning to germinate, so to speak?

16 A. The seed was germinating. That is a nice way of putting

17 it. Bear in mind Paul Goggins, who has been mentioned

18 a lot, was Alf's successor as the Member of Parliament

19 for Wythenshawe and Sale East, and Paul -- I was very,

20 very close to Paul, sadly no longer with us.

21 Q. Now, you then had a meeting with Paul Goggins, which

22 took place in January 2010. Before I ask you about your

23 recollection of the meeting and the significance it held

24 for you, can we look at the briefing that you received

25 in advance of it. It is DHSC5190274. So the briefing

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1 hard to move any Government department when they feel

2 an issue is done as far as they are concerned. They

3 didn't want this. You know, they didn't want us to be

4 meeting and discussing it. That was obvious from the

5 sort of body language. But that's what this -- that is

6 what this reflected.

7 Q. You met with Lord Morris in September 2009 or

8 thereabouts.

9 A. Yes.

10 Q. There is no record, I think, of that but I don't --

11 A. No.

12 Q. -- think you think that -- you don't find that

13 surprising -- (overspeaking) --

14 A. No, I don't, because obviously I'd said on the note,

15 that yes, underlined, I wanted to meet him, because, as

16 I said, there was a strong kind of sense that "You

17 really shouldn't" -- you know, he was part of the Archer

18 review, and it -- "You will find it difficult". But Alf

19 was somebody, as I said, for whom I had huge regard.

20 I went one-to-one which sometimes is what

21 a minister -- you do, to say, "Look, I'm just going to

22 go and I want him to tell me -- tell it as it is."

23 So I met him in a tea room in the House of Lords,

24 and anyone who knew Alf, he was pretty good at telling

25 you as it was -- I think half the time with a finger

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1 is dated 14 December 2009. Paragraph 1 explains that:

2 "You have agreed to meet with Paul Goggins,

3 Brian Iddon [who was another MP] and some hepatitis C

4 infected haemophilia patient representatives."

5 Then there is reference to there having been

6 an earlier meeting with Gillian Merron in October.

7 If we go further down the page we can see what's

8 identified here under the heading "Increased HIV Payment

9 (Macfarlane and Eileen Trusts)" is what's anticipated to

10 be the criticisms that will be voiced at the meeting.

11 So that the:

12 "Increase in Macfarlane and Eileen Trusts funding

13 for those with HIV does not meet need.

14 "Campaigners want more parity with the (more

15 generous) compensation scheme in Ireland."

16 If we go over the page there are some "Key points"

17 set out. Then the "Suggested lines to take", so this is

18 the Civil Service briefing or recommendation to you, as

19 I understand it, are: we carefully considered

20 Lord Archer's recommendations; we have already paid out

21 money; we are going to increase the payments. So it is

22 the status quo, effectively; is that right?

23 A. Yes.

24 Q. Then we have got "Skipton Fund review". So there is

25 a summary of what the Skipton Fund does in paragraph 6.

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1 Paragraph 7 again makes clear that there is no payments
2 to dependants, including those of people who died before
3 the fund was announced. Some data set out about the
4 numbers of people who have claimed payments.

5 If we go to the top of the next page.

6 Paragraph 11 sets out the Government response, ie the
7 review in 2014. It says:

8 "... so there is still no support to those who
9 decide before 29 August 2003 who currently cannot claim
10 (an anomaly the widows were campaigning to be
11 rectified).

12 "In recent weeks, there has been an increase in
13 correspondence seeking to highlight the difference
14 between the ex gratia payment schemes for HIV and
15 hepatitis C. We think you will be heavily lobbied on
16 this point."

17 Then the "Criticisms" that are anticipated are set
18 out:

19 "The Skipton Fund should be reviewed now -- to
20 wait longer is "kicking it into the long grass".

21 "No payments to widows/dependants and nothing for
22 those who died before 29 August 2003."

23 Then again campaigners wanting parity with
24 Ireland.

25 The "Key points" are essentially money has been
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1 a little misleading, as the circumstances there were
2 different, and then what's said to be the difference is
3 then articulated in paragraph 14, and over the page.

4 Again, I will come back to that when we look at
5 the March judicial review.

6 If we go a little further down the page, we have
7 got the heading "Exclusion of widows", what's described
8 as the anomaly in the scheme and the long campaign in
9 paragraph 18 for that to be rectified.

10 Then, top of the next page:

11 "Key points:

12 "None -- this anomaly remains unrectified."

13 The line to take, again, is essentially to leave
14 it to 2014. The briefing goes on to deal with the issue
15 of insurance. It is obviously an important practical
16 matter, but I'm not going to take the time reading it
17 now.

18 So the briefing you were getting, is this right,
19 Mr Burnham, is essentially "Please don't change the
20 existing policy"?

21 A. Yes.

22 Q. You had that meeting then with Paul Goggins --

23 SIR BRIAN LANGSTAFF: May I just ask a question? Really, it
24 is directed, I think, to you, Ms Richards, and the team.
25 If we go back to page 3 of this document --

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1 paid out already and they are tax free and disregarded
2 by the DWP. Then the "Suggested lines to take" are
3 essentially the status quo, I think, a maintenance of
4 the current line, with the fourth bullet point being,
5 again, the review in 2014.

6 So you are not being recommended to change the
7 Government line?

8 A. No, there was no suggestion of that. As I said, I think
9 there was a very strong suggestion of do you really want
10 this meeting? It wasn't just the Alf Morris meeting.
11 It was the same with the meeting with Paul and with
12 Brian Iddon.

13 What I need to say, again, is the parallel with
14 Hillsborough is important because Paul was somebody
15 I was -- it makes me slightly emotional to talk about
16 him. (Pause)

17 Paul was saying to me at this time that this was
18 an injustice just like Hillsborough, but worse, if it
19 could be worse, in that thousands and thousands of
20 people were affected. And he was saying to me "Just sit
21 down, sit down with them, Andy". So I said I would, and
22 that was the meeting.

23 Q. If we just look at what the briefing for that meeting
24 says under the heading "Parity with Ireland". The
25 suggestion is that Lord Archer's recommendation is

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1 MS RICHARDS: Of course.

2 SIR BRIAN LANGSTAFF: -- under the "Suggested lines to
3 take", the third bullet point appears to be saying that:
4 "Only a minority of hepatitis C infection results
5 in serious liver disease (about 20% of Skipton Fund
6 recipients)."

7 That may well reflect a position, I don't know,
8 that 20 per cent of Skipton Fund recipients had
9 developed what is described as serious liver disease.
10 But it is stated on the basis that this is, if you like,
11 the ultimate end point of hepatitis C infection, which
12 doesn't fit with the expert evidence that we had as to
13 the position as it was understood, certainly when the
14 experts gave their evidence to us back in, I think,
15 2019/2020 --

16 MS RICHARDS: 2020.

17 SIR BRIAN LANGSTAFF: -- where the evidence was that
18 20 per cent to 30 per cent of people cleared. Of the
19 remaining 70 per cent to 80 per cent, one would expect
20 a progressive -- depending on their age -- decline into
21 almost inevitable cirrhosis, with the effect that, by
22 the age -- after some 20 years, 30 per cent would be
23 suffering, and so on.

24 So, do we know, have we made any enquiries as to
25 the basis at the time this was written for the medical

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1 evidence which seems to underpin it, which simply
 2 doesn't coincide with modern understanding?
 3 **MS RICHARDS:** I don't know the answer to that, sir, without
 4 checking, but we will certainly look into it.
 5 **SIR BRIAN LANGSTAFF:** You understand why I ask you.
 6 **MS RICHARDS:** Absolutely.
 7 **SIR BRIAN LANGSTAFF:** I don't expect Mr Burnham has any
 8 comment on that. It may be an error of understanding it
 9 may be an error of expression but it may not have
 10 been -- it may be faithful to the evidence that the
 11 writer had.
 12 **MS RICHARDS:** Yes, but it is obviously important because it
 13 may have fed into the existing policy position of not
 14 doing anything further in relation to Skipton Fund
 15 payments.
 16 **SIR BRIAN LANGSTAFF:** Because it is not serious enough?
 17 **MS RICHARDS:** Yes, and if -- based upon a misunderstanding
 18 of the actual position. We will certainly look further
 19 into that, sir.
 20 **SIR BRIAN LANGSTAFF:** Thank you.
 21 **MS RICHARDS:** Mr Burnham, I wanted to ask you now about that
 22 meeting in January where, in addition to Paul and to
 23 Brian Iddon, you met several of those who had been
 24 infected.
 25 Your statement makes clear it made a profound

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1 "I have got to go into Leigh to do a meeting". It
 2 sticks in the mind because, for all those reasons, it
 3 was exceptional. It was a strange sort of be calm day
 4 for that reason. Normally, I would be this, you've got
 5 to be on the train, and that, and I think I already said
 6 to the Department I wouldn't be going down because of
 7 the situation, the trains were not working.
 8 So I went into Leigh and, you know, if that
 9 created the conditions for a different meeting.
 10 Normally, you are in a meeting with people, who were
 11 telling you something really -- "Secretary of State,
 12 next meeting", on the door. But it wasn't like that.
 13 My staff in Leigh knew they were to let us talk, and we
 14 did.
 15 And that was the first time -- and I have
 16 a permission to use her name today -- somebody I have
 17 come to know very well over the years, Eleanor Bates and
 18 Fred Bates, her husband, who was infected. I got to
 19 know them very well. They were Paul's constituents.
 20 Paul asked me to get to know them and there were others
 21 there that day, I don't have permission to use their
 22 name but Brian brought constituents as well.
 23 It was something that Eleanor said in that
 24 meeting -- because Paul kept saying to me "There is
 25 a parallel with what you did on Hillsborough" -- so

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1 impression upon you. Why was that? What was it that
 2 was so significant about this particular meeting?
 3 **A.** As I said a moment ago, Paul had asked for it on a very
 4 different basis. This wasn't just an MP asking for
 5 a meeting. Paul was an extremely close friend and he
 6 said "Just sit down, talk to them, hear it". He said,
 7 "Do what you did with the Hillsborough families". And
 8 I said to him, "Of course, I will do that. Of course
 9 I will do that".
 10 So Paul was that kind of person, who was kind of
 11 knowing about people and he knew what I needed to do, is
 12 the way I would put it. He knew he needed to get me to
 13 a position where I just sat and I listened. And we
 14 deliberately -- he said constituency office, not
 15 Department, so we kind of arranged that.
 16 So we arranged for a Monday morning, by memory,
 17 and it didn't happen in December, as the note suggested.
 18 In the end, it happened in the January 2010 and
 19 I remember it quite vividly because it was just after my
 20 40th birthday and it was a really heavy winter from
 21 a snowfall point of view. It was kind of piled high
 22 everywhere.
 23 On that particular Monday morning my children's
 24 school was shut and they were at home and I remember
 25 playing football in the garden with my son. I said

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1 just -- if it helps the Inquiry for me to say this. How
 2 could I re-open Hillsborough? When you are in
 3 Government and there is a firm line that there was no
 4 fault and no -- it was amended police statements with
 5 Hillsborough. I found evidence through a journalist
 6 colleague of mine called David Conn that police
 7 statements had been amended before -- they were written
 8 by police officers and then amended by seniors, and
 9 that's what we used to open up Hillsborough.
 10 This meeting created a moment where -- there was
 11 the most serious moment of me sort of thinking
 12 "Something really wrong is here". So I had this
 13 departmental line of no fault: no one did anything
 14 wrong, no fault. But then I had sitting right in front
 15 of me Eleanor Bates, who I was meeting for the first
 16 time, telling me that she went with Fred to see her
 17 lawyer in the mid-1990s because there was a litigation
 18 happening at that time, that some of the families might
 19 remember. I think it was one of a number that were
 20 tried in that period. Sitting in an office in Liverpool
 21 with a lawyer who said "And, of course, Fred is
 22 hepatitis B positive", and Eleanor said "What?" That
 23 was the first time she had been told.
 24 And I said "What, you didn't know and a lawyer was
 25 telling you in an office?" She said "I had never -- we

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1 tried to get his records and we had never been able to.
2 But it was actually worse, he was diagnosed on his
3 medical records in 1977".

4 I was -- "what? What are you telling me here?"
5 I couldn't believe what she was saying. "He was
6 diagnosed in 1977 and you found out from a lawyer in,
7 I think, 1994". I might have the dates wrong but
8 I could look them up, if you would like me to. She said
9 "yes".

10 And that for me was the sort of -- as revealing as
11 the first time I knew there was an amended police
12 statement around Hillsborough. There was a line here up
13 at the top of government and there was a reality here
14 that in no way -- why would a diagnosis be withheld from
15 a patient for all of those years?

16 I remember that day vividly because I remembered
17 that was the day -- it was always, as a politician, you
18 know, you have instincts, and "Is that right? Not sure
19 about that". That was the day where I said "Okay, I'm
20 doing something on this now". And that was the mood in
21 which I went back down to London.

22 Q. I think one of the other things you refer to in your
23 statement as standing out is the experience that Eleanor
24 and Fred related about the indignity of having to ask
25 for help and the difficulties in obtaining assistance,

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1 "Following my meeting with Paul Goggins and
2 others, I notified the Permanent Secretary that I wanted
3 a meeting with senior officials to discuss contaminated
4 blood issues. I think that this meeting took place in
5 late January 2010 but in the context of a meeting that
6 was called to discuss Departmental priorities. As far
7 as I can recall, those in attendance included me,
8 Gillian Merron, Hugh Taylor and other senior
9 Departmental officials. My advisers have told me that
10 extensive efforts have been made to find a record of
11 this minute/note of meeting, but, so far, without
12 success.

13 "I can recall raising both of the issues that had
14 come over to me so forcefully in the meeting in my
15 constituency office. On the issue of the failure to
16 communicate the diagnosis, I asked officials whether
17 there was a case for full disclosure of all official
18 papers related to these issues as clearly there was
19 something seriously amiss if patients had not been
20 informed of a diagnosis of something as potentially
21 serious as Hepatitis B. I drew a parallel with
22 Hillsborough and the independent panel that had recently
23 been established to oversee disclosure of all papers.
24 In that case, we had specifically asked the panel to
25 match any papers held at a policy level with

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1 financial assistance and support?

2 A. It was the second thing that sticks in my mind. She was
3 saying, you know, Fred -- "We just need things from time
4 to time", and she said -- I think she mentioned
5 a mattress. She just would say "Why should we be
6 begging for that? For scraps off the table? But that's
7 how it feels". And, again, I was in a position of
8 asking, "Well, through no fault of your own you and Fred
9 are living this life and you are kind of having to kind
10 of beg for basics". You know why? Yeah, that was the
11 other thing where something had got through --

12 And I would say -- you know I do feel a sense of
13 guilt about how many months had I been in the Department
14 at that time? Six-ish. I wish I -- I would have liked
15 to have done more before that. But you are confronted
16 with these firm lines and then you kind of -- by the
17 efforts of some very diligent MPs you get to hear
18 something very different, and that was -- that, for me,
19 was a massive moment.

20 Q. Then I want to pick up what happened next from your
21 statement because we don't have a record of the meeting
22 that you recall with officials. It is WITN706001.
23 Page 30, please.

24 I'm going to read from paragraph 10.29, if I may.
25 You say this:

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1 instructions that may have led to an operational impact
2 (ie amendment of police statements). On the basis of
3 what [and that's Eleanor. Again, we have permission to
4 use her name] had told me, I wondered how a diagnosis
5 could come to be withheld from a patient and whether any
6 instruction or policy to this effect would be revealed
7 in the paperwork.

8 "Senior officials replied by saying that they had
9 been fully transparent over the years and that all
10 relevant documents were in the public domain and had
11 a been passed to the Archer Inquiry. At the time,
12 I accepted what I was told."

13 We will come onto the next issue in a moment but
14 can I just ask you about what you say there.

15 So this first point that you had raised, is it
16 right you had in mind the possibility of something like
17 the Hillsborough panel, some -- not a public inquiry but
18 something that would be someone external to the
19 Department, external to Government, looking at the
20 documents and seeing whether they married up, as it
21 were, of what the documents showed with the Departmental
22 lines?

23 A. Yes. So the background to this is, from the time I was
24 in the Department, I was still dealing with the
25 Hillsborough issue because of its personal importance to

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1 me, and I had been involved in the Government because
2 I -- in some ways, the South Yorkshire Ambulance Service
3 was my only, if you like, direct locus for being
4 involved but I inserted myself very centrally in the
5 talks around the creation of the Hillsborough
6 independent panel.

7 It was -- I came up with it. It was a new
8 construct which was intended to stop the Treasury
9 saying, "We can't do a public inquiry because it is too
10 expensive", which is often what blocked progress on
11 issues. It was intended -- I framed it to say "Just
12 disclose, just properly disclose everything and let
13 people see the truth and then if the truth leads
14 somewhere, then that's where we should go".

15 So in January 2010, we just agreed finally the
16 terms of reference and the Chair of that panel,
17 Bishop James Jones, and he had begun his work. So that
18 is why that was sort of front and centre in my mind, and
19 I was thinking something similar could be what might
20 work here and, as it says, I initiated a conversation
21 about that. It is hard when you are in a meeting with
22 officials -- you know, "We have disclosed everything",
23 which is what they said. I said "What, everything?"
24 "Yes, everything". I said "There is all the
25 records, medical records".

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1 must be brought forward. In the discussion that
2 followed, the point was repeatedly made that there was
3 no way of financing any enhancement of the fund
4 following a review and that, if I was minded to proceed
5 in that direction, difficult choices would have to be
6 made. I specifically remember officials raising the
7 idea of selling off the Blood Products Laboratory (BPL)
8 as one way of financing the review. It occurred to me
9 at the time that this was possibly one way of making me
10 go cold on the idea of bringing forward the review as
11 officials knew that this was an idea that I was unlikely
12 to support."

13 Is it right to read from this that your insistence
14 that the review of the Skipton Fund be brought forward
15 did not get a good reception from officials?

16 A. No, it didn't. And it was -- the reason -- I think the
17 reason why this was a Departmental priorities meeting,
18 not a specific -- you know, that's when I said I wanted
19 to raise issues to do with contaminated blood. The
20 reply had been: well, we'd need to consider it -- we had
21 a whole meeting -- from memory, "Oh, we're being asked
22 to make the first efficiencies for a decade by the
23 Treasury". This was the first round of -- what you
24 would call cuts or efficiencies were coming forward.
25 There was a big efficiency programme that the Department

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1 "Well, we can't" -- and so basically it didn't and
2 it couldn't go very far because I didn't know that they
3 hadn't disclosed everything.

4 Q. Looking at it now, do you regret that you didn't push
5 that further at that time?

6 A. Yes. Yes, it got -- there is some explanation. I'm not
7 sitting here to justify everything I did, by the way.
8 I mean, I think you've got also -- there is another
9 important point of context which was it is fair to say
10 that I think I knew I wasn't going to be in Government
11 much longer. I think we were reading the runes, if you
12 like, and, you know, kind of it was clear that our time
13 in Government was coming to an end, and I was in the
14 kind of position of what can I do? I have got
15 effectively six weeks left. Because the Department, you
16 know, already was shutting down a bit, "Oh, these are
17 going to be issues for the next -- after the next
18 general election". So there was that as well. What
19 could we actually do in this period of time?

20 Q. So the issue that you did push is the one we then see
21 referred to in paragraph 10.32?

22 A. Yes.

23 Q. You say this:

24 "On the issue of the Skipton Fund, I said waiting
25 until 2014 for a review was unacceptable and that it

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1 had just initiated.

2 Now it is easy in retrospect to see, sort of,
3 I don't know, bad intentions and everything, but I do
4 think there was an element of, "Make sure he sees blood
5 in the round with all those other pressures on the
6 Department."

7 Yeah, distinctly remember saying that the only way
8 you could do this is if BPL is sold, and I pursued it
9 even though that's what they were saying. So, that was
10 what I decided to press on. I felt if there was one
11 thing that I could move forward it would be bringing
12 forward the review of the Skipton Fund, because that
13 was -- you know, well, I said to them, well, why is
14 it -- what's the argument for delaying that to 2014?
15 Just because it is ten years? Well, why? And I think
16 there wasn't -- they didn't have an answer to that. It
17 was purely affordability. I said, well, that's not good
18 enough. I was very much thinking of Eleanor and what
19 she'd to me about the mattress and all of that.

20 Q. We don't need to put it up on screen but there is
21 an email of 24 February 2010. For the transcript it is
22 DHSC6482184, page 3, which refers to you and
23 Gillian Merron wanting to know what options you had for
24 bringing forward the Skipton Fund review and an options
25 paper having been requested in that regard.

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1 A. Yes.

2 Q. Then I think, in fairness also, just to touch on the

3 issue of finances and the role that was playing.

4 If we put up on screen DHSC5051039.

5 This is in response to an email which is over the

6 page -- we don't need to go over the page but it was

7 enclosing a draft of the submission that you had

8 requested, and we can see here someone whose title was

9 Deputy Director, Financial Planning and Allocations

10 expressing concern about the costs, and explaining that

11 it may be difficult to find this funding. There is

12 a question posed in any funding in HIP resources, do you

13 know what that is a reference to?

14 A. Health improvement program I think? I might be wrong.

15 Q. It says:

16 "We can discuss the payment for future years

17 further."

18 There is a reference to securing that for

19 thalidomide. The significance of that we will come on

20 to. It says:

21 "... Treasury generally does not accept this

22 approach, and has turned down other similar cases."

23 It is right to say the financial issues were being

24 raised within the Department at that time?

25 A. Yes, and I think there are other minutes that say -- to

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1 whether a scheme for funding for those with thalidomide

2 could be applied with those contaminated by blood and

3 option (2) was the bringing forward of the review of the

4 Skipton Fund.

5 We can see the heading "Recommendation",

6 paragraphs 4 and 5. The recommendation in relation to

7 the thalidomide scheme was that it was not

8 an appropriate scheme to apply.

9 Then, in relation to its option that you and

10 Gillian Merron had been particularly interested in, the

11 bringing forward of the review of the Skipton Fund, the

12 advice at paragraph 5 is:

13 "We had agreed with DH Finance that we are unable

14 to recommend that the review be brought forward because

15 the Department is overcommitted on funding for 2010/11,

16 and the financial position in subsequent years being

17 extremely tight. If you wish to fund a review, then

18 decisions will be needed on cuts to other priority

19 programmes."

20 Pausing there before we look at the remainder of

21 the paper. That was a pretty clear steer from

22 officials, was it, not to go ahead with what you

23 proposed?

24 A. Yes, it was.

25 Q. If we go over the page, halfway down the page there is

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1 my private office, if we are going to have a review, you

2 need a very senior person from finance of any

3 consideration. So the Department wasn't in favour,

4 let's be clear about that, and they were putting

5 pressure on us not to commit to a review.

6 MS RICHARDS: Sir, I note the time. The options paper will

7 take a little longer to look at than the couple of

8 minutes between now and our usual lunchtime, so perhaps

9 we could pick it up at 2 o'clock.

10 SIR BRIAN LANGSTAFF: Yes, indeed. We will take a break now

11 until 2 o'clock.

12 (12.58 pm)

13 (The short adjournment)

14 (2.00 pm)

15 MS RICHARDS: Mr Burnham, I'm going to ask you to look at

16 the options paper that was provided pursuant to the

17 requests that had been made. It is DHSC0041307_015. It

18 is dated 3 March 2010 and the purpose is self

19 explanatory. Paragraph 1:

20 "To provide advice, as you requested, on two

21 options to further support patients infected 20 or more

22 years ago with hepatitis C and/or HIV as a result of

23 treatment with contaminated blood/blood products, and

24 their families."

25 Then there are two options. Option (1) was about

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1 a further discussion under the heading "Option (2) -

2 reviewing the Skipton Fund".

3 Paragraph 8 refers to the likely costs if the

4 review resulted in additional money:

5 "... many tens of £millions over the next few

6 years, and there are significant risks attached to

7 this ..."

8 At paragraph 9:

9 "If you still wish to consider a review, we would

10 recommend the following principles be applied ..."

11 Then there was: specific funding envelope, clear

12 and specific focus to steer its work, and structured to

13 enable the funds to be allocated to the Skipton Fund in

14 2010/11.

15 Then under the heading "Resource implications",

16 the warning this would add many tens of millions of

17 pounds to the Skipton Fund over the coming decade.

18 If we go over the page, under the heading "Risks",

19 paragraph 12, you are told:

20 "There are significant risks associated with

21 bringing forward the review."

22 (a) concerns the campaign for money and the fact

23 that the Department was currently defending the judicial

24 review of the Government's response to the Archer

25 recommendation. (b) talks about the challenge in terms

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1 of funding allocation.
 2 "(c) There may be criticism about the opportunity
 3 cost to the NHS of spending limited resource in that
 4 way."
 5 Do you know what that meant?
 6 A. That there would be a cut to a priority programme, as it
 7 said earlier, and if you did something to expand
 8 resources available to the Skipton Fund, that would
 9 require suspending a public health programme or --
 10 Q. Then (d) is it would need to be agreed with the devolved
 11 administrations. (e) is the suggestion that other
 12 groups, such as those affected by vCJD, may be
 13 stimulated to increase pressure for more funding.
 14 Then (f):
 15 "Finally, whenever the review is undertaken,
 16 addressing the issue of payments especially to
 17 dependents of those who decide before 2003 and who are
 18 currently ineligible, will be difficult. Given the
 19 destruction of the medical records after death, it will
 20 be difficult to establish criteria that distinguish
 21 between genuine claims and erroneous or fraudulent
 22 claims."
 23 Then, if we go over the page, paragraph 17
 24 concludes:
 25 "Because of the funding situation, we are unable
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1 strongly advise not to rush any review - especially
 2 having decided so far to maintain the existing position.
 3 There will be many legal and policy requirements we will
 4 have to address and we think it is highly risky to
 5 promise something in a hurried way now that may prove to
 6 be difficult, or not possible, to achieve. We also run
 7 the risk of exposing the Department to further legal
 8 challenge by way of Judicial Reviews.
 9 "7. We therefore recommend that you hold the
 10 existing line, and do not change the current commitment
 11 to review the SKF in 2014.
 12 "8. If, however, you do wish to bring forward the
 13 review date, a great deal of care will be required from
 14 the beginning to manage campaigners' expectations."
 15 There is more set out there. If we just go over
 16 the page. Paragraph 9 warns that commitments may need
 17 to be cleared in advance with the Treasury and so on.
 18 Would it be right to understand this further
 19 follow-up advice is equally strongly if not more
 20 strongly advising you and Gillian Merron not to bring
 21 forward the review date?
 22 A. Yes, I find it quite outrageous, to be honest, the way
 23 in which they were pressuring us and presenting us with
 24 a one-sided case all about the finance. As I say, not
 25 in any kind of sense saying, "Yes, we understand why you
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1 to recommend that the review be brought forward."
 2 There are various annexes I'm not going to go
 3 through, but annexes that talk in detail about why the
 4 thalidomide approach was not appropriate, and then, in
 5 relation to the Skipton Fund, give further facts and
 6 figures.
 7 Just one other document before I ask you about
 8 this. There is a further submission, 17 March 2010, at
 9 DHSC0041307_014.
 10 This is addressed again to Gillian Merron and
 11 paragraph 1 says:
 12 "Further to Rowena Jecock's submission of
 13 3 March ..."
 14 Which we have just looked at.
 15 "... you have asked for:
 16 "- further advice on options for bringing forward
 17 a review of the Skipton Fund (SKF)."
 18 There is also the reference to the possibility of
 19 personalised budgets. There is further advice set out.
 20 I'm not going to read that aloud. But if we go to
 21 recommendations -- on the next page, please, Lawrence --
 22 under the heading "Recommendations", paragraph 6:
 23 "Due to the complexity of this review, the
 24 potential legal repercussions and the far reaching
 25 complications for other Government Departments, we
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1 want to do this, because of this and the suffering that
 2 people are going through, the inadequacy" -- they should
 3 have started with, "We know, Secretary of State, why you
 4 want to look at this, because you heard from Fred and
 5 Eleanor Bates that they had to beg for a mattress."
 6 Yes, that's -- you know. And we -- where is that?
 7 It is just totally absent from this. I just think it
 8 was a reflection that the Department had this in -- and
 9 I'm not saying this out of malice for the Department,
 10 I had a huge amount of regard for the Department and the
 11 people who worked in it, but on this issue they
 12 fundamentally had it wrong, and they could not -- you
 13 know, there was just no humanity at all in this. This
 14 is pressurising ministers against helping people in
 15 a desperate situation. I mean, where -- how would they
 16 justify that now?
 17 What this should have said was, "We know it is
 18 your intention" -- because I said that, it was our
 19 intention to bring forward the review -- "Here's how you
 20 could do that, but here is the odd places that you will
 21 have to look" -- they didn't -- it's really -- that is
 22 what you would expect normally if you were minded to do
 23 something, which we were. And you can see this as the
 24 Department -- I wouldn't even say lobbying ministers --
 25 pressurising ministers to, you know, drop it basically.
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1 And it does make me fairly angry, actually, to
2 re-read this. I think they thought: oh, well, they are
3 nearly out of Government and what mandate have they got?
4 Hence a note of this kind.

5 But I think it does say something about why -- why
6 are people in this room? Why are families across
7 Britain still fighting for justice on this? Because
8 there is too much control of these issues. And it could
9 be -- you could name a whole heap of other issues other
10 than -- and I mentioned Hillsborough today, but nuclear
11 test veterans would be a very good kind of comparator
12 with contaminated blood, where you have thousands of
13 people exposed to nuclear tests, without -- not just
14 without their consent or knowledge -- these were
15 servicemen largely, some women I think but mainly, the
16 vast majority, ex-servicemen. They -- no PPE. But they
17 are still in the same position today. And this says
18 something that's wrong here. That -- it is a chance,
19 really, that I got -- the protest, Alf, Paul, the
20 meeting in my office -- and then coming back and wanting
21 to do something. But you can see then how hard it is to
22 do something that I would say is in the interest of
23 natural justice.

24 I hope the Department is uncomfortable re-reading
25 that note that they put to me as Secretary of State when

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1 the Skipton Fund. They were attracted to the idea of
2 placing a finite funding envelope on a review and of
3 addressing anomalies with regards to widows, but were
4 persuaded by the various legal risks that these options
5 would be extremely hard to implement.

6 "Ministers have therefore urgently requested some
7 further briefing on how the review could be brought
8 forwards and what the broad scope of such a review would
9 be - this should not be in the form of detailed terms of
10 reference, but explore options for any constraints that
11 could be placed on the review."

12 So the outcome of the meeting that you've had, it
13 would appear to be pressing ahead, bringing forward the
14 review from 2014 to an earlier date. Do you have any
15 recollection yourself of that meeting?

16 A. I do. And, you know, I think the Inquiry will hear from
17 Gillian Merron, and I hope you do because I -- she was
18 a great support to me in this period of time, and I do
19 think at times it has to be understood how hard it is to
20 be a minister, not just facing this kind of pressure
21 but -- look at the date, Monday, 29 March 2010 -- we
22 were running out of road, is the polite way of putting
23 it. You know, the purdah period in advance of the 2010
24 general election was basically upon us and we were
25 trying to get something away, you know, and the

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1 I was trying to do something which I believe I should
2 have been doing in the public interest.

3 Q. If we look then at the further discussion you and
4 Gillian Merron had, which is DHSC5616528, and we go to
5 page 4.

6 Just before I look at that, for the record, and
7 for the benefit of others, pages 2 and 3, which I'm not
8 going to go to, record conversations with
9 Nicola Sturgeon and with Edwina Hart, who were content
10 for the review to be brought forward or had no problem
11 with it being brought forward.

12 Page 4 here, bottom of the page, it is dated
13 25 March, and it refers to a "very constructive meeting
14 ... yesterday", so presumably 24 March:

15 "As a brief summary for those not at the meeting,
16 SoS [that's you] and MS(PH) [Gillian Merron] were clear
17 that although they recognised this was a very difficult
18 area, they were keen to take action on the issue of
19 contaminated blood because they felt on a number of
20 policy issues the Department's line could not be
21 maintained. There was a broad discussion of a range of
22 different policy options along with the associated
23 risks.

24 "Ministers had a clear preference for Option B in
25 the submission - bringing forwards in full the review of

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1 Department, I think, was trying to -- well, it was, it
2 was trying to stop us.

3 Q. If we look at ARCH0001105 we will see one of the last
4 acts or decisions, before purdah made anything further
5 problematic, was this. This is the written ministerial
6 statement from Gillian Merron, 6 April 2010:

7 "Further to the Government's response to
8 Lord Archer of Sandwell's report ... I wish to inform
9 the House that we have decided to bring forward a review
10 of the Skipton Fund, which makes ex-gratia payments to
11 those infected with hepatitis C as a result of their
12 treatment.

13 "The unintended and tragic consequences of these
14 treatments have seriously impaired the lives of many
15 people, together with those of their families. We have
16 listened carefully to the views of those infected, their
17 families, carers and many in this House, who have told
18 us that our intended review date of 2014 will be too
19 late for many of those affected. Consequently, we have
20 decided that the review will begin as soon as possible
21 this year.

22 "It will be an independently chaired review.
23 The terms of reference, membership and conduct of the
24 review will be agreed in conjunction with the Devolved
25 Administrations."

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1 As I understand it, Mr Burnham, that's really
 2 the last involvement you and Gillian Merron had with
 3 this issue because, of course, the general election
 4 happened not long after this and the question then of
 5 any review and how it would be implemented would be
 6 a matter for the new Conservative Government?
 7 A. Not quite. So this day, I think, this probably was the
 8 last sitting day, possibly the second to last, and
 9 I think Parliament was dissolved not long after.
 10 Q. 12 April?
 11 A. So we were in the last knockings of that Parliament.
 12 I think I left the Department of Health on 12 April and
 13 actually did not physically return to the Department.
 14 The reason I say not quite is because the March judicial
 15 review, which I had not, as you said before, had much
 16 involvement in, it was presented as a sort of narrow
 17 review, I think, on an element of the Archer Report.
 18 It obviously reported back before the general
 19 election, when notionally I was still in office and was
 20 Secretary of State and had to be consulted because there
 21 was a sort of a thing about appealing. So the
 22 Department at that point was much more in control of
 23 matters, and I was out on the campaign trail. I think
 24 the papers might show it. I told them to be sympathetic
 25 and point to this review because even I, at that point,

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1 A. Mm.
 2 Q. Again, the reference, for the transcript, of that is
 3 DHSC5081242. Is it a concern for you that the basis
 4 upon which the Government, in part, had rejected one of
 5 Lord Archer's recommendations and a line which the
 6 Government had taken in relation to Ireland was found by
 7 the court to contain an error?
 8 A. Absolutely. It was great concern, given that these
 9 lines were not just entered in to a legal process. They
 10 were given to the Minister of State, Gillian Merron, to
 11 say a number of times in the House of Commons, to
 12 Baroness Thornton to Lord Warner, to a whole number of
 13 people who -- and I think I faithfully read those lines
 14 out, because the ministers wouldn't have had the chance
 15 really to go back and check.
 16 It is a serious matter, a very serious matter for
 17 the Government to be giving ministers something so clear
 18 cut, it was not the same, not comparable and then
 19 ministers putting that on the Parliamentary record, and
 20 then a judge finds that it is comparable. I think that
 21 is serious and the Department of Health, I think, if the
 22 Inquiry chooses to make comment on this, needs -- they
 23 need to be challenged, in my view, how they could be --
 24 It wasn't just that, of course. We talked about
 25 the sentence in the Tonkin letter. We went through,

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1 if I'm being honest, couldn't open up the Ireland
 2 comparison because I just didn't know how I could, if
 3 I was, in the unlikely event, returned to the Department
 4 of Health, I would have not known how I to pursue that,
 5 given what I was facing. But that was the final
 6 involvement.
 7 Q. Just to get the dates. The general election was called
 8 on 6 April, which was the day -- the written ministerial
 9 statement; Parliament dissolved 12 April, general
 10 election 6 May. The judgment in the March case was then
 11 delivered on 16 April 2010, and you are right, there is
 12 some communications -- I'm not going to take time going
 13 to them -- about how any response to them should be
 14 phrased.
 15 I don't think we need to go to the judgment
 16 itself. I will read out the reference again so that
 17 others can find it, if they need to. It is
 18 DHSC0003819_011. The effect of the finding of
 19 Mr Justice Holman in that case was to say that the
 20 Department had made an error in the way in which it had
 21 characterised the difference between Ireland and the
 22 United Kingdom. I'm summarising, rather than going
 23 through the details of the legal argument. You refer to
 24 advice in relation to appeal. I think the advice you
 25 received was that the prospects of an appeal were weak?

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1 before the break, some of the statements that were made
 2 in briefings, yes. I have used the phrase, and maybe we
 3 will come onto it, about how, in my view, what happened
 4 here was -- I don't use this word necessarily in
 5 relation to the Department of Health but I have used it
 6 more broadly, about "criminal cover up".
 7 I think you cannot conclude otherwise, I don't
 8 think, that there is not a cover up going on here, in
 9 that ministers are being given inaccurate information to
 10 put before Parliament. That is a very serious
 11 situation.
 12 Q. In terms of the March judicial review, the decision as
 13 to how to respond to the finding in terms of taking
 14 a further decision then fell to your successor rather
 15 than to you because it was a new government. So you had
 16 no further involvement in deciding whether the
 17 government should now accept the Archer recommendation?
 18 A. I think that did fall to the new Secretary of State.
 19 I think I was asked to sign-off a statement, I think, in
 20 response to the ruling, the handing down of the ruling,
 21 and I required it to be changed to make it more positive
 22 about the review that we had just announced but I think
 23 that was my last involvement.
 24 Q. More generally, how does a minister change direction,
 25 change policy in a Department where officials don't

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1 agree with it?

2 A. You stick to your guns. So I had to do it over the

3 appointment of Sir Robert Francis to conduct the first

4 independent inquiry into Mid Staffordshire because the

5 official was there should be no process of further

6 inquiry. So I had to say "Thank you, but I'm not --

7 I am overturning that, I'm not accepting that". And it

8 is for all the reasons that you can see, in terms of the

9 pressure, and bear in mind the minister wants the

10 Department's support in other ways, so you always have

11 to bear in mind that this is only one issue within

12 50 that you were dealing with.

13 It is not easy but I suppose I had been a minister

14 along enough at this point to know that if I was going

15 to do something I was going to do it but you just have

16 to be ready for the sort of sense of the place is not

17 with you anymore.

18 Q. I want to turn next to the question of public inquiries.

19 Obviously, no Public Inquiry was directed, either when

20 you were Secretary of State or at any earlier stage,

21 until much more recently. I think it probably follows

22 from everything you have said over the years since you

23 were Secretary of State -- please correct me if I'm

24 wrong -- but it is your view that a public inquiry or

25 some form of inquiry, independent of government, should

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1 way saying that the civil servants who put those things

2 up to me, I think they were doing something wrong.

3 Well, let's say there is a discussion to be had --

4 a debate to be had about that.

5 What I think they were doing was there was the

6 firmest of government lines that had been established

7 for a long, long time and they were having to live

8 within that, sort of, straitjacket when they were

9 putting advice to ministers, I think and resist any

10 opening up of -- that was I think the clear instruction.

11 I think when I used the word "criminal" before,

12 I must just make it clear that I wasn't necessarily

13 relating that to anybody who I was working with in the

14 Department. That applies to what I began to collect

15 from people like Eleanor and Fred. To me, withholding

16 a diagnosis when somebody knows about a diagnosis,

17 I would say -- I would stand to be corrected by people

18 with greater knowledge of the law than I have -- but

19 I have to say that that sounds to me like a criminal

20 offence because, obviously, you can infect a family

21 member. That is a very serious thing.

22 I have an example of a falsification of a medical

23 record by somebody else who I have got to know, who has

24 given me permission to use her name, Hazel Bullock,

25 where her husband Ken, who was a very senior civil

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1 have been held much earlier?

2 A. For certain. I mean, I said as much as Shadow Health

3 Secretary. At the time I was Secretary of State I had

4 not come across the equivalent evidence that I got on

5 Hillsborough, which was multiple amended police

6 statements. I did not have the grounds on which to say

7 "I've got the evidence and this is enough to say, no,

8 there must be a process of inquiry".

9 That had started with what Eleanor had said to me

10 around Fred's diagnosis being withheld for 17 years,

11 I think, and that was the beginning of that process, but

12 I didn't have -- because you saw in the minutes people

13 were saying "There is no more lessons to be learned. We

14 have learned everything". That's what they were saying,

15 "We have disclosed everything".

16 Q. Is it your view that the failure to have some form of

17 independent inquiry, again leave aside whether it is

18 a public statutory inquiry or a Hillsborough-type panel,

19 whatever it might be, but a failure to have something

20 independent, was that a failure in your view of

21 successive governments?

22 A. Absolutely. And I just want to come back to the point

23 I was touching on a moment ago. I'm not accusing

24 anybody of anything individual, of anything improper,

25 I don't have the evidence to do that. I'm not in any

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1 servant himself, was -- as a haemophiliac was infected,

2 and she battles to get his notes and when she finally

3 got his notes after a long battle, it was full of

4 suggestions of "likes a drink at weekends", "chronic

5 alcoholic". To me, again, the falsification of

6 a medical record is a criminal, I would say, offence.

7 So, I don't know whether there was any instruction

8 ever given to people working, if you like, in the NHS

9 about withholding diagnosis or kind of withholding

10 medical records or amending medical records or, in this

11 case, falsifying medical records, but I do believe that

12 those acts are, as I say, criminal acts and I'm also

13 certain that there are multiple examples of that. Hence

14 the phrase "criminal cover up".

15 Q. Just going back to how public inquiries or independent

16 inquiries might come about. Part of the problem will be

17 if the inquiry potentially is into the decisions and

18 actions of a department of the government, they may be

19 the worse people to make a decision about whether there

20 should be an inquiry or not. Do you have any

21 suggestions based upon your experience over the years of

22 how that potential problem could be addressed?

23 A. I mean, immediately it takes you to a sort of

24 independent arbitration function, doesn't it, within

25 government, that would go beyond the Department itself.

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1 I think this is a very serious issue that you have
2 raised, in that the Department concerned controls all of
3 the levers that would allow -- would open an issue up:
4 the access to information, the ability to steer things
5 in a certain direction, and I think it does explain --
6 I mentioned nuclear test veterans before and the MoD
7 would absolutely be a case in point, with regard to that
8 example.

9 So, yes, I think there is a case for is there some
10 way in which there could be an independent body that
11 a member of the public or a campaign group could
12 complain to with evidence to say "We believe this is
13 unreasonable"?

14 I mean, this is maybe not the forum to say it but
15 I will quickly say, if you don't mind, I think it is to
16 do though with our system of government and our
17 Parliamentary system. What I can say to you today, from
18 my experience in the House, and I was 16 years in the
19 House of Commons, at least 1,000 MPs in that time were
20 very engaged in this issue and writing countless letters
21 and did quite a diligent job, I think, with some of the
22 constituents they had who were affected.

23 But those letters were just bouncing off and the
24 question is why? Where's the real power here? I think,
25 personally, that the whip system gives -- takes a lot of

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1 made through something called the Hillsborough Law,
2 which we have put forward, is a statutory duty of
3 candour on all public officials and that would include
4 civil servants and senior civil servants because, in
5 this case, I believe there must have been people in the
6 Department of Health, from the '70s onwards, who would
7 have had serious concerns about some of the lines that
8 were being put up to ministers. And if there was
9 a statutory duty of candour that would have allowed them
10 to break the cycle of partial briefing, incorrect
11 briefing, without being in fear of their job for doing
12 so because there's a law that would require them to come
13 forward with information that they knew would have
14 changed the complexion of the issue.

15 Q. The Public Authority Accountability Bill that you
16 advocated -- and there is a debate in Parliament
17 March 2017 -- I'm going to read out the first paragraph
18 of that because it will help those listening understand.
19 We don't need to put it up Lawrence but it is
20 RLIT0001577. You described it in these terms that:

21 "Leave be given to bring in a Bill to set
22 a requirement on public institutions, public servants
23 and officials and on those carrying out functions on
24 their behalf to act in the public interest and with
25 candour and frankness to define the public law duty on

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1 people away from elected representatives and hands a lot
2 of power to the permanent structures of government. And
3 the answer may lie actually somewhere there. On this
4 issue, there was a huge cross-party consensus that this
5 issue had to be opened up, and I will pay tribute to
6 people in all political parties who worked together
7 obviously Diana Johnson in my own but Alistair Burt --
8 there is a whole heap of names I could reel off of
9 people would were really working hard to prise the lid
10 off this and get something done.

11 And these are very senior people but they could
12 not. And it does -- this Inquiry is getting to the
13 heart of something about the British state and --
14 because how many can I reel off to you today? This
15 Inquiry, but the poor people affected by Grenfell,
16 five years on. Some would say why are they still in the
17 position that they are in? Hillsborough, I have
18 mentioned. You could look at Bloody Sunday, nuclear
19 test veterans.

20 You can actually go through an extremely long list
21 because this pattern keeps on repeating and something is
22 wrong here, in that the system, I think, has too much
23 control and it is why -- I do believe there is a case
24 for very significant political reform to give elected
25 representatives more power, but I think the call I have

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1 them to assist courts, official inquires and
2 investigations, to enable victims to enforce such
3 duties, to create offences for the breach of certain
4 duties, to provide funding for victims and their
5 relatives in certain proceedings before the courts and
6 at official inquiries and investigations and for
7 connected purposes."

8 That was your summary in Parliament of the statute
9 that you were hoping to bring in.

10 Now, that hasn't come onto the statute book. Does
11 it remain your view that that kind of law, which has
12 been termed elsewhere, by you or by others, as the
13 "Hillsborough Law", does it remain your view that that
14 is something that ought to be done?

15 A. It very much remains my view that that is essential.
16 Sir Robert Francis recommended a duty of candour with
17 respect to medical professionals and it is my
18 understanding it has had some impact. This is a much
19 more far-reaching duty of candour that would apply to
20 public servants and senior officials and, indeed,
21 possibly all officials. It is something that was
22 recommended in the report by Bishop James Jones, who was
23 asked to report on the experience of the Hillsborough
24 families by the former Prime Minister, Theresa May. He
25 produced the report called *The Patronising Disposition*

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1 of *Unaccountable Power*. His report, I think, was
2 published in November 2017 and I think it is pretty
3 disrespectful to the Hillsborough families that we are
4 almost five years on and the Government hasn't responded
5 to that report.

6 The proposal of a duty of candour has widespread
7 support amongst senior legal professionals alongside, it
8 has to be said, a provision for parity of legal funding
9 at inquests where the state is involved because there is
10 often a case where a disaster happens that people are
11 brought into a courtroom, the public bodies, be they the
12 police or the NHS are spending public money with no
13 limit on it to hire the best QCs in the land and
14 bereaved families are in a courtroom raw with grief,
15 scrabbling around for legal funding.

16 That also is something that is in the law and is
17 critical in my view to the Hillsborough Law. There's
18 also a Bill -- I think it is being heard in Parliament
19 today actually -- put forward by Maria Eagle, which
20 I mentioned earlier for a public advocate, and this must
21 be something of the kind that you were touching on
22 before, an independent body that bereaved families could
23 go to. And this Bill, the Public Advocate Bill,
24 I think, perhaps would have been relevant in the case of
25 contaminated blood because it would give people, in

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1 State for Health, and indeed more generally, I think,
2 you have spoken in Parliament on a number of occasions
3 about issues arising out of infected blood. I'm just
4 going to read the dates and the reference numbers for
5 three of those occasions and I want to look at the last
6 one with you.

7 So you spoke on 15 January 2015, RLIT0000771. You
8 spoke in March 2015, RLIT0001575 and in July 2015,
9 RLIT0001576. Those accounts stand for themselves.
10 I don't propose to ask you about them. You then spoke
11 in April 2017 as you were about to stand down and
12 running for election for your current position as Mayor
13 in Manchester. I just wanted to not read the whole of
14 your speech but ask you about a couple of parts of it.

15 Could we have this on screen, please, Lawrence, it
16 is RLIT0001578, 25 April 2017. It is quite a long
17 speech and debate. I just want to go to a couple of
18 passages and then ask you about it. We just pick it up
19 with the introductory paragraph:

20 "Through you, Madam Deputy Speaker, may I thank
21 Mr Speaker for giving me this opportunity to make what
22 will be my last speech in this House? I make it on the
23 subject of contaminated blood for a simple reason:
24 knowing what I know, and what I believe to be true,
25 I would not be able to live with myself if I left here

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1 theory anyway, a powerful advocate to challenge the
2 obstructiveness or the inertia of the state on behalf of
3 bereaved families.

4 I think all of this is important. Obviously for
5 reasons of basic humanity and care and support for
6 people who often will understand that mistakes can be
7 made. What they won't forgive is the cover up that
8 sometimes follows.

9 It also could save the country money. Here we are
10 decades on from when these issues were first known and
11 it is just not right that people -- in my view, it is
12 not right that people are having to sit in this room on
13 a hot Friday afternoon, people whose lives were ruined
14 by these events, still fighting for justice. What has
15 that taken in terms of expense that they have caused
16 everybody who is fighting but also in terms of the state
17 fighting these things?

18 In the end, it costs money to operate in this way.
19 It would be better for everybody if there was a duty of
20 candour that the truth was told at the first time of
21 asking and then reparation can be made at the first time
22 of asking. I think that saves money in the long run but
23 it certainly saves a lot of distress and hardship for
24 those who are most affected.

25 Q. In opposition, in your capacity as Shadow Secretary of
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1 without putting it on the official record. I will be
2 honest: this is a speech made with a sense of guilt in
3 that all of us here are collectively culpable of failing
4 to act on evidence that is there before us if only we
5 cared to look and, by extent, failing thousands of our
6 fellow citizens who are the victims of perhaps the
7 greatest untold injustice in the history of this
8 country."

9 If we could go to the last paragraph on this page,
10 and this picks up on something you have already said to
11 us, Mr Burnham, which is why I wanted to read it again:

12 "Here is what I think is the crux of the problem.
13 Contaminated blood has always been viewed through
14 a financial prism. That suits the government, it keeps
15 the victims in a position of subservience, forced to beg
16 for scraps of help with the various funds that have been
17 set up. By the way, let me make it clear that I am
18 talking about not just this particular Government --
19 although I am talking about this Government -- but all
20 Governments. To the extent that the public know
21 anything much about this scandal, there is a vague sense
22 that it is an argument about money. In my view, it is
23 in the Government's interests to keep it there; they
24 want to keep it there. Why is that? Just as with
25 Hillsborough, if the Great British public knew the real

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1 story here, there would be such a wave of public support
2 for the victims that demands for full and fair
3 compensation simply would not be able to be resisted by
4 the Government. That is the experience of Hillsborough.
5 When the truth was told, such was the huge groundswell
6 of popular support that there had to be action. Perhaps
7 that is why the Government do not want the truth to be
8 told -- they know that there would be little place for
9 them to go in answering those calls."

10 Then you go on to explain that you had brought
11 this debate to the House to try to break through that
12 impasse.

13 Does everything you said there remain your view
14 today, Mr Burnham?

15 A. Yes, it does. Every single word remains true and
16 I would stand by, as we have demonstrated today, that
17 the lines that they had, I remember one of the briefings
18 put to me around this time was about preparing strong
19 defensive lines for the Government's position. They
20 simply didn't exist. There weren't any strong defensive
21 lines for the Government's position. They were
22 threadbare lines. They were falling apart around us,
23 through the March judicial review or through other kind
24 of challenges that they were under.

25 So, no, it absolutely is my view that that is --
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1 consent. It relates to also diagnoses being taken
2 without consent. I think what I need to do today, if
3 I may at this point of my evidence --

4 Q. Of course.

5 A. -- is kind of take this a step further if you like. Why
6 was there a criminal cover-up on an industrial scale?

7 If you look back over the five decades -- and
8 I mentioned before that over five decades the Government
9 had not done enough at all, failed the people who had
10 been victims. Through the '70s, what did we see? We
11 saw a recognition of the issue, of the risk of imported
12 blood products, and a drive to increase capacity. But
13 that didn't come through, did it? And it kind of got
14 lost in the '80s and there still wasn't the capacity at
15 that time.

16 Then if you kind of take it forward kind of into
17 the '80s, I pointed the Chair today to a memo from the
18 Oxford Haemophilia Centre that I would say is another
19 case of extreme negligence, if you like, of the welfare
20 of people, with regard to products being given in the
21 way that was described there.

22 But I would also say, if you bring it forward to
23 the kind of first two decades of this century, so we are
24 going right through here, aren't we, '70s, '80s, into
25 the '90s, you know, kind of maintaining these two lines,
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1 and obviously there is the element of victim blaming.
2 In this case, there was an argument all about money.
3 Or, in the case of Hillsborough, "Oh, those Liverpool
4 supporters, weren't they" -- well, no, because they were
5 vindicated on every single count at the second
6 Hillsborough Inquest that came.

7 And it's that thing, isn't it? That is how the
8 system sometimes works. It tries to take pressure off
9 itself by "Oh, there's surely something wrong over there
10 with some of these people". Like poor Ken Bullock,
11 called an alcoholic when he never -- according to Hazel,
12 would have an occasional glass of wine on a birthday.
13 How does a man like that, a senior civil servant, get to
14 have a defamatory medical record left? What is going on
15 there?

16 There's other examples. I have heard so many
17 examples of people having tests without their consent.
18 Even their children have had tests without consent.
19 Even [redacted], who I referred to in this debate, gave
20 examples of that. So I stand by -- you didn't read it
21 up again but I will read it out again: "criminal
22 cover-up on an industrial scale".

23 So yes I stand by that too. And that word
24 "criminal" relates to medical records falsified,
25 deleted. It will relates to tests being done without
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1 and then it is the first two decades of this century,
2 not providing for people in very desperate
3 circumstances, not providing financial support for them,
4 that too damages not just physical health but mental
5 health too, if you leave people in the wilderness in
6 that way.

7 So I guess what -- if you summarise everything
8 that I'm saying here and have now come to believe,
9 I think the Department of Health and the bodies for
10 which it is responsible have been grossly negligent of
11 the safety of the haemophilia community in this country.

12 And I would add to that, from there, I would say
13 there is even the possibility that the CPS should be
14 asked to consider charges of corporate manslaughter.

15 And I don't say that lightly. I'm not coming here
16 to create -- I have thought -- from the moment I called
17 for this Inquiry, when -- in my final speech, I have
18 thought about, if I was called, what I might say here.
19 And obviously I have been re-reading over things
20 recently -- as I say, I have a lot of regard for people
21 in the Department of Health but I think on this issue
22 they have got it fundamentally wrong from the off, from
23 the '70s onwards. And the reason why I believe I can
24 justify the statements I have just made, I think I can
25 provide evidence about the cover-up, and I think I have
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1 done today, but, you know, they were negligent in not
 2 following through on self-sufficiency, even though it
 3 was clearly stated that that is what would do most to
 4 protect the citizens of this country. If we were
 5 self sufficient in blood products, that we knew came
 6 from donors who were not paid, our citizens would be in
 7 a safer position than relying on products where people
 8 were paid. And the failure to follow through on that is
 9 negligent of people's safety but particularly of people
 10 in the haemophilia community.

11 Secondly, having not done that, then conducting
 12 trials of these products, that was continuing to change
 13 without proper consent, proper mitigations or
 14 safeguards, as it would appear to me that they did, that
 15 was grossly negligent of the health and safety of people
 16 who were subject to those products.

17 Then, thirdly, not to provide financial support
 18 which is commensurate with the physical and mental
 19 distress of the people who have suffered, through no
 20 fault of their own, that, too, in my view, is grossly
 21 negligent. And then, when you add it all together --
 22 I personally can come to no other conclusion. I heard
 23 what Sir Robert said about the moral case, and
 24 I understand perhaps he can't go further because he has
 25 not been asked to look at that, and I appreciate the

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1 speech in Parliament, is it right to understand that two
 2 of the practical concrete things you called for were
 3 some form of independent investigation and inquiry and
 4 then, secondly, if we go to the bottom of page 7 of the
 5 Hansard report -- please, Lawrence -- I can just pick it
 6 up in the last two lines. You respond to something said
 7 by one of your parliamentary colleagues and you say:

8 "Absolutely, there must be full, fair compensation
 9 now. I say to the Government, do not delay; do what
 10 Ireland and other countries have done. They should do
 11 that now. They raised expectations and they should do
 12 it. We would all support it."

13 So April 2017 you called for, as you described it
 14 there, full and fair compensation?

15 **A.** Absolutely. And as I say, I was pleased to hear what
 16 the Chair had to say. I would like to praise the
 17 Government for establishing the study into a fair
 18 compensation framework. I think that is a big step
 19 forward.

20 I would like to praise the previous
 21 Prime Minister, Theresa May, who initiated this Inquiry,
 22 obviously with some of my input as well, but she and
 23 I worked together on Hillsborough and we worked together
 24 on this as well.

25 But it is five years ago now. It's five -- as

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1 Inquiry may take a different view, but I think there is
 2 a clear case to me that there is a massive legal
 3 liability here for being grossly negligent of people's
 4 needs.

5 And I think in the law related to corporate
 6 manslaughter it is about scant regard for people.
 7 I think if you look back at those submissions that you
 8 have been putting to me today, where is the regard for
 9 the concerns of the people affected? Where is the
 10 statement about that? It's not there. So policies were
 11 being done without any consideration, "If we do this,
 12 it's going to have that impact on" -- there was no
 13 regard.

14 So, as I say, I'm not coming here today to just
 15 throw a few -- you know, I have thought very carefully
 16 about this, and I can come to no other conclusion, that
 17 it -- maybe put the -- whether or not there is a case
 18 for corporate manslaughter, because the law is complex
 19 in that territory, I certainly think it should be looked
 20 at. Given what I have said, it is not just a moral case
 21 for significant immediate compensation, there is a rock
 22 solid legal case for it, in my view, and that's why
 23 I very much welcome what the Chair of the Inquiry had to
 24 say at the start of today's proceedings.

25 **Q.** In that speech you gave in April 2017 as your last

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1 everyone said today, what have those five years meant to
 2 these thousands of people who have been left struggling?
 3 It is five years they will never get back. And this
 4 dragging of feet in the British Government Civil
 5 Service, you know, in whose interest? What justifies
 6 that? Just because you are trying to please the
 7 Treasury or -- it is not -- there isn't a justification
 8 for it in my view. And credit, I think, to
 9 Penny Mordaunt who initiated the study into the
 10 financial compensation. But I would say we are in
 11 a position where we are in limbo, aren't we, as
 12 a country at the moment with the changes that are going
 13 on. I just hope that people can hear what's coming out
 14 of this Inquiry and act now. Support people now. Don't
 15 make them wait a day longer.

16 **MS RICHARDS:** Sir, that covers the issues that I was
 17 proposing to explore in terms of my own questions and
 18 also a lot of what I have asked has reflected
 19 suggestions made to me by Core Participants.

20 But, obviously, we must give an opportunity for
 21 further questions to be suggested to me, arising not
 22 least out of the evidence that Mr Burnham has given
 23 orally today. Could we take our afternoon break now,
 24 perhaps until 3.30, so perhaps five minutes longer or so
 25 than normal and, hopefully, that will provide enough

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1 time for any further questions to be considered by me.
 2 **SIR BRIAN LANGSTAFF:** Yes. Let me just say a word of
 3 explanation. The law provides that Core Participants
 4 who are legally represented may, through their legal
 5 representatives, put questions to counsel to ask of any
 6 witness and they must obviously be given a chance to do
 7 that, particularly having heard what you have said
 8 today.

9 I don't know how long it will be. Counsel will
 10 have an idea, she has suggested not before 3.30 pm.
 11 I shall say not before 3.30 pm because if questions come
 12 in, as they do sometimes, rather late, then she has to
 13 have time to consider how best to put those to you and
 14 it may be therefore a little bit later.

15 But it is an essential part of fairness that
 16 everyone has a chance to participate in this Inquiry, it
 17 is part of our commitment to openness and transparency
 18 and, in this case, it is underpinned by the law.

19 So that's what we will do. We will take a break
 20 now until no earlier than 3.30 pm. I can't tell you,
 21 I'm afraid, how long after 3.30 pm you will be detained,
 22 it will all depend on how many questions there are.

23 **A.** Chair, could I, if you don't mind, just ask a question
 24 of you --

25 **SIR BRIAN LANGSTAFF:** Yes, certainly.

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1 individuals and bodies and departments. But it just
 2 seemed that that was the course upon which the UK
 3 Government set off.

4 And I know there's the question of the destruction
 5 of Lord Owen's papers. I think if more were to be
 6 learnt about that, I don't know if it is possible to
 7 find out more about that, I think that may hold
 8 something of the answer. But all I can say is I used to
 9 get puzzled as a MP, as -- it was always about finance,
 10 and that's kind of -- the MPs were left just asking for
 11 a bit more funding, a bit more help. And the issue --
 12 you know, I got emotional earlier today when thinking
 13 about Paul Goggins, a great close friend of mine, but he
 14 was the only one I can recall who spoke about the
 15 people, "Think about -- listen to the" -- you know, that
 16 wasn't -- that was never part of the consideration, and
 17 it is really bad, awful, terrible that that's the way it
 18 was conducted, but it was all about the money.

19 **Q.** In your last speech as an MP you said that you would
 20 pass evidence to the police if the Government failed to
 21 act. Obviously, as we know, the Inquiry was set up. As
 22 a matter of fact, did you seek to pass evidence to the
 23 police?

24 **A.** I was absolutely ready to; in many ways, I still am.
 25 I did say that if the Inquiry was set up I would not get

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1 **A.** -- respectfully? Will there be any further chance to
 2 comment if there are no further questions on my part?

3 **SIR BRIAN LANGSTAFF:** Yes. We always allow any witness, we
 4 invite any witness, to say what they want to say at the
 5 end of the questioning and you will have that chance
 6 just as any other witness has had.

7 **A.** Thank you.

8 (2.56 pm)

(A short break)

10 (3.30 pm)

11 **MS RICHARDS:** Mr Burnham, I have a few further questions.

12 The first arises out of your observation in the course
 13 of today that the firmest of government lines had been
 14 established for a long time.

15 Do you have any insight into or any thoughts about
 16 how it had come to be so set in stone, or how those
 17 lines had come to be so set in stone?

18 **A.** Obviously I was not in government in the '70s, '80s, or
 19 indeed a minister or in Parliament in the '90s, and I'm
 20 just going off, I guess, what I know about the way
 21 government thinks and works but also what has been said
 22 about this issue.

23 I do come back to the point that, it is fear of
 24 the financial exposure I think that lies at the heart of
 25 this. Possibly alongside protection of reputations of

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1 in the way of an inquiry of this kind. It is very
 2 important that I didn't conflict or undermine this
 3 Inquiry's work or delay it, actually, with a police
 4 inquiry. But I would have done that had it not been set
 5 up.

6 I come back to Hazel Bullock and what I have come
 7 to know of the terrible thing that her happened to her
 8 husband and his medical records. I personally believe,
 9 straightforwardly, that a criminal act has occurred in
 10 that case and it would be for that -- for Hazel and her
 11 family to decide whether or not they would want to
 12 pursue that. I think her position has always been that
 13 she just wants the issue to be understood and resolved
 14 for everybody, and I hope that is what now happens.

15 But I have not -- anything I have said I have not
 16 said lightly, I have thought about it carefully and
 17 I would reserve the right, at some point, to still do
 18 that because I can't see how withholding a diagnosis
 19 from a patient can possibly be anything other than --
 20 well, is it criminal? I think it is, because of the
 21 impact that can have on people.

22 I have made mention today about the CPS and
 23 corporate manslaughter. Again, there is, in my view,
 24 a very clear case to be made for that, in that the
 25 failure to deliver on self-sufficiency, when it was

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1 known that British people would be at risk if there
2 wasn't self-sufficiency, carrying on using products
3 imported with all of the risks, without telling people,
4 even though that was way after the issue had been
5 acknowledged, and then into the 2000s leaving people in
6 physical and emotional and financial distress, who were
7 already very damaged.

8 That, too, is an act of gross negligence and is
9 evidence of paying scant regard to people's needs which,
10 as I understand it, is the test. All of that is
11 relevant, I think.

12 And those avenues should remain open, but I would
13 not in any way want to divert this Inquiry, cut across
14 this Inquiry. I hope it will deliver what people --
15 I hope it will deliver the truth and the justice that
16 people deserve.

17 I hope that answers the question.

18 Q. With witnesses over the last few weeks there have been
19 discussions of the idea of corporate memory, of the
20 problems that ministers come and go, often quite
21 quickly.

22 A. They do.

23 Q. Civil servants come and go, usually over a longer period
24 of time, but nonetheless they come and go. Are there
25 mechanisms that you can think of that would ensure that

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1 redress for people who have been wronged. So it would
2 be something in that space to be honest, you know, and
3 potentially in the Cabinet Office, rather than the
4 Department that's got the issue, an independent function
5 within government where complaints can be lodged about
6 a particular issue.

7 It is very significant, though, the fact that
8 there are so many unresolved injustices. And
9 particularly in the field of health. This is lives
10 ruined. Many, many, many lives ruined. It is clear
11 that the way we have run the country in those decades
12 has not delivered fairness or justice for those people.
13 Something better is definitely needed.

14 Q. When there are investigations and inquiries that result
15 in recommendations, as you have alluded to, those
16 recommendations or reports do not always get implemented
17 or sometimes even responded to. You gave the example of
18 Bishop Jones's report in particular. Would you support
19 some kind of mechanism, an inquiries commissioner, or
20 whatever you might want to call it, someone whose role
21 it is to follow up how government seeks to learn lessons
22 or doesn't seek to learn lessons, follows up when
23 inquiries or investigations make recommendations issue
24 reports to see whether those are implemented or
25 responded to?

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1 history doesn't get re-written and that things that
2 happened are retained within the knowledge of the
3 department and passed on to successive ministers or
4 civil servants?

5 A. Well, I'm glad you are asking these questions and
6 I would be so pleased to see some potential remedies
7 coming forward from this Inquiry, because I think they
8 are needed. I have made reference today to wider issues
9 of injustice which suggest a similar culture in other
10 government departments, but let's just for a moment talk
11 about the Department of Health because it is not just
12 infected blood that's an ongoing issue that hasn't been
13 resolved so far on. You could think of Primodos, which
14 was a pregnancy drug, test. You could think of sodium
15 valproate. You could think of mesh, the mesh that was
16 inserted with devastating consequences. There's
17 actually quite a lot of similar issues in that same
18 territory that are unresolved issues involving the
19 pharmaceutical industry or the devices, product,
20 blood -- the medical products industry. So there is
21 a bigger hinterland here than just infected blood,
22 although infected blood is by far the biggest.

23 Surely there needs to be a framework for how these
24 issues should be handled to establish the truth from the
25 first opportunity, and then mechanisms for appropriate

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1 A. I think that's an excellent suggestion and it very much
2 complements the notion that I mentioned before, and
3 perhaps those two roles could be combined within
4 an independent function in the Cabinet Office to be
5 discussed. I guess the overall remedy though is what
6 I would point you to. We call it the Hillsborough Law,
7 but it is a consolidation of some of these measures.

8 What you have to do at the end of the day is
9 empower the individual against, sometimes, the might of
10 the state. The state holds all the power and all the
11 cards and it leaves people fighting, fighting and
12 fighting away in the wilderness often, without the means
13 to get the justice that they need. So the duty of
14 candour on public servants, the parity of legal funding
15 at inquests where the state is involved, the public
16 advocate measure that I have mentioned. You know, the
17 Hillsborough Law, which is a consolidation of all of
18 these measures, actually implementing the
19 recommendations of Bishop James Jones' report, alongside
20 what you have just said, around an inquiries
21 commissioner, I think you are getting towards
22 a rebalancing of the system in favour of ordinary
23 people, if you like, and away from the system.

24 Q. Just picking up on the duty of candour that would emerge
25 from the Hillsborough Law. Is there a danger with the

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1 duty of candour that it might drive decision making,
 2 note taking in records into personal notebooks and
 3 disposable records, or result in things not being
 4 recorded at all? And if so, how might that be
 5 addressed?
 6 **A.** So it would be a duty that applies to inquiries, if you
 7 like, either localised inquiries set up by a council,
 8 internal inquiries set up by a particular body. It
 9 wouldn't be about every single day having to be, "What
 10 do I need to tell the truth about today?" You know, it
 11 would just be about when there is a process of inquiry
 12 that there is a legal requirement that you tell
 13 everything you know, in the same way as I took the oath
 14 today. It is that, isn't it? In that situation you
 15 must say everything you know.
 16 Now I wouldn't want to go into the details today,
 17 it wouldn't be appropriate, but I set up -- just to
 18 illustrate what I'm saying, I set up a voluntary inquiry
 19 you could call it, maybe similar to the Archer review,
 20 following the Manchester Arena bombing. It was chaired
 21 by Lord Kerslake, a very senior figure known to many
 22 people in this room, I am sure.
 23 There was and there is a concern amongst the
 24 bereaved families from that appalling attack in the
 25 heart of our city that our police force did not give
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1 because I have made reference today to the handling of
 2 medical records, records held at the local level and
 3 I don't know if the Inquiry is going to go into this
 4 straightaway but I hope it would, in terms of saying
 5 "How did that happen in so many multiple cases, that
 6 records were lost/deleted/withheld?"
 7 I don't know whether -- your point about records
 8 needs to extend to the kind of question of records held
 9 at local level as well as national level, because it is
 10 often putting together the both things that tells the
 11 whole story about something that may have gone wrong.
 12 **Q.** Then, going back to the Department of Health, do you
 13 know whether there was, as it were, a library, a file,
 14 of lines to take?
 15 **A.** On this issue?
 16 **Q.** On this issue or whether it is something you came across
 17 on other issues?
 18 **A.** There always would be lines to take. I know that can
 19 sound a bit sinister but it shouldn't necessarily be
 20 considered in that way because often ministers would be
 21 asked to comment on something that was outside of their
 22 direct portfolio. So they would need a sense of what
 23 the position was. Of course, any minister with the
 24 agreement of the Secretary of State, is able at any
 25 time, actually, to change those lines to take. And
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1 a wholly accurate account to that inquiry and gave
 2 a different account when people were under oath.
 3 Now that's not acceptable. People should be
 4 telling the truth at the first time of asking. So the
 5 duty of candour applies when you are asked: what was
 6 your view of this incident? What happened? It is about
 7 being wholly truthful at that moment. And I don't
 8 believe that should have an effect of driving -- people
 9 should go about their normal job but, when asked to give
 10 account, they should be under a duty to do so and know
 11 they can't be demoted or dumbed down or sacked for doing
 12 so.
 13 **Q.** Would you support a duty to keep records and be accurate
 14 and to check the information that's recorded in
 15 government documents?
 16 **A.** Yes, I would. I think there's something -- there is
 17 certainly a duty that should apply to government
 18 departments and I do think we need to know more, don't
 19 we, about how can a government department lose papers
 20 for a big chunk of time on an issue that we knew was
 21 clearly a controversial issue, even then, in the '70s.
 22 I don't see how that's possible. There should be
 23 a framework shouldn't there for records --
 24 recordkeeping.
 25 I think it needs to go further than government
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1 I have indicated today how that process happens. It is
 2 hard but you can do it.
 3 I think the risk here is those lines to take
 4 becoming so embedded in the system.
 5 I think you also maybe need to think about, well,
 6 how lines to take can never -- you've always got to be
 7 conscious that it might change and perspectives will
 8 change. The process that I described about the "treat
 9 official" process is something that I think you should
 10 think about because how can lines to take change if
 11 ministers are not seeing what people are saying and how
 12 they are reacting to those lines to take and challenging
 13 them if they are not coming up to ministers because they
 14 are just going in and they are coming back out again.
 15 So people are challenging the lines to take and
 16 then they are sending the lines to take back out.
 17 I think that is something that is a real issue and I do
 18 think other ministers who have been in the Department of
 19 Health have made a similar point to me as that.
 20 **Q.** Would it be a good idea, if you have lines to take,
 21 particularly on not a fast moving contemporaneous issue
 22 but on an issue that may have -- be rooted in previous
 23 administrations, would it be a good idea for each such
 24 line to take to have a file of documents associated with
 25 it that evidences or sets out the justification for that
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1 line, so that the minister could, rather than just
 2 simply being faced with a line to take, say, "Can I see
 3 what that's based on?" And they could have a look and
 4 ask questions, "That doesn't quite add up?"
 5 A. I think so. Ministers can do that. You are always able
 6 to say to officials, "You've got that in the note,
 7 can I" -- but it is probably the odd time that
 8 a minister would do that. And a kind of more balanced
 9 presentation of issues absolutely should be always what
 10 is put before ministers. I think you would find it hard
 11 to consider what you have shown me today was going to be
 12 conducive to balanced decision-making. It was one-sided
 13 in terms of its presentation of issues. I do think --
 14 I actually feel there does need to be quite a response
 15 from Government to this Inquiry from what I know has
 16 already come out, because it says something about how we
 17 are all governed and how hard it is to correct injustice
 18 in this country. It is too hard. The scales are too
 19 weighed against ordinary people fighting when wrongs
 20 have been done. There does need to be a sort of
 21 levelling up of those -- "levelling up" is a phrase that
 22 we use that says -- well, how about we level up those
 23 scales of justice so that it is not as hard as it is?
 24 The fight takes too much out of people. I think
 25 it is incredible that people are still, as they are
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1 receptive one, it will just be an almost blaming
 2 exercise.
 3 You referred earlier to the processes within
 4 Parliament and the extent to which they can or cannot be
 5 conducive to the best kind of decision-making.
 6 In relation to the issue I have just put, are
 7 there ways in which it can be made easier for ministers
 8 to say: we got things wrong?
 9 A. I think so. I don't think the public punish people for
 10 getting things wrong. I think they will always punish
 11 people much more for covering up when something has gone
 12 wrong. That is actually the greater offence, I think,
 13 in the eyes of the public.
 14 And I think ministers, part of the kind of culture
 15 of Whitehall should be about a learning environment.
 16 They keep saying "learn the lessons". How many times,
 17 as I said before, do we hear that phrase? But they
 18 don't because they don't open up on things. So I do
 19 think we have hit a point here -- as I say, it is
 20 staggering that we are in this room today, almost
 21 five decades on from when these issues first arose, that
 22 itself says something, doesn't it, that something is
 23 amiss at the heart of the system.
 24 I just think there has to be a different way of
 25 thinking about these things and, in the Civil Service
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1 doing, kind of fighting -- fight for loved ones, for
 2 people they know. But they shouldn't. I have met so
 3 many thousands of people that are just kind of left in
 4 this place. It has happened to too many people, nuclear
 5 test veterans is one.
 6 I hope I'm not going beyond what I should be
 7 saying Chair, in saying that, please, do think how your
 8 recommendations could help another campaign. I am
 9 certain there is another injustice of major proportions.
 10 What you might say could actually help them. Because
 11 things are not in the right kind of order at the moment.
 12 There is too tight a control of the information and the
 13 lines, and something needs to happen to change that grip
 14 of issues by the vested interests that might have most
 15 to lose by the exposure of that issue.
 16 Q. Can we pick up on just one final point. We heard from
 17 an earlier minister, in my mind it's Lord Waldegrave but
 18 it might have been from someone else, but, in any event,
 19 when asked about the extent to which ministers might be
 20 able to go to Parliament and be more open about things
 21 having been done wrong, things -- decisions having been
 22 made that should now be reversed, part of the answer
 23 that whoever it was gave was to say that's actually
 24 quite a difficult process because, immediately, the call
 25 from the Opposition will be not necessarily the most
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1 training, that duty of candour should -- that shouldn't
 2 just be about -- well, it will be about individuals but
 3 I am talking about a culture change that should come
 4 from that.
 5 It is actually about protecting ministers, to be
 6 honest. What happens -- I think ministers get put at
 7 risk quite severely by the system that we have got,
 8 because you are sitting on top of a system and I would
 9 understand it, and I know some of the campaigners will
 10 feel this, that you are knowledgeable about all this
 11 stuff that's going on underneath you, the treat
 12 official. That's more dangerous, to be honest with you,
 13 than ministers saying, "Oh no, I have had a report now
 14 that this wasn't" ...
 15 The bigger risk, politically, to people is looking
 16 like you are sitting atop a sort of unresponsive system
 17 that's batting people away, pulling the shutters down.
 18 That, in the end -- somebody will be in the position
 19 when that breaks out, and then the political
 20 consequences will be harder for that individual and the
 21 government of the day.
 22 So it is a cultural change that's needed. I can
 23 only say that, in my time in Parliament, Hillsborough
 24 changed when Theresa May and I started -- with other
 25 people as well, but that cross-party connection was
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1 made. On this issue, I referred to it before I could
 2 barely name a MP who didn't try and represent their
 3 constituents on infected blood, but they could not break
 4 through.
 5 You know Parliament was -- the balance between the
 6 Civil Service and Parliament was wrong here. Parliament
 7 couldn't break the door open on this issue and it was
 8 only that -- I'm not overclaiming for my role -- but it
 9 was only when police were mentioned that that seemed to
 10 change.
 11 There is the need for something fundamentally
 12 different than the way we are doing things and I think
 13 the remedies that you have suggested today all sound
 14 like they have merit to me. But I would say it is not
 15 just internal changes, you have to empower the public to
 16 challenge people more effectively. And the
 17 Hillsborough Law I think is something that -- called
 18 that, but it is obviously a -- you know, it's a name
 19 that we put on it, but let me put it this way: the
 20 recommendations of Bishop James Jones should not be
 21 sitting going nowhere for five years when
 22 a Prime Minister asked somebody of his stature to look
 23 into what's gone wrong.
 24 It is reflective of the same culture that it is
 25 sitting there for five years. So maybe this Inquiry can

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1 **A.** Yes. That is right, Sir Brian.
 2 The Act is, I think, trying to set a lower bar
 3 than perhaps you would find with misconduct in public
 4 office. It would be implemented corporately on the
 5 entity, the body, the possible body, but contractually
 6 as well in the individual contracts of public servants.
 7 It obviously would be an offence not to -- as I said,
 8 not in just replying to an email to a colleague -- we
 9 are talking about official inquiries, as you said. So
 10 to give partial or, worse, an inaccurate account to
 11 an inquiry set up by a recognised body, a council,
 12 a body like I lead, the Greater Manchester Combined
 13 Authority, that would be a very serious offence.
 14 **SIR BRIAN LANGSTAFF:** Ms Richards, in her questions at the
 15 end from Core Participants, asked the question whether
 16 the existence of this duty, enforced as it is by
 17 criminal sanction, might lead people not to record
 18 things, if you like defensive action, rather than record
 19 them just in case it later proves to be wrong. There is
 20 a further danger, possibly, that an official in the
 21 department comes to a received line, a line that has
 22 been parroted out before, and thinks to themselves:
 23 well, if I try to check this I may discover it is wrong,
 24 and I may be, therefore, acting properly but I could on
 25 the other hand get myself into trouble if I don't look

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1 break that impasse.
 2 **MS RICHARDS:** Sir, those are the questions I'm proposing to
 3 ask from the Core Participants' suggestions. I'm just
 4 going to check with Ms Grey.
 5 No questions from Ms Grey.
 6 Before we ask Mr Burnham if there's anything he
 7 wishes to add, do you have any questions, sir?
 8 **SIR BRIAN LANGSTAFF:** Yes.
 9 The Hillsborough Law, the Public Authority
 10 Accountability Bill, I think is its full title, as
 11 published, it creates a duty of candour in particular,
 12 as you say, but not exclusively, when:
 13 "... dealing with court proceedings, official
 14 inquiries and investigations, and in other circumstances
 15 where a public authority, public servant or official
 16 acts in a private law matter or a non-public function,
 17 the duties apply except where to do so might
 18 significantly and disproportionately damage the public's
 19 interest."
 20 So those are the duties.
 21 The question arises: how do those duties actually
 22 be observed? The answer that is given by the Act is, is
 23 it, that there is a danger of creating a criminal
 24 offence if what is done is done intentionally or
 25 recklessly?

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1 carefully enough, so I won't look at all, I will simply
 2 repeat the line. And they are not acting intentionally,
 3 telling a falsehood, they are not acting recklessly,
 4 probably, in not being candid, even though you could say
 5 they are a bit careless in not going back and checking.
 6 So, again, it could be that the sanction approach isn't
 7 the only approach.
 8 You would, from your time in the Health Ministry,
 9 think that prevention is better than cure?
 10 **A.** I would.
 11 **SIR BRIAN LANGSTAFF:** Using another aphorism, carrot and
 12 stick. The two ways of enforcing behaviour: one is
 13 stick, the other is carrot.
 14 **A.** I think they are related though, aren't they, the
 15 existence of the stick as a backdrop because it is there
 16 that sits behind things, should things go wrong. What
 17 it is seeking to do is create the preventative climate
 18 in the body, isn't it, that you are supported to come
 19 forward, we want you to come forward.
 20 And I would find it very odd if a duty of candour
 21 lead to people, I'm now under a duty of candour
 22 therefore I won't record -- you would do the opposite
 23 surely, most people would. But I was not happy with
 24 that today I'm just going to -- that -- I will just take
 25 a note of it.

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1 You think it would create the opposite culture.
 2 All I can say is I feel the culture isn't right at the
 3 moment, and the tendency to pull the shutters down, to
 4 push the public away when things go wrong is clear.
 5 I think there must be a better way and I think it is
 6 often the fear of being done down, loss of promotion,
 7 often it is harder to speak up in an organisation for
 8 all of those reasons, and hence the norm is that, isn't
 9 it, that we don't have, often, a culture where people
 10 feel empowered to point out where things are wrong and
 11 we need --

12 Learned lessons needs to mean what it says,
 13 ie a learning culture and not a punitive culture when
 14 people point out a concern about something that wasn't
 15 right.

16 I think the duty of candour is a simple idea: tell
 17 the truth at the first time of asking. I personally
 18 don't see what is problematic about that if people are
 19 doing what they should do, which is serving the public
 20 first and foremost.

21 **SIR BRIAN LANGSTAFF:** In this Inquiry we have heard quite
 22 a lot of cases of people being told by their doctors
 23 that things aren't nearly as bad as they might think,
 24 that the press has been sensationalist, that the illness
 25 they've got won't cause them any problems at all. Which

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1 negligence claims and possibly saved time and resource
 2 going into the fighting of claims.

3 I just am putting forward that there is a case for
 4 a much broader duty of candour to get the transparency
 5 as a culture that exists around Whitehall. It doesn't
 6 exist at the moment and that absolutely is something
 7 that I'm determined to change.

8 **SIR BRIAN LANGSTAFF:** The history of the NHS over the last
 9 50/60 years has involved there being quite a number of
 10 inquiries. Now, they may be a little different from
 11 this Inquiry because this Inquiry takes a very broad
 12 systematic look at the whole system, going right to the
 13 Department and politicians at the top.

14 But, in each case, or almost each case that I know
 15 of, there has been a call in the Inquiry report for
 16 a change of culture.

17 **A.** Yes.

18 **SIR BRIAN LANGSTAFF:** And in each successive case it would
 19 appear that change of culture hasn't really happened,
 20 which is why I ask about the carrot as well as the
 21 stick. Because the stick, in terms of penalising bad
 22 behaviour is there, to some extent, in the GMC. It is
 23 there to some extent in the ability of people if they
 24 have sufficient resource and will to take legal action
 25 if there is sufficient to show there may be a case.

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1 in most cases was not a fact. And there is some
 2 evidence that the doctors knew or ought to have known
 3 better.

4 Now, how do you enforce their duty, because it is
 5 the same interpersonal obligation, on a very personal
 6 level, to tell the truth, the whole truth, which may not
 7 be easy to listen to, to a patient, when you would far
 8 rather be delivering good news to the patient?

9 **A.** I think those are matters of professional regulation
 10 with regard to the GMC or other medical regulatory
 11 bodies.

12 I think this is an area where there has to be
 13 clarity. I don't see how it can be justified that
 14 a clinician can be aware of a diagnosis, a test that has
 15 revealed an infection, and not communicate that. The
 16 damage is greater in the not, is it not, Chair, than in
 17 the difficult news? The difficult news is what you need
 18 to hear if you are hepatitis C positive, HIV or any
 19 other infection. And I think medical regulatory bodies
 20 would -- do require that now.

21 The duty of candour would imply to an inquiry, you
 22 know, a bigger process set up. I think it is important
 23 to make that distinction. I do think Sir Robert's duty
 24 of candour, as -- I am told has had some beneficial
 25 impact on speeding up the settlement of medical

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1 But how do we create a culture in which, rather
 2 than being defensive, people value candour? Is your Act
 3 part of it? Is there something else we can do to avoid
 4 any, if I were to suggest, for instance, a change of
 5 culture as needed -- that meeting the same fate as those
 6 who have said there should be a duty of candour before?

7 **A.** I think the carrot is letting people do their job and
 8 answer their calling. Most public servants that I have
 9 dealt with -- and I have been at pains today, at points
 10 in my evidence, to say how much respect I have for the
 11 civil servants that I worked with and I do now in terms
 12 of the people who work in the Greater Manchester Police
 13 or other Greater Manchester entities. They want to
 14 serve the public. It is why they do what they do but
 15 they are often working in organisations that they feel
 16 they can't or have to pull back.

17 So the carrot is to empower people to do their job
 18 and do what is right, and don't send them home feeling,
 19 should I have said something about? I think that is the
 20 effect of the duty of candour. It frees people up to
 21 serve the public and do what they feel to be right
 22 without the fear of reprisal because as you say, many
 23 reports have talked about the need for culture change
 24 but it has not been achieved. I am prepared to accept
 25 there might be another mechanism to improve culture but

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1 I can't think of it, and I do think Sir Robert's duty of
2 candour has had some impact on the NHS, is what I'm
3 told.

4 And that's a good thing. So why not build from
5 there and see if we can apply it more broadly?

6 **SIR BRIAN LANGSTAFF:** If the supervisor places a value upon
7 a particular characteristic of people at work -- and we
8 know in general terms it happens, if somebody a hard
9 worker that is valuing hard work or productivity -- if
10 part of the value is being candid and checking your
11 facts, that may place a value on them which may create
12 a carrot or might it? Might it work?

13 **A.** I think so. It is somebody doing their -- not becoming
14 a problem or awkward, as sometimes they can be
15 characterised, but doing their job, and fulfilling the
16 obligation that the organisation is being judged about.
17 Because the duty of candour would apply corporately as
18 well as individually. So anybody who fulfilled their
19 individual duty would be conserving the wider aim.

20 I think we have to be honest about where this is
21 coming from. This is about seniors in the South
22 Yorkshire Police telling people to re-write the
23 statements of individual officers. Those officers
24 actually, if you go back to those police statements,
25 were very candid, honest. Some of them were emotionally

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1 a management responsibility to encourage, upon which the
2 management will be held accountable?

3 **A.** Yes. I think there may be ways of measuring the effect
4 it might have on morale, on productivity. How much
5 energy is consumed by the attempt to fight people who
6 have been wronged? You know public bodies are spending
7 thousands of pounds of our money on lawyers -- and
8 nothing wrong with lawyers, but they are spending
9 thousands of pounds of our money fighting these things.
10 You know, for no public benefit. Zero public benefit.
11 For institutional benefit perhaps, but is that a public
12 benefit if they manage to sort of grind people into the
13 ground because they have spent so much on legal costs?
14 That is the point I think.

15 This is actually wasteful of public resources.
16 A duty of candour might reduce the costs that are being
17 spent fighting cases, fighting the public. I believe it
18 could. Margaret Aspinall, Chair of the Hillsborough
19 Family Support Group, as was, says it very bluntly,
20 "Please, tell us the truth at the first opportunity.
21 The difference it would make to us is incalculable".
22 You can't put a value on it, actually. I think that
23 call is magnified in terms of the people in this room,
24 the people watching, who have suffered as a result of
25 this issue.

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1 challenging to read because they were so upset about
2 what they had seen. But then they had all of that taken
3 out. That is what this duty is doing. It is often
4 people who are working on the frontline who want to be
5 honest about things and what they have seen. And in
6 this case, I think, the same I guess. People would
7 want -- there will be people in the system, always, who
8 want to do the right thing, and it is about people -- it
9 is about empowering people who want to do the right
10 thing and undermining people who want to do the wrong
11 thing. At the moment it is too easy for those who want
12 to do the wrong thing to assert their culture in
13 an organisation, and somehow you have got to turn that
14 around.

15 So, I was very pleased when Bishop James did his
16 report. The title says it all, *The Patronising*
17 *Disposition of Unaccountable Power*.

18 No one in this room needs any lessons about that,
19 because they lived with that for decades. So something
20 different is needed here. And I think the duty,
21 although it is framed as a stick measure, it could
22 actually be an empowering preventative measure if it is
23 implemented properly.

24 **SIR BRIAN LANGSTAFF:** Might there be an element of carrot
25 if, following on from your remarks, the duty is seen as

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1 It is unclear to me, and I don't know, Sir Brian,
2 whether you can get any closer to this, how could there
3 be such widespread withholding of diagnoses, with
4 widespread withholding of people's medical records,
5 widespread deletion of chunks of people's medical
6 records, or in the case of [redacted], the manipulation
7 of medical records where a key piece was suddenly
8 removed from a file when she saw it, which was something
9 I spoke about in Parliament.

10 If you think about it in the context of this
11 Inquiry and a duty of candour, how -- who -- could such
12 widespread behaviour of the kind I just described
13 prompted it? Did everyone individually in those places
14 do it off their own bat? Was there something more than
15 that? I honestly don't know.

16 But I know there's so many examples of it in this
17 instance that says the lack of a duty of candour is
18 highly problematic in terms of the type of behaviour
19 that was going on. It would have taken one person in
20 the medical records department of a hospital to say
21 "I was asked to delete this from this file", or "I was
22 asked to withhold this file", or "I was asked to fight
23 the release of this file in a court and, do you know
24 what, I'm going public about that because I'm not
25 prepared to do it, it is not right, it is not in the

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1 public" -- do you see the point I'm making?
 2 I think that is the benefit of it. And it will
 3 allow those bad behaviours and cultures not to take root
 4 in -- not just in organisations but even in parts of
 5 organisations. It is clear to me that there was
 6 systematic covering up of information in this case, and
 7 I can't think of a better remedy than a duty of candour
 8 if -- you know -- if there is one, I would probably
 9 support -- if there is a better remedy, I would support
 10 that too. But what I do know is we have an event in
 11 Parliament next week to, if you like, launch the
 12 consolidated Hillsborough Law, and I would say that
 13 people need to start feeding into the -- you could read
 14 out bits of my Bill that maybe need to be improved but
 15 people need to -- of your stature need to start
 16 improving this legislation so that we do rebalance the
 17 system in the favour of the people in this room, the
 18 people watching, the people wronged by this scandal.
 19 **SIR BRIAN LANGSTAFF:** Thank you very much. That's all
 20 I ask.
 21 **MS RICHARDS:** Mr Burnham, was there anything you would like
 22 to add?
 23 **A.** I think I have probably said what I needed to say today,
 24 so I won't detain the Inquiry much longer. I said
 25 everything today after great thought and I just need to

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1 to change my thinking about how things work and how
 2 things -- well, shall I put it the other way, how things
 3 don't work for people.
 4 So I took that thinking into the year I was in the
 5 Department of Health and then through and to this
 6 Inquiry today. This is the product of a lot of thought.
 7 And if the measures I have proposed aren't right, then
 8 I would say, you know, let's get this right so that we
 9 don't let -- anyone who has followed this, we don't let
 10 these things carry on happening to people in this
 11 position. It is so important. This is about how we
 12 have been governed and it is not good enough for people
 13 who are most harmed.
 14 So as I am conscious today of the enormity of the
 15 issues that are involved here, but mainly everything
 16 I have said today is borne out of a consciousness of the
 17 many thousands of people, lives ruined, families
 18 devastated, the level of harm caused by people being
 19 left in the wilderness for all of these decades.
 20 I know I have spoken of the haemophilia community
 21 a lot today, because they are the people I have got to
 22 know. But I know people have been infected in other
 23 circumstances, people with other conditions, or people
 24 infected via blood transfusions. I know there is
 25 a whole range of ways in which people, through no fault

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1 say that again. After great thought.
 2 I have been on a journey, really, in terms of my
 3 understanding of the way this country works, ever since
 4 I was invited to the 20th anniversary to the
 5 Hillsborough disaster. That was, if you like, my fork
 6 in the road. I was a loyal minister until that -- I was
 7 doing my bit, I was a team player and I was reading the
 8 lines to take, and then I was confronted with
 9 a situation where the Government that I was in was
 10 clearly not listening to the people I had grown up with,
 11 and I had to decide what was I going to do. And that is
 12 what happened to me on the 20th anniversary of the
 13 Hillsborough disaster.
 14 And obviously I kind of chose the path of saying,
 15 well, things are not -- I can't justify this because
 16 I know they are right, I know the Government is wrong.
 17 So then I obviously challenged.
 18 And that then took me into the Department of
 19 Health and, you know, I would say to everybody
 20 listening, you know, I'm -- I would like to say sorry to
 21 everybody for being too slow to act. I wish I had done
 22 things sooner. I do. I really do. But you can only
 23 act on what you know at the time, can't you? You can
 24 only change things where you can actually get hold of
 25 the evidence that you need. But that was where I began

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1 of their own, have found themselves in this position.
 2 So, as I say to everyone in this room and
 3 watching, I would just like to say sorry that I didn't
 4 do more, but we are here today, not because of anything
 5 that I have done or any politician did but it was
 6 because you never gave up.
 7 Thank you very much, Chair.
 8 **SIR BRIAN LANGSTAFF:** Can I add my thanks to the very
 9 obvious thanks of those in the room, in particular for
 10 your candour in the way in which you have told us your
 11 account and you have given your evidence.
 12 **A.** I place myself under the same duty that I have been
 13 calling for today.
 14 **SIR BRIAN LANGSTAFF:** Well, it seems to me, as far as I can
 15 tell, that you have fully observed it. So thank you.
 16 **MS RICHARDS:** Sir, we resume on Monday with presentations in
 17 relation to decision-making in Northern Ireland and
 18 Wales and then we have witnesses for the remainder of
 19 next week.
 20 **SIR BRIAN LANGSTAFF:** Yes. So Monday 10 o'clock.
 21 (4.21 pm)
 22 (The Inquiry adjourned until 10.00 am on Monday,
 23 18 July 2022)
 24
 25

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(82) year - zoned