

1 **Wednesday, 21 September 2022**

2 **(10.00 am)**

3 **SIR BRIAN LANGSTAFF:** Yes, Mr Boukraa.

4 **Presentation by Counsel to the Inquiry about government**
5 **decision-making and the response of government in Scotland**

6 **MR BOUKRAA:** Sir, we are turning today to Scottish
7 Government decision making focusing on the period from
8 the 1970s to about the early 1990s. I am going to start
9 with a handful of introductory points, most of which
10 will be familiar to those who have followed previous
11 Inquiry presentations, this oral presentation
12 accompanies a written note which has now been disclosed
13 on the Inquiry website. The written note, as will be
14 obvious to those who have seen it, is lengthy and it
15 covers a large number of documents which were available
16 on Relativity. I certainly won't be covering every
17 document or issue that are contained in the written note
18 today.

19 I should also say, as I have said before in
20 presentations, that whilst the written note is lengthy,
21 it doesn't purport to address every relevant document.
22 No doubt there will be further documents and points
23 brought to your attention by core participants and legal
24 representatives in due course.

25 The Inquiry team also intends to disclose a much

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1 topic I intend to miss out more or less completely today
2 is self-sufficiency and supply of blood products.

3 Now, that topic was of course considered in some
4 detail in the March hearings. The written note adds
5 some further detail on the involvement of Scottish
6 Government decision-makers. They looked at very similar
7 issues and a similar chronology to the material
8 considered in March. The evidence that's available is
9 in the written notes and I'll be focusing on other
10 topics today.

11 Finally, on terminology, much of the material that
12 we're going to be looking at today concerns the Scottish
13 Home and Health Department, the SHHD, which is a bit of
14 a mouthful sometimes. I'll occasionally refer to it as
15 the HHD, occasionally as "the Department". I will try
16 to make it clear when I'm contrasting it with the
17 equivalent department in England and Wales, the DHSS or
18 the Department of Health.

19 I'm going to move now, sir, to the structure and
20 organisation of the HHD and the Scottish Office
21 relatively briefly and its relationship with other
22 bodies.

23 It will be apparent from the written note that the
24 sources we rely on to outline the structure and
25 organisation of the HHD and its position within the

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1 shorter addendum note on a particular issue that I'll
2 touch on later today. It relates to the hepatitis
3 waiver or the waiver that applied in Scotland in the
4 context of the HIV Haemophilia Litigation and, in
5 particular, whether that waiver covered only
6 hepatitis -- sorry, only HIV or both HIV and hepatitis.
7 I'll come back to that later on today, sir, but we also
8 intend to disclose a short addendum note addressing it.

9 In terms of witness evidence on Scottish
10 Government decision making, the Inquiry has already
11 heard from Duncan Macniven and Lord Forsyth, but the
12 Inquiry is also obtaining a further witness statement
13 from a further Scottish Government official,
14 Mr John Davies, who was a senior official in the
15 Scottish Home and Health Department between 1983 and
16 1985. We will see his name appear on a number of
17 documents relating to AIDS in particular during the
18 course of today. The Inquiry is in the process of
19 obtaining that statement and it should be available
20 shortly, both a written note and what I say orally will
21 fall to be considered alongside that statement and
22 Mr Davies's evidence.

23 Now, the structure of the rest of today will
24 broadly follow the structure of the written note for
25 those who are following it. I should flag that one

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1 Scottish Office mainly involved witness evidence. That
2 includes witnesses who gave evidence to the
3 Penrose Inquiry and witnesses to this Inquiry, such as
4 Duncan Macniven. The note also makes reference to
5 a document created during the course of the
6 Penrose Inquiry which summarises the structure of
7 the HHD in the 1980s, lists the names and titles of
8 number of officials and ministers, and that's a document
9 which is set out in the written note.

10 Now, that and a significant part of the available
11 witness evidence focuses on the 1980s but many of the
12 key features of the way in which the Department was
13 structured also apply to the 1970s.

14 Now, as the witnesses we have heard from in this
15 Inquiry have noted, during the 1970s and 1980s,
16 the Scottish Office was of course part of the wider
17 UK Government. It was headed by a Secretary of State
18 for Scotland, beneath whom were a number of more junior
19 ministers.

20 Now, that Secretary of State for Scotland was
21 a member of Cabinet, but there were a number of areas in
22 which decision making, policy and decision making, was
23 devolved and fell to Scottish Office ministers and
24 officials. Health, including blood services, was one of
25 them. One of the issues we'll look at further during

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1 the course of today is the relationship between those
 2 decisions taken in Scotland and the wider UK Government.
 3 Now, the Scottish Office itself was divided into
 4 a number of departments, one of which was the HHD. Each
 5 department reported to one or more junior ministers and
 6 through the junior minister to the Secretary of State.
 7 The junior minister with responsibility for Health could
 8 be a parliamentary under-secretary of state or
 9 a Minister of State. The ministerial responsibilities
 10 were allocated by the Secretary of State for Scotland.

11 As with the DHSS, the HHD had a dual hierarchy of
 12 officials, on one side were administrative officials, on
 13 the other were medical officials. Both contributed to
 14 advice to ministers.

15 A very brief summary of the administrative
 16 structure: the hierarchy of administrative officials in
 17 the HHD was headed by the HHD secretary, who reported to
 18 the Scottish Office Permanent Secretary. Beneath the
 19 HHD Secretary were under-secretaries, then an assistant
 20 secretary, occasionally called the senior principal,
 21 underneath the assistant secretary, senior executive
 22 officers, sometimes referred to as principals.

23 Departments in the Scottish Office were divided
 24 into groups, each one was headed by an under-secretary.
 25 Each group was divided into several divisions. At the

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1 We'll see him appear a number of times today, as we will
 2 with Dr John Forrester who replaced Dr Bell in 1985
 3 until 1988.

4 Now, the CMO in Scotland and DCMOs had a wide
 5 range of responsibilities. Dr Macdonald, in giving
 6 evidence to the Penrose Inquiry, described two practices
 7 which he said were intended to keep the CMO and the DCMO
 8 aware of the work of the medical staff beneath them.
 9 The first one was a meeting every Monday morning, which
 10 was chaired by the CMO or a DCMO, attended by PMOs
 11 heading each of the groups, principal medical officers.
 12 He said these were quite informal meetings. No notes
 13 were taken.

14 The second mechanism was a monthly report written
 15 by senior medical officers and medical officers which
 16 were generally known I think as PMO reports, principal
 17 medical officer reports, which set out the issues and
 18 the activities medical officials had been involved in
 19 during that month. Dr Macdonald's evidence by the time
 20 of the Penrose Inquiry is unfortunately those reports
 21 were no longer available. That remains the case today,
 22 although we will occasionally see documents which seem
 23 to have been intended to contribute to PMO reports.

24 One of the issues that was explored in witness
 25 evidence we've heard previously in this Inquiry with

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1 head of the division was an assistant secretary and,
 2 generally speaking, groups were referred to by a Roman
 3 numeral, followed by a letter, sometimes the particular
 4 Roman numeral and the particular letter changed over the
 5 course of years. Divisions were then generally divided
 6 into branches and at the head of a branch was a Senior
 7 Executive Officer.

8 On the medical side, the hierarchy of medical
 9 officials was headed by the Chief Medical Officer for
 10 Scotland, the CMO, beneath whom were deputy chief
 11 medical officers, DCMOs, principal medical officers,
 12 senior medical officers and medical officers.

13 Until 1974 the HHD had one DCMO to whom principal
 14 medical officer reported. In 1974 a second DCMO post
 15 was created and the two individuals who were in post
 16 from the mid-1970s in that period were
 17 Dr Iain Macdonald, Dr Graham Scott. We'll see their
 18 names appear in a number of documents we look at today.
 19 In 1985, Dr Macdonald was appointed CMO and the
 20 hierarchy beneath him reverted to just one DCMO.

21 Now, the principal medical officer from 1977 to
 22 the early 1990s was Dr Archibald McIntyre. That's
 23 a name that will appear a number of times today. The
 24 senior medical officer with responsibility for blood
 25 services from around 1973 to 1985 was Dr Albert Bell.

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1 Mr Macniven and Lord Forsyth was the relationship
 2 between ministers and officials in the HHD and the wider
 3 Scottish Office, in particular how it was decided
 4 whether or not an issue should be put to a minister for
 5 a decision or to inform them about an issue.

6 I'm not going to repeat that evidence that's
 7 already been given. The thrust of it was there were no
 8 set criteria and it was a matter of judgment for the
 9 officials to decide when to put the issue to ministers.

10 I am going to highlight a paragraph in written
 11 evidence to the Penrose Inquiry which casts some further
 12 light on this evidence, it comes from the statement of
 13 Alexander Murray and, Lawrence, if we could please have
 14 PRSE0002440.

15 This is the statement of Alexander Murray for the
 16 Penrose Inquiry. It was on the topic of HIV testing.
 17 Mr Murray was a senior executive officer in the HHD
 18 between 1983 and 1987. This statement was considering
 19 in particular the introduction of HIV testing but
 20 there's a section that's of more general relevance for
 21 our purposes.

22 So if we could go to page 4, please. Then the
 23 third paragraph. That's great, thank you.

24 So the first sentence refers to the evaluation
 25 programme relating to the introduction of HIV testing,

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1 but Mr Murray goes on to describe --

2 **SIR BRIAN LANGSTAFF:** Well, can you help with that, because

3 much depends on timing in respect of this, what is meant

4 by "at this stage"? Can you link that back for us,

5 please, to what he says earlier.

6 **MR BOUKRAA:** I believe he's referring to the timing of the

7 decision to put this issue to Scottish Office ministers

8 in the first few months of 1985, and how officials went

9 about deciding --

10 **SIR BRIAN LANGSTAFF:** Well, can you be any more precise

11 about that?

12 **MR BOUKRAA:** That's -- sir, I will -- if I may, I might come

13 back to being a bit more precise about that.

14 **SIR BRIAN LANGSTAFF:** The reason for my asking is this: the

15 idea of evaluating appears to have arisen initially in

16 January 1985 with the DHSS. It is not entirely clear

17 when it was taken forward, but it would have been some

18 time between mid-January and early February, in the

19 DHSS.

20 It would appear from what is said in this

21 statement that the Scottish ministers were not notified

22 in advance that there would be an evaluation programme

23 and therefore weren't in a position, if they had wished

24 to do so, to challenge it and say, "Well, why are we

25 evaluating? Why don't we get on with it?" Or whatever

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1 divisions within a Department, or multiple Departments;

2 or where developments in Scotland affected UK

3 Departments and vice versa. When a Department

4 considered an issue was of such importance that the

5 final decision required to be made by the Secretary of

6 State, the submission would be in the form of going

7 first to the junior Minister concerned and then to the

8 Secretary of State."

9 As we go during the course of today to submissions

10 which were put to ministers in the HHD, we will come

11 across some of those circumstances.

12 **SIR BRIAN LANGSTAFF:** There's an element of circularity, is

13 there, about those reasons. As you say, it's a matter

14 of judgment, but keeping ministers aware of important

15 current developments demands someone considering that

16 there is, first of all, a development. Secondly, it's

17 a current development. But, thirdly, it's important.

18 Those are all matters which each of them in turn, to

19 a greater or lesser extent, involve a judgment. Then if

20 something is going to appear in the media, that speaks

21 for itself.

22 But a decision had to -- the next one:

23 "... if a decision had to be made which officials

24 considered only Ministers could make ..."

25 It's exactly the same, isn't it? You are sending

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1 might have crossed their minds. And that's why I'm so

2 interested in the precise date.

3 **MR BOUKRAA:** Sir, I can quite see why you're interested in

4 the precise date. I'm going to come back to the

5 introduction of HIV screening --

6 **SIR BRIAN LANGSTAFF:** It's not -- if you can't answer it off

7 the top then better a considered answer in due course.

8 **MR BOUKRAA:** Thank you, sir. I could try to give you an

9 answer off the top but it would be a bit too rough and

10 ready and I will make sure that I have a more precise

11 date to give you linking to this paragraph when we get

12 to the introduction of HIV screening later on today.

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

14 **MR BOUKRAA:** Sir, we can see, in this paragraph that's

15 highlighted here, Mr Murray describing the sorts of

16 factors which might lead to a minister being involved

17 directly in an issue, and he says:

18 "An issue like this would normally be brought to

19 Ministers' attention in the following circumstances: to

20 keep Ministers aware of important current developments;

21 if something was going to appear in the media; if

22 a decision had to be made which officials considered

23 only Ministers can make; if an interdepartmental dispute

24 needed to be resolved; to bring together, in an overview

25 submission, a number of issues affecting multiple

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1 something to a minister which a minister should decide.

2 Well, that's a question of judgment again, isn't it?

3 **MR BOUKRAA:** That's exactly right, sir, yes. Yes.

4 A number of these factors come back, as you just

5 said, to a question of judgment. They're consistent

6 with what, for example, Mr Macniven said. They don't

7 give us a precise answer. They don't give us a set of

8 criteria by which that judgment was evaluated. Some of

9 them are perhaps a bit more hard edged, like something

10 appearing in the media, but you're absolutely right,

11 sir, that many of them come back to the matter of the

12 official's judgement.

13 **SIR BRIAN LANGSTAFF:** I mean, I suspect that, as with most

14 matters of judgment, generally most people would agree,

15 but it doesn't answer the point, really, it doesn't

16 provide a specific objective criterion beyond what is

17 set out.

18 **MR BOUKRAA:** That's absolutely right, sir, yes.

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

20 **MR BOUKRAA:** We can take that down now. Thanks, Lawrence.

21 Now, the nature of the relationship between the

22 Scottish Office and the wider UK Government, more

23 particularly between the HHD and the DHSS, or later the

24 Department of Health, is an important aspect of our

25 understanding of HHD decision making in this period.

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1 The written note records at a more general level
2 some of the different ways in which that relationship
3 has been described by witnesses both to this Inquiry and
4 to the Penrose Inquiry. There might be said to be
5 contrasts that can be drawn between those descriptions
6 or at least differences in emphasis between them.
7 For example, the note records Dr Macdonald's evidence to
8 the Penrose Inquiry, when Dr Macdonald said that on
9 major policy matters the DHSS will have been expected to
10 take the lead, and other departments, such as the HHD,
11 will have been expected to fit their policy around the
12 lead of the DHSS.

13 He put it another way when he said that the DHSS
14 would be expected to take the lead and then other
15 departments would implement a common policy, subject to
16 a modest degree of adaptation informed by local
17 circumstances.

18 Now, those comments should be considered alongside
19 other evidence, such as that of Mr Macniven.
20 Mr Macniven commented that, as a matter of good
21 administration, the HHD and the DHSS will have kept each
22 other in touch with developments in one country that
23 might affect the other, but he described the
24 Health Service in Scotland as being entirely devolved to
25 the Secretary of State for Scotland and through him to

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1 relationship at points but there is more detail, as
2 I say, in the written note.

3 I'm going to turn now, sir, to a different topic,
4 which is Home and Health Department knowledge and
5 decision making in relation to hepatitis B and, in
6 particular, issues relating to the screening of blood
7 donations for the virus.

8 Most of the available documents on this issue
9 relate to the position in the 1970s. There was some
10 evidence available of the HHD's understanding of
11 hepatitis B in the 1960s. I'm going to highlight one of
12 those documents now.

13 Lawrence, could we please have SCGV0000279_165.

14 Now, this is a letter that we can see, from the
15 date in the top right-hand corner, that was sent on
16 27 September 1968. The letter heading at the top is the
17 Scottish Home and Health Department.

18 If we could just go through, please, Lawrence, to
19 the second page for a moment, we can see the signature
20 at the bottom of the page. It comes from the Chief
21 Medical Officer in Scotland at that time,
22 Dr Brotherston.

23 If we go back, please, to the top of the letter,
24 it's addressed to "Dear Doctor".

25 If we go, please, Lawrence to the bottom of this

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1 the HHD, emphasised that the DHSS had no oversight role.

2 Similarly, Lord Forsyth, whilst stating that there
3 were occasions on which he felt that the DHSS or the
4 wider UK Government hadn't consulted sufficiently with
5 the Scottish Office, said that, broadly speaking, every
6 Secretary of State for Scotland used to say that they
7 were Scotland's person in the Cabinet, not the Cabinet's
8 person in Scotland.

9 Now, that is really just a broad brush overview
10 picture of this issue. Sir, you may wish to consider it
11 and may well hear submissions on how that relationship
12 operated in the context of particular issues, for
13 example the introduction of hepatitis C screening.

14 Now, the written note also seeks to summarise
15 evidence relating to the HHD's relationships with other
16 bodies such as the Common Services Agency and the SNBTS.
17 I'm not going to go very much further into that now.
18 One of the issues that arises in that context is the
19 extent to which there were difficulties or tension in
20 the relationship between the HHD and the SNBTS,
21 particularly Professor Cash, the extent to which such
22 difficulties may have affected decision making. It was
23 explored in witness evidence to some extent, for
24 example, with Mr Macniven. The written note contains
25 some documents, some of which suggest strains in the

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1 page, we can see who Dr Brotherston meant, "Medical
2 Officers of Health, General Medical Practitioners".

3 Back up, please, again to the first paragraph. We
4 can see the reason why this letter was being sent.
5 Dr Brotherston says that:

6 "From 1st October, 1968 effective jaundice and
7 measles will be generally notifiable the Public Health
8 (Infectious Diseases)(Scotland) Amendment Regulations
9 1968".

10 The third paragraph makes it a little bit clearer
11 why this letter is being sent:

12 "The principal object of making all forms of
13 infective jaundice generally notifiable is to enable
14 Medical Officers of Health to enquire into the
15 epidemiological background."

16 **SIR BRIAN LANGSTAFF:** Infective jaundice was not serum --
17 necessarily serum hepatitis.

18 **MR BOUKRAA:** What we see in the next two paragraphs I'm
19 going to take you to, sir, is Dr Brotherston seems to
20 use the term "infective jaundice" to cover both what we
21 understand becomes hepatitis A and also serum hepatitis,
22 hepatitis B.

23 So in the fourth paragraph that begins "The
24 majority", it says:

25 "The majority of cases of infective jaundice

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1 notified under the new Regulations are likely to be due
2 to infective hepatitis, which is a common condition
3 believed to be of increasing" --

4 **SIR BRIAN LANGSTAFF:** That's what he deals with above.
5 That's not serum hepatitis.

6 **MR BOUKRAA:** It's not, sir, no.

7 **SIR BRIAN LANGSTAFF:** Then if we go to -- what is of
8 interest to us is the last paragraph, is it?

9 **MR BOUKRAA:** It's the next paragraph, yes. It's not quite
10 the last one because there are more below that. So he
11 starts with what becomes hepatitis A. He then moves to
12 serum hepatitis, which is what is of interest to us, and
13 he says this -- I just wanted to highlight the first few
14 sentences in this:

15 "Serum hepatitis occurs less frequently than
16 infective hepatitis. It's potentially a more serious
17 condition with a longer incubation period of usually,
18 60-160 days. Transmission is almost invariably by
19 a parenteral route and a history of a blood transfusion,
20 or of an injection by any parenteral route, within the
21 incubation period may suggest this diagnosis."

22 Then in the last sentence of this paragraph he
23 refers to:

24 "Outbreaks both of infective hepatitis and serum
25 hepatitis have been reported from a number of units

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1 prior to the Edinburgh outbreak, Scottish transfusion
2 directors had felt that the time was not yet right for
3 the screening of blood. Their position begins to change
4 around this time, and there seems to be a view that
5 screening should be introduced, at least for high risk
6 patients, such as those undergoing dialysis, but they
7 say it wouldn't yet be feasible to screen larger
8 quantities of blood for other emergency use.

9 We do see in the documents around this time,
10 mid-1970, certain Regional Transfusion Directors in
11 Scotland emphasising the risk posed by serum hepatitis
12 and pressing the HHD to support a more general
13 introduction of screening at an earlier date. We see
14 that in particular in correspondence from the director
15 of the Glasgow and West of Scotland RTC, Dr Wallace, and
16 we're going to come back at various points to
17 correspondence involving Dr Wallace.

18 One of those, which is just summarised in the
19 written note, which I won't go to now, but is of
20 interest, is a 16 July 1970 letter written by Dr Wallace
21 to Dr Macdonald at the HHD, which attached a paper on
22 serum hepatitis and the Blood Transfusion Service.

23 Now, it was directed in particular at issues
24 relating to renal dialysis and it contains some material
25 that is of wider relevance for our purposes.

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1 undertaking intermittent haemodialysis for the treatment
2 of chronic renal failure."

3 We'll come back to points at which that sort of
4 issue comes up in the early 1970s.

5 So that's a document -- relatively brief but at
6 least makes some reference to the HHD's understanding of
7 serum hepatitis in the late 1960s.

8 We move forward to the early 1970s, and what we
9 see in the available documents is the HHD becoming
10 involved in debates amongst regional transfusion
11 directors in Scotland over the introduction of screening
12 of blood donations for Australia antigen, for serum
13 hepatitis, what becomes known as hepatitis B screening.

14 We can see evidence of the debate that takes place
15 around this time. In June 1970 a meeting takes place on
16 that date to discuss a policy which might be recommended
17 on the use of Australia antigen screening of blood
18 donations. The detail is in the written note.

19 That meeting took place at around the same time as
20 an outbreak of hepatitis in Edinburgh, which was in
21 a renal unit, a haemodialysis unit.

22 That meeting at which this issue was discussed was
23 attended by transfusion directors and the HHD, including
24 Dr Macdonald.

25 The note of the meeting which we have records that

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1 A couple of points to highlight in particular from
2 that document -- and we can take that down now, please,
3 Lawrence -- that paper provided by Dr Wallace said that
4 for the past 30 years, so this is 1970, for the past
5 30 years, homologous serum jaundice, serum hepatitis,
6 has been recognised as a delayed complication of the
7 transfusion of blood and blood products.

8 Dr Wallace also recorded that the highest
9 incidence of serum hepatitis had been observed in
10 recipients of plasma prepared during World War II. He
11 said that was not surprising because it was not uncommon
12 to prepare a plasma pool from 500 donations of blood.

13 So we see there Dr Wallace making a link between
14 hepatitis risks and pool sizes and providing that
15 information to the HHD.

16 There was a further letter from Dr Wallace to the
17 HHD in August of 1970 in which he begins to press more
18 strongly for the screening of all donations for
19 Australia antigen. One of the comments he makes is that
20 even if this mass screening only reduces the incidence
21 of serum hepatitis by 25%, it would still be
22 a significant reduction in the incidence of what can be
23 a serious illness:

24 "In the present climate, I think the SNBTS must be
25 seen to be doing everything possible to reduce this

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1 serious transfusion risk."

2 Now, by this time, which is around mid-1970,
3 the introduction of Australia antigen was also being
4 considered by the DHSS.

5 In September 1970, a new group was set up, the
6 advisory group on testing for the presence of Australia
7 hepatitis associated antigen and its antibody, chaired
8 by Dr Maycock, becomes known as the Maycock Advisory
9 Group. It was appointed jointly by the DHSS, the HHD,
10 and the Welsh Office. Dr Wallace was one of its
11 members.

12 Now, the work of that group has been considered by
13 the Inquiry on previous occasions. I'm not going to go
14 in detail into its development and what it found, but
15 its work relates to the HHD's understanding and response
16 to hepatitis risks during this period.

17 It seems that the HHD was aware in the early
18 1970s, so around 1970, 1971, that Scottish RTCs,
19 Regional Transfusion Centres, were taking different
20 approaches to screening, both in the extent of screening
21 they were undertaking and in the technique they were
22 using for screening.

23 If we move forward to May 1972, the Maycock Group
24 publishes, issues a report, which recommends the
25 introduction of routine testing of all blood donations

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1 had and what its thinking was at the time.

2 There's a series of documents, which I'm not going
3 to go into the detail of now, which is summarised in the
4 written note, which begin in February 1973. They are
5 about a trial that Dr Wallace began of a newer
6 technique, radioimmunoassay, sometimes referred to as
7 RIA, which was more sensitive and more expensive than
8 the method then being used by his RTC, the
9 electrophoretic method.

10 We can see that Dr Wallace writes to the HHD
11 effectively to say that in order to be able to undertake
12 this trial, he would get some equipment loaned free of
13 charge from Abbott Laboratories. He would need to
14 purchase some reagents in order to undertake the trial.
15 He asks for the HHD's agreement, the additional funding
16 that would be necessary for that trial to take place.
17 The HHD agrees.

18 I mention that correspondence, which is from
19 February 1973, because it forms the background to some
20 later developments and, in particular, to disagreements
21 which emerge later on between the HHD and Dr Wallace
22 about the appropriateness of different screening
23 methods.

24 Now we're moving closer to that by going forward
25 to the mid-1970s, the period from 1975. The HHD's

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1 for Australia antigen and its antibody, recommends
2 a number of different testing methods.

3 I'm going to keep moving forward to 1973, when the
4 HHD becomes more closely involved in discussions about
5 the appropriateness of different screening techniques
6 for serum hepatitis. So rather than the principle of
7 whether or not to screen or have mass screening, the
8 appropriateness of different techniques.

9 Now, this was an issue being considered by the
10 Maycock Group --

11 **SIR BRIAN LANGSTAFF:** By now, by 1973, there was general
12 screening.

13 **MR BOUKRAA:** Yes.

14 **SIR BRIAN LANGSTAFF:** So the question then is: what form of
15 screening are you having?

16 **MR BOUKRAA:** Exactly, sir, yes. When I refer to screening
17 techniques, what I mean is the debates about exactly
18 that, sir, the form of screening technique which is --

19 **SIR BRIAN LANGSTAFF:** Yes.

20 **MR BOUKRAA:** -- appropriate.

21 Now this issue which is being considered by the
22 Maycock Group, the form of screening which is
23 appropriate, is also being raised in correspondence
24 again between Dr Wallace and the HHD, which provides us
25 some insight into what the HHD -- what information it

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1 involvement in debates over screening techniques
2 intensifies. That debate is taking place in the context
3 of the Maycock Group preparing a further report.
4 The documents show that the HHD received a draft version
5 of the Maycock Group's updated report in around
6 February 1975. It discussed that draft report
7 internally, discussed it with the SNBTS over subsequent
8 months, and provided comments to the Maycock Group.

9 I want to highlight two internal HHD documents
10 from around this time which touch briefly on the
11 Department's understanding of its role in this issue,
12 and also its views on screening.

13 The first, please, Lawrence, is SCGV0000205_085.

14 Now, if we can -- if you could zoom out slightly
15 so we can see the whole document, we can see that this
16 is an internal minute which is from Dr Scott. It's
17 dated 1 May 1975. It's addressed to Mr Roberts and
18 Dr McIntyre in the HHD. The subject is "Hepatitis B
19 surface antigen testing".

20 Now if you could please zoom in on the top half of
21 the page, thank you.

22 Dr Scott says this, he refers to the NMD, the
23 National Medical Director, which at the time was
24 Major General Jeffrey, has asked if Dr Wallace and
25 presumably the other RTDs who wish to use RPH, reverse

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1 passive haemagglutination, one of the screening methods
2 for screening hepatitis, can go ahead now in
3 anticipation of Maycock to introduce the test in place
4 a CIEOP which was the technique then generally in use,
5 counterimmunoelectrophoresis.

6 **SIR BRIAN LANGSTAFF:** Osmophoresis.

7 **MR BOUKRAA:** Osmophoresis, thank you, sir.

8 If we move down to the paragraph that begins

9 "I have no qualms" Dr Scott says:

10 "I have no qualms about anticipating the Maycock
11 report as I wonder if we could in any case stop a
12 [Regional Transfusion Director] who 50 to do RPH now or
13 indeed RIA. It is to a great extent a clinical matter;
14 similarly, we cannot force Dr Cash and the others to
15 adopt RPH in place of PH."

16 PH is passive haemagglutination. Dr Cash, in the
17 Edinburgh Regional Transfusion Centre, was using
18 a version of passive haemagglutination at the time.

19 He then goes on to say:

20 "There is a question of money but that would be up
21 top the NMD. However this is a matter of such
22 importance I should have thought that the money must be
23 found."

24 Now that's one perspective from Dr Scott at the
25 time on what the Department's role was in decisions

25

1 Now on to the next paragraph, Dr McIntyre says
2 that:

3 "This subject will be sure to come up at the
4 Scottish Transfusion Directors' meeting on 11 June and
5 if the NMD [National Medical Director] knew in advance
6 that we were agreeable in principle to the introduction
7 of a more sensitive test he could perhaps ask the
8 Directors to come prepared to discuss at that meeting
9 the test they were likely to adopt and the financial
10 implications thereof. I agree that the question of
11 money will be up to the NMD but I feel sure that he will
12 eventually come to us for additional money for this
13 purpose."

14 So we can see there officials discussing the
15 different screening tests they consider to be
16 acceptable, also linking decisions around the
17 introduction of those tests to the question of funding
18 which ultimately comes from the Department.

19 Now, the updated Maycock report which is discussed
20 in these minutes is eventually finalised in
21 September 1975. That report says that the CIEOP method
22 is no longer recommended. It recommends replacing it
23 with RPH or PH. It also discusses the RIA method, which
24 it says has some extra sensitivity, but that advantage
25 is outweighed by disadvantages, in particular that it is

27

1 around the introduction of different screening
2 techniques in RTCs in Scotland.

3 If we go next, please, to PRSE0000704.

4 This is Dr McIntyre in the same series of minutes
5 providing his perspective.

6 So we can see it is dated 13 May 1975. It's from
7 Dr McIntyre to Dr Scott on the same issue.

8 I'll just read out the first sentence.

9 Dr McIntyre says:

10 "There is no doubt that the Advisory Group will
11 recommend reverse passive haemagglutination (RPH) for
12 routine screening of blood for HBsAg. It is also likely
13 that following representation from this Department the
14 passive inhibition agglutination test will be accepted
15 as being perfectly satisfactory for the detection of the
16 antigen."

17 What that sentence provides us some insight into
18 is the Department's role in commenting on the draft
19 Maycock report before it was circulated more widely.

20 Dr McIntyre says:

21 "From the draft text of the report it would appear
22 that they are approximately equally sensitive. There
23 would seem, therefore, to be no reason why a gradual
24 change should not be made at an early date to one or
25 other of the more sensitive methods."

26

1 more expensive and more difficult to perform.

2 Now, those recommendations come to be discussed at
3 a December 1975 meeting of SNBTS directors. Important
4 to note when looking at the minutes of that meeting that
5 Dr Wallace who is there emphasises that the
6 recommendations in the Maycock updated report were
7 drafted in early 1975. In other words, suggesting that
8 there was a possibility that they were becoming out of
9 date by the time we get to directors considering and
10 accepting them.

11 Now, by the time we get to March 1976 it seems
12 that recommendations in the Maycock updated report had
13 been implemented in Scottish RTCs and that the HHD was
14 aware of that. Then we get to the summer of 1976 and by
15 this time differences have begun to emerge between
16 Dr Wallace and the HHD about the appropriateness of the
17 different techniques which had been covered by the
18 Maycock report.

19 Those differences related in particular to whether
20 funding should be provided for RIA screening, which is
21 a more sensitive method. I'm going to quickly go to
22 a document in which Dr Wallace set out his position in
23 this issue to the Department.

24 It's PRSE0000964.

25 That's a 22 June 1976 letter to Dr McIntyre at the

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1 Home and Health Department. We can see at the top of
2 this document it comes from the Glasgow and the West of
3 Scotland Blood Transfusion Service. On the left-hand
4 side at the top, the regional director is Dr Wallace.
5 And if we go just very briefly to the end of the
6 document, we'll see that it's signed by the Regional
7 Director, in other words Dr Wallace.

8 If we could go back, please, Lawrence, to the
9 first page. This letter is headed "Total Screening of
10 Donations for HBsAg".

11 I'm not going to read them out, but in the first
12 paragraph Dr Wallace describes some of the work
13 undertaken by the Maycock Group. In the second
14 paragraph he says to Dr McIntyre:

15 "You attended meetings of the Central Advisory
16 Group under the chairmanship of Dr Maycock on the
17 testing of donations for HBsAg. The views of the
18 members of the Advisory Group were similar to those
19 reported by the special WHO group on the same subject.
20 It was acknowledged that radioimmunoassay (RIA) was the
21 most sensitive method available for the detection of
22 HBsAg but in practical terms both expert groups
23 recommended the reverse passive haemagglutination (RPHA)
24 should be introduced as the method of total screening
25 because RPHA could be introduced much more rapidly than

29

1 "This proposal was discussed with General Jeffrey
2 and he agreed that it would be a valuable exercise in
3 respect of (a) the feasibility of total available
4 screening by RIA and (b) the comparative sensitivity of
5 RIA and of RPHA. The exercise was started in the middle
6 of August, 1975 and is due to end in the middle of
7 August, 1976."

8 He then summarises some of the key findings of his
9 trial to date. He says:

10 "During the first nine months of the exercise
11 a total of 99,911 donations were tested and 36 examples
12 of confirmed HBsAg positive donors were found."

13 If we then go down into the paragraph that begins
14 "Of these 36 examples". Thank you.

15 Dr Wallace says:

16 "Of these 36 examples of HBsAg, only 13 were
17 detectable by IBOP and only 24 were easily detectable by
18 RPHA. Another 5 specimens gave doubtful positive
19 reactions by RPHA. This means that if we had been
20 relying on RPHA for total screening we would have
21 missed, in the period of 9 months, at least 7 examples
22 of HBsAg positive donations and perhaps as many as 12."

23 If we go down, please, Lawrence to the final
24 paragraph on this page, Dr Wallace says:

25 "There is, in my opinion, substantial evidence in

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1 the more sophisticated RIA technique."

2 So that's Dr Wallace describing the reasons as he
3 understood them for the Maycock Group's recommendations.

4 He then goes on at the bottom of this page to
5 describe some of his own involvement. He says:

6 "As a member of the Advisory Group I was aware of
7 the views of the members and I decided to continue my
8 original work within the limits of the finance
9 available."

10 So that's the work he's undertaking to test
11 different screening methods and to compare their
12 sensitivity. He says:

13 "I discussed the possibility of a further
14 evaluation of RIA with Abbott Laboratories which is the
15 only firm currently producing reliable reagents for the
16 performance of RIA testing for HBsAg. I had sufficient
17 money available to produce reagents for RPHA testing and
18 Abbott Laboratories agreed to provide me with all the
19 facilities for RIA testing for a period of one year at
20 the same cost as would have been incurred by producing
21 reagents for the RPHA."

22 If we go over the page, to the top couple of
23 paragraphs. Thank you.

24 Dr Wallace describes the trials that he has been
25 undertaking and their results. He says:

30

1 favour of total screening by RIA rather than by RPHA."

2 In the remainder of the letter he sets out the
3 additional money that would be needed in order for that
4 to be able to take place and we can just go to the last
5 paragraph of this letter. We have what would appear to
6 be Dr Wallace referring to the possibility of litigation
7 if his proposal, which is to continue with RIA testing,
8 is not accepted. He says:

9 "I have not, at this stage, informed either the
10 Scottish Legal Office or my own Defence Society of the
11 position because I am hoping that something can still be
12 done to maintain a sensitive method of testing
13 donations. If by the middle of August we are obliged
14 for financial reasons to adopt a less sensitive method
15 of testing then clearly I will have to inform these
16 bodies ..."

17 Now, this letter from Dr Wallace was considered in
18 a number of internal Home and Health Department minutes,
19 which provide some insight into the Department's
20 thinking. They are summarised in the written note.

21 We can take that away now, thank you, Lawrence,
22 and go instead to one of the internal HHD minutes which
23 discusses this letter from Dr Wallace.

24 It is SCGV0000205_037.

25 If we could go to the second page, please, of this

32

1 document. Thank you.
2 So this is a minute dated 25 June 1976 from
3 Dr McCreadie in the Department to Dr Scott and
4 Dr McIntyre. In the first sentence he refers to
5 Dr Wallace's letter. He summarises in that first
6 paragraph Dr Wallace's view. He then says this in the
7 second paragraph:

8 "This brings us back to the old question of what
9 can we afford to achieve, a marginal improvement in the
10 goal of perfection? According to Dr Wallace the cost of
11 RIA screening is 100% more than the cost of RPHA
12 screening test. We have at least the backing of the
13 Maycock Committee and WHO for the utilisation of the
14 RPHA test.

15 "It is my view that in the present financial
16 climate it would not be justified to increase our
17 testing costs by 100% to obtain marginally improved
18 sensitivity. Your comments would be welcomed."

19 If we could go back, please, to the first page, we
20 can see Dr McIntyre picking up Dr McCreadie's comments
21 and providing his own to Dr Scott's. I'm going to look
22 at the third paragraph that begins "Dr Wallace".

23 Dr McIntyre says:

24 "Dr Wallace has been involved in the problems of
25 hepatitis right from the beginning and knows that the

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1 Dr Wallace knows that hepatitis B is only the tip of the
2 iceberg. That may be a reference to non-A, non-B
3 hepatitis. It may be that other readings and inferences
4 are possible.

5 So what we have here is a discussion by these
6 officials of the position the Department should adopt in
7 a situation in which a more sensitive method of
8 screening might be available, but it is more expensive
9 than the method which has, the previous year, been
10 recommended by an expert advisory group.

11 We can take that down now. Thanks, Lawrence.

12 I'm not going to go to it but Dr McIntyre responds
13 directly to Dr Wallace on 30 June 1976 setting out the
14 Department's position. He described the Maycock
15 Advisory Group as having favoured RPH after weighing up
16 factors such as sensitivity and cost. He noted that the
17 estimated cost of RIA testing on a commercial basis was
18 likely to be twice that of RPH, and he concluded that in
19 light of what was said in the Maycock report, the method
20 of testing recommended by that Advisory Group should be
21 employed in the West of Scotland as in other Transfusion
22 Centres in Scotland.

23 Now, that response from the Department seems to
24 have led Dr Wallace to write a letter to chief
25 administrative medical officers and others in his

35

1 problem is complex and that hepatitis B is only the tip
2 of the ice-berg. If we accede to his request for
3 additional money so that he can continue RIA then we are
4 saying that this is such a preferable method that we
5 considered the additional expenditure is justified.
6 This leaves us in a difficult situation as regards the
7 other centres. It may be that we could argue that they
8 do not have the equipment necessary and therefore
9 further additional costs over and above the reagent
10 should be involved. Should a case of hepatitis B arise
11 in any of these other regions however it could be
12 construed that by implication we were adopting in these
13 regions a less sensitive testing method."

14 Just the paragraph above that, I just draw your
15 attention to, sir, what Dr McIntyre says in the middle
16 of that paragraph:

17 "I do not like what I consider to be the
18 professional blackmail in the last paragraph of
19 Dr Wallace's letter."

20 Which is presumably a reference to Dr Wallace
21 considering whether or not he needed to be in touch with
22 the Scottish Legal Office about potential changes to
23 screening methods in his region.

24 What's not clear, at least from the face of this
25 document, is what Dr McIntyre means when he says that

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1 region, including haematologists. That letter comes on
2 26 July 1976.

3 In summary, what Dr Wallace says in the letter is
4 that RPHA would replace RIA testing in the Region as
5 a result of the Home and Health Department's position,
6 and he says it was estimated that annually this would
7 lead to 96 chronic carriers of hepatitis B surface
8 antigen not being detected. So linking the change that
9 would need to be introduced in the West of Scotland from
10 RIA to a less sensitive testing method to the
11 Department's position.

12 Now, that letter from Dr Wallace leads to more
13 internal discussion between officials in the Home and
14 Health Department and we can see that, for example, in
15 a 29 July 1976 minute from Dr McIntyre to his
16 colleagues. I won't bring it up, but I'll just
17 highlight that Dr McIntyre says the point at issue is
18 not the sensitivity of the test, this test RIA -- of
19 that there's never been any doubt -- but the policy to
20 be adopted after consideration of the other factors such
21 as capital and recurrent costs.

22 "In my view Dr Wallace has not shown any reason
23 why the present policy should be changed at this time."

24 The correspondence between the officials and
25 Dr Wallace continued over subsequent months. I'm going

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1 to bring up just one further letter from Dr Wallace
2 which helps to explain the reasons for his position and
3 shows the information that he provided to the HHD to try
4 to justify it. It is SCGV0000205_027.

5 This is a 6 August 1976 letter from Dr Wallace to
6 Dr Macdonald, who was at the time was DCMO in the
7 Department. We can see the subject of the letter from
8 its title. Dr Wallace goes on in this letter to provide
9 a number of comments to help to explain the position
10 that he'd adopted both in correspondence with the
11 Department and directly to clinicians in his region.

12 He says this:

13 "1. Neither the Maycock report nor the WHO Report
14 to which you refer is recent. Each report really states
15 views held by experts in the second half of 1974.

16 "2. The two Maycock Reports (1972 and 1975) and
17 the two WHO Reports (1973 and 1975) all make it
18 abundantly clear that the situation is dynamic and that
19 recommendations must, of necessity, be interim. Expert
20 opinion today recommends either RIA or EIA as the
21 technique of choice."

22 In the next paragraph he picks up that HHD
23 officials were involved in the discussions of the
24 Maycock Group or he's received evidence of those
25 discussions and he says:

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1 with extremely weak examples of HBsAg transmitting
2 severe viral hepatitis type B are unique to the West of
3 Scotland. What is much more worrying and potentially
4 more serious is the dissemination of these infective
5 agents in multiple blood products. I know that this
6 possibility is causing concern to Maycock and to Watt."

7 That's John Watt, who is at this time scientific
8 director of the Protein Fractionation Centre in
9 Scotland.

10 Dr Wallace continued to make these points
11 including at meetings with other RTDs in Scotland and to
12 the Department. We can see that in a 9 March 1977
13 meeting which was summarised in the written note. The
14 minutes of that meeting as well as recording this point
15 from Dr Wallace include some more general comments about
16 delays in the advice that's provided by expert groups
17 such as the Maycock Group. I'm just going to read out
18 one of the entries from those minutes which records the
19 comments of directors, it says:

20 "Rapid progress was being made in the use of
21 various blood products with a consequent increase in the
22 risk of the spread of hepatitis. Regional Directors
23 were concerned at this increasing risk and would be
24 considering the entire question in the near future. The
25 situation whereby Reports of this kind had to be widely

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1 "It is clear from these discussions, notes and
2 papers that the members of the Group [the Maycock Group]
3 were in a quandary by the middle of 1974 as to whether
4 to recommend RPHA or RIA. There was a definite
5 polarisation of members between finance and
6 sensitivity."

7 If we go in the middle of the page to a paragraph
8 starting "I have told", we have here Dr Wallace trying
9 to explain the reason for his letter to CAMOs and others
10 in his region.

11 "I have told Dr McIntyre repeatedly that I accept
12 the sad fact that there is no more money available for
13 developments, but I reserve the right to inform medical
14 colleagues in the region for which I am responsible,
15 that I am discontinuing the use of RIA, and as
16 a consequence I anticipate a definite number of false
17 negative donations. What I cannot quantify is the
18 number of cases of type B hepatitis which will result or
19 the amount of cross contamination of products and
20 fractions which will occur."

21 Finally, the last paragraph in this letter, and
22 it's to pick up what Dr Wallace says here. He refers to
23 recent cases of hepatitis B transmission in the West of
24 Scotland, and then says:

25 "I cannot believe that these cases of donations
38

1 circulated for approval prior to publication invariably
2 resulted in the document being somewhat dated,
3 particularly in the developing situation."

4 And there's a suggestion --

5 **SIR BRIAN LANGSTAFF:** Do you have a copy of the document to
6 put up on display?

7 **MR BOUKRAA:** This one? Of course, sir, yes. It's
8 SCGV0000079_013.

9 Sir, we can see at the top of this document that
10 it's a meeting of the Scottish Health Service Planning
11 Council Blood Transfusion Advisory Group. In attendance
12 at the meeting is Dr McIntyre from the HHD as well as
13 number of transfusion directors, and we can see
14 Dr Wallace is one of the individuals present at that
15 meeting.

16 We can see the discussion which I was just
17 referring to over the page.

18 **SIR BRIAN LANGSTAFF:** Lawrence, could you just go back to
19 the top of the page.

20 **MR BOUKRAA:** Of course.

21 **SIR BRIAN LANGSTAFF:** Thank you. 9 November -- sorry,
22 9 March 1977.

23 **MR BOUKRAA:** 9 March 1977.

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

25 **MR BOUKRAA:** While we've got that date, sir, 9 March 1977,
40

1 earlier on I described the Maycock Advisory Group draft
2 report being circulated to the HHD in around
3 February 1975. The report seems to be finalised
4 September 1975, discussed by directors in Scotland
5 towards the end of that year.

6 Then there seems to be a period over about the
7 following year until around this time, in March 1977,
8 before the Department circulates it more widely in
9 Scotland, with a covering circular, so it's that timing
10 which seems to prompt some of the discussions we see in
11 these minutes.

12 If we go over the page, please, Lawrence. Thank
13 you.

14 It's the top half of this page, the entry
15 paragraph that begins "Report of the Advisory Group on
16 the Testing for HBsAg and its Antibody".

17 We can see in the second sentence Dr Wallace
18 emphasising the point he'd made in the previous meeting,
19 that the information in the report was based on 1974
20 data and was now substantially out of date.

21 He says:

22 "In view of the considerable advances which had
23 been made in the meantime he and most members of the
24 Maycock Group would no longer agree with the main
25 recommendations of the Report."

41

1 this issue:

2 "However, a suggestion that this situation could
3 be overcome by the issue of updating information sheets
4 was thought to have considerable merit. It would also
5 avoid having to go over old ground again."

6 It was intimated that the report was initially
7 a report to the Health Department for consideration of
8 any financial implications, although tests recommended
9 in the report had been in use for some considerable
10 time, and there's a reference at the end there to
11 apprehension amongst staff working in the centres.

12 While we've still got this paragraph up, sir, the
13 first sentence at the beginning:

14 "The second report of the Advisory Group had now
15 been circulated under cover of NHS Circular 1977(GEN)2."

16 It was that recent development that I was
17 describing earlier, which is wide circulation of this
18 Maycock September 1975 report, not taking place until
19 1977, though regional directors were aware of its
20 recommendations earlier.

21 **SIR BRIAN LANGSTAFF:** So the concern which he is expressing,
22 and begins "Rapid progress" is the use of blood
23 products, which would include presumably clotting
24 factors, would lead to a consequent risk -- increase in
25 the risk of the spread of hepatitis, and it's that risk

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1 Refers to a further report that's been prepared by
2 the WHO, and then the entry which I had started to read
3 out earlier:

4 "Rapid progress was being made in the use of
5 various blood products with a consequent increase in the
6 risk of the spread of hepatitis."

7 **SIR BRIAN LANGSTAFF:** Yes, he introduces it by saying:

8 "In view of the considerable advances which had
9 been made in the meantime [ie since the drafting of the
10 report] he and most members of the Maycock Group would
11 no longer agree with the main recommendations of the
12 Report."

13 **MR BOUKRAA:** That's exactly right, sir, yes, that's

14 Dr Wallace's contribution at this time, March 1977.

15 **SIR BRIAN LANGSTAFF:** Then he goes on to the bit you're now
16 quoting. Let's have a look at that.

17 **MR BOUKRAA:** Yes, that's right sir, yes.

18 "Regional Directors were concerned at this
19 increasing risk and would be considering the entire
20 question in the near future. The situation whereby
21 Reports of this kind had to be widely circulated for
22 approval prior to publication invariably resulted in the
23 document being somewhat dated, particularly in the
24 developing situation."

25 There's then a suggestion about how to deal with

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1 which they think is now more concerning and therefore
2 there's a greater case for effective screening. That's
3 what he's saying, is it?

4 **MR BOUKRAA:** That's exactly right, sir, yes. And that would
5 be consistent with a document that we looked at earlier
6 from Dr Wallace to the Department and Dr Wallace linked
7 some of his concerns about the sensitivity of the test
8 to developments in the use of blood products to Mr Watt
9 at the PFC, and the use of fractions.

10 **SIR BRIAN LANGSTAFF:** Yes. Thank you.

11 **MR BOUKRAA:** We're finished with that now, thanks, Lawrence.

12 Now, in the remainder of the 1970s and early 1980s
13 we can see in the documents further consideration of
14 screening methods, that includes developments of, for
15 example, a lower cost RIA, and other methods, trials of
16 different techniques were being undertaken at RTCs. I'm
17 not going to go into the details of those developments
18 now. The Maycock Advisory Group has reconvened under
19 a different chair. The written note summarises the
20 HHD's involvement in those developments.

21 I'm going to move forward, finally on this topic,
22 sir, to a last couple of documents in 1981, which is
23 relevant to how the HHD understood its role in relation
24 to screening and also what transfusion directors'
25 responsibilities were.

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1 So in May 1981 a further report from the advisory
 2 group on hepatitis B testing, by this point under
 3 a different chair, had become available. That report
 4 was discussed at a meeting which was attended by the
 5 HHD. It considered the merits of different screening
 6 methods which had developed by this point beyond those
 7 that we've been looking at, RIA, ELISA tests, and RPHA
 8 tests. That updated report recommended minimum
 9 sensitivity levels for tests used by RTCs.
 10 We can also see from that report a conclusion that
 11 it was only possible to lay down approximate guidelines
 12 for the sensitivity testing.
 13 If we could go to PRSE0003920, we can see
 14 a meeting of SNBTS directors, 22 September 1981, chaired
 15 by Professor Cash, attended by Dr Bell and also
 16 Mr Finnie for the Department, in which there's
 17 discussion of this report. Can we go to page 5, please.
 18 Thank you.
 19 Down little bit further so we can see the whole of
 20 section 5. Thank you. "Testing for hepatitis".
 21 Professor Cash introduces the report that I was
 22 just seeking to summarise, and there's a discussion of
 23 that report's recommendations, and I just wanted to pick
 24 up Dr Bell's comments here.
 25 Dr Bell is recorded as having advised:
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1 which HIV and AIDS, the Department's knowledge of
 2 matters relating to HIV and AIDS, and their responses.
 3 Now, the earliest reference to AIDS in documents
 4 involving the Home and Health Department, at least in
 5 the material available to the Inquiry, would appear to
 6 be a 21 January 1983 meeting of SNBTS and Haemophilia
 7 Centre Directors. It was chaired by Dr Bell and
 8 attended by Dr McIntyre and Mr McBryde. I'm not going
 9 to the minutes of that meeting, which have been
 10 considered before, but during the course of it
 11 Professor Cash draws the meeting's attention to recent
 12 articles in the United States and some other documents
 13 including an MMWR extract relating to AIDS.
 14 If we move forward to May 1983, by this stage the
 15 SHHD was receiving information relating to AIDS from
 16 other sources, in particular the DHSS.
 17 Now, the Inquiry has previously considered
 18 a 3 May 1983 DHSS minute on this subject which enclosed
 19 a line to take and a background note which had been
 20 prepared for the Prime Minister.
 21 Now, those documents were copied to John Davies,
 22 who was Assistant Secretary at the time at the Home and
 23 Health Department. The Inquiry has looked at those
 24 documents previously. They included a line to take that
 25 there was as yet no conclusive proof that AIDS had been
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1 "... that the document was not intended to provide
 2 a legal safety net but to provide guidelines on the best
 3 procedures to be adopted, and that Directors' clinical
 4 judgment and adherence to the recommendations, within
 5 the finance available, was all that could be expected of
 6 them."
 7 So we see here Dr Bell emphasising that the use of
 8 particular screening tests that were available by this
 9 point was a matter of clinical judgment, also
 10 recognising that those choices had to be made within the
 11 finance that was available. The finance that was
 12 available ultimately being a matter for the Department.
 13 Sir, that was all I intended to say about
 14 hepatitis B screening and hepatitis B for today. I'm
 15 going to move on now to another topic. I note the time,
 16 11.10. I wonder if this would be a convenient moment
 17 for a break. Alternatively, I can start on our next
 18 topic, which is going to be HIV and AIDS.
 19 **SIR BRIAN LANGSTAFF:** Yes, well, let's do that, then, and
 20 come back to HIV and AIDS at 11.40.
 21 (11.10 am)
 22 (A short break)
 23 (11.40 am)
 24 **SIR BRIAN LANGSTAFF:** Yes.
 25 **MR BOUKRAA:** Sir, I'll be moving now to issues relating to
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1 transmitted through American blood products.
 2 I'll come back to that line later.
 3 There was also a briefing note which described the
 4 risk to haemophilia patients treated with Factor VIII,
 5 said they were at increased risk of AIDS, and described
 6 the risk as follows:
 7 "As yet there is no conclusive proof that AIDS is
 8 transmitted by blood as well as by homosexual contact
 9 but the evidence is suggestive that this is likely to be
 10 the case."
 11 Sir, those are DHSS documents but they are copied
 12 to officials in the Home and Health Department. What we
 13 see in the documents is, in the days that follow those
 14 documents being provided, both administrative and
 15 medical officials work on a submission to the Junior
 16 Minister who had responsibility for Health in the
 17 Department at this time, and that was John MacKay, and
 18 I'm going to go to the submission in which these issues
 19 are brought to the Minister's attention.
 20 Lawrence, it's PRSE0004037.
 21 It's a one-page document. We can see at the
 22 bottom it's from JG Davies, John Davies, dated
 23 6 May 1983.
 24 At the top it is addressed to PS, that's a private
 25 secretary, to Mr MacKay, and copied to some another --
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1 to a number of individuals within the Department.
 2 In the introduction Mr Davies says that:
 3 "Mr MacKay may have seen comment recently in the
 4 media about AIDS. He might find it helpful to see some
 5 briefing material on the matter prepared earlier in the
 6 week by DHSS for the Prime Minister."
 7 Those are the documents which I've just described.
 8 Mr Davies said:
 9 "We agree with the general line in the briefing.
 10 There are, however, a few Scottish points to be
 11 made ..."
 12 The first is about imported Factor VIII.
 13 "Scotland is virtually self-sufficient in
 14 Factor VIII. Occasional purchases of imported
 15 concentrate are made for clinical reasons: only a very
 16 few patients are involved."
 17 On Scottish cases Mr Davies said that:
 18 "No confirmed case of AIDS has yet been reported
 19 in Scotland. Any suspected for diagnosed case will be
 20 reported to the Communicable Diseases Unit at
 21 Ruchill ..."
 22 **SIR BRIAN LANGSTAFF:** As a matter of interest, the wording
 23 there is "No confirmed case of AIDS". That leaves open
 24 that there may have been a suspected case.
 25 **MR BOUKRAA:** That wording, you're absolutely right, sir,
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1 relevant gay associations.
 2 "(d) Avoiding collection in high risk locations
 3 such as prisons or where there is known to be a high
 4 proportion of homosexuals or drug abusers in the
 5 population."
 6 Now, that final sentence there brings with it the
 7 suggestion that collection in certain high risk
 8 locations such as prisons was still taking place in
 9 Scotland at this time. There's a later section in the
 10 written note which deals briefly with prisons and what
 11 the Home and Health Department understood to be the
 12 position at this time, in May 1983.
 13 **SIR BRIAN LANGSTAFF:** Just as a matter of interest, is there
 14 any -- or what are your submissions as to the force of
 15 the word "neutral" under (iii)(b), "Preparing a neutral
 16 factual leaflet"? It's a word which is often used where
 17 there are two rival views. What do you submit the force
 18 of that is? Or is it simply saying what we're trying to
 19 be and give the objective facts without sensationalism?
 20 **MR BOUKRAA:** I think's more likely to tend towards that
 21 second characterisation, sir. It's perhaps a slightly
 22 unusual word to use in this context. I think it is
 23 likely to reflect officials' understanding that already
 24 at this time, in May 1983, there was what they
 25 considered to be a great deal of sensationalism in the
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1 does leave that open. I'm not aware from the documents
 2 that I've seen, and I believe are available to the
 3 Inquiry at the moment, that there were any suspected
 4 cases of AIDS in Scotland at the time of this note -- of
 5 this minute. It's an issue we might want to investigate
 6 further, but I'm at least not aware of any suspected
 7 cases that had been brought to Mr Davies's attention or
 8 the attention of Home and Health Department officials
 9 which might lend particular significance to the use of
 10 the word "confirmed" in the submission but, as I say,
 11 it's something we can look in further to confirm the
 12 position.
 13 **SIR BRIAN LANGSTAFF:** Thank you.
 14 **MR BOUKRAA:** On "Donation Policy", Mr Davies wrote:
 15 "The Blood Transfusion Directors in Scotland are
 16 very aware of the problem and have it under constant
 17 consideration." They are currently considering ..."
 18 Then he sets out four measures, first:
 19 "(a) Briefing all frontline blood bank staff to
 20 handle questions from donors.
 21 "(b) Preparing a neutral factual leaflet about
 22 AIDS and making this available at donor sessions -
 23 perhaps drawing attention to it as a follow-up to recent
 24 press and television publicity;
 25 "(c) Informal contact with representatives of the
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1 press in particular around any issues relating to AIDS,
 2 that they were keen to avoid adding to that
 3 sensationalism.
 4 It might also relate to a desire to avoid causing
 5 any offence amongst blood donors, a neutral leaflet
 6 which tries to present facts about AIDS which doesn't go
 7 beyond presenting matters as neutrally as they could be
 8 at the time, so as to avoid causing offence. Those are
 9 two suggestions that come to mind immediately, sir, but
 10 it's a word that might be worth keeping in mind as we
 11 look through the remainder of the documents and when we
 12 consider documents in the written note relating to the
 13 preparation of the AIDS leaflet.
 14 What we'll see in my summary of those documents,
 15 sir, and also in the written note, is perhaps less
 16 direct involvement by Scottish officials and certainly
 17 by Scottish ministers in the wording of leaflets
 18 relating to AIDS than might have been seen in England
 19 and Wales when officials and ministers were more
 20 directly involved in the wording.
 21 So we see, sir, from this document a number of
 22 matters which will repeat and will form a part of the
 23 pattern of officials' response to the risk of AIDS. One
 24 of them in particular is an emphasis on Scotland being,
 25 as they describe it, virtually self-sufficient in
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1 Factor VIII.

2 We know that Mr MacKay, the Minister, saw this
3 document because we have a response from his Private
4 Secretary, which I won't go to, essentially just
5 expresses the Minister's gratitude for this submission.

6 Now, around this time, and certainly by June 1983,
7 Dr Brian McClelland of the South East Scotland Regional
8 Transfusion Centre had begun work on an AIDS donor
9 leaflet. The steps taken by Dr McClelland in relation
10 to that leaflet have been explored in evidence
11 previously heard by the Inquiry, notably Dr McClelland's
12 own oral and written evidence.

13 The Home and Health Department's involvement in
14 that issue is set out in the written note. I'm not
15 going to go into the detail of it here for reasons of
16 time.

17 The evidence suggests that Dr McClelland's RTC in
18 Edinburgh began issuing an AIDS donor leaflet in
19 June 1983, suggests that the Home and Health Department
20 had very little involvement in the preparation of its
21 contents.

22 When Dr McClelland described orally to this
23 Inquiry how he went about liaising with the Home and
24 Health Department, he described essentially asking for
25 forgiveness rather than permission after taking steps to

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1 Secretary, to Mr MacKay, and I'm going to highlight the
2 second paragraph, and what Mr Davies says there:

3 "Regional Transfusion Directors in England have
4 now prepared the attached draft leaflet for printing and
5 publication by DHSS (it is substantially based on an
6 earlier draft by Dr McClelland at the Edinburgh and
7 South East Scotland Blood Transfusion Service).
8 The main aim of the leaflet is to discourage practising
9 homosexuals from donating their blood and, in view of
10 the sensitivity of the issue, DHSS have consulted their
11 Ministers over its terms. Our understanding is that
12 some reservations have been expressed and that DHSS
13 officials are toning down the text somewhat, largely to
14 make clear that, even in the US, only a small number of
15 cases have been reported. DHSS Ministers have also
16 asked for a formal statement to be available for use at
17 the time of publication to diminish any risk of over
18 reaction ..."

19 Mr Davies refers to a possible opportunity for
20 that statement.

21 Then in the final paragraph of this page, he said:
22 "We consider that the leaflet should be issued on
23 a UK basis, and are arranging for the text to be
24 adjusted accordingly. The main change that is required
25 is to alter references to the 'National' (ie English and

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1 issue the leaflet.

2 The documents also show that around this time, so
3 this is mid-1983, Home and Health Department officials
4 were monitoring the development of a donor leaflet being
5 prepared by the DSS and transfusion directors in England
6 and Wales.

7 The documents show officials in Scotland liaising
8 with their counterparts in the DHSS, and emphasising the
9 need for the Home and Health Department to be consulted
10 on the development of that UK leaflet.

11 If we move forward to 1 July 1983, when a DHSS
12 submission on the publication of an AIDS leaflet was
13 submitted to ministers in England and Wales, as we've
14 seen with some of the other documents relating to AIDS,
15 it was copied to an official at the Home and Health
16 Department, that was Mr Wastle.

17 After that submission is copied to officials in
18 the Home and Health Department, they begin to discuss it
19 internally and to prepare a submission to go to their
20 minister, Mr MacKay.

21 I'm going to turn to that document now, which is
22 dated 11 July 1983, so about ten days after the DHSS
23 submission.

24 It's SCGV0000147_157.

25 Again, from Mr Davies, once more to the Private
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1 Welsh) Blood Transfusion Service. No separate Scottish
2 announcement would be called for, but an important point
3 for any press inquiries is that Scotland is virtually
4 self sufficient in Factor VIII."

5 Sir, we can see here officials recommending to
6 the Minister that a UK approach to this leaflet would be
7 appropriate, suggesting that some changes might need to
8 be made to its wording but really focusing on what might
9 be considered to be more minor amendments to reflect
10 that applies to Blood Transfusion Services in the whole
11 of the UK and not simply England and Wales. And what we
12 also see in the last sentence of this document is an
13 emphasis again on self-sufficiency in Scotland.

14 I'm going to go very briefly to the Minister's
15 response --

16 **SIR BRIAN LANGSTAFF:** The underlying reason for that
17 presumably is an appreciation in mid-July 1983 that the
18 public, or for that matter others, might think that if
19 the blood is sourced from domestic national sources, it
20 is safer than blood products imported from the
21 United States.

22 **MR BOUKRAA:** That's exactly right, sir, yes.

23 **SIR BRIAN LANGSTAFF:** And making a virtue of that.

24 **MR BOUKRAA:** Absolutely making a virtue of that, sir, yes.

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

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1 **MR BOUKRAA:** It might be said to be tied not only to the
2 public perception of the risk of domestically produced
3 blood products but also what officials appear to
4 understand the relative risks to be. I'll come to
5 a document a little later on which lays out -- or which
6 provides an insight into at least what some officials
7 understood to be the advantages that were gained from
8 blood products being produced domestically rather than
9 relying on importing particularly American sources.

10 **SIR BRIAN LANGSTAFF:** Yes.

11 **MR BOUKRAA:** So the Minister's response which comes through
12 his Private Secretary the following day. It's just
13 a short document. SCGV0000147_153.

14 At the bottom we can see it's from Geoff Pearson,
15 Private Secretary to Mr MacKay, directed to Mr Davies.
16 It starts by simply noting that the Minister has seen
17 the minute:

18 "[The Minister] enquired whether the surplus
19 capacity at the Protein Fractionation Centre at Liberton
20 could be used to increase UK production of Factor VIII -
21 he believes the current English production is some only
22 60% of demand."

23 So that's the Minister taking on board the point
24 that is implicit in Mr Davies's document, which is that
25 domestically produced products are understood to be of

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1 In the second paragraph, AIDS is briefly
2 described, and then I was going to highlight the third,
3 where this press release said this:
4 "No cases of the disease have been confirmed in
5 Scotland and the Scottish Home and Health Department
6 emphasised today that there is no conclusive proof that
7 the disease can be transmitted through blood or in blood
8 products. There is however no screening test the BTS
9 can use to detect people with AIDS and donors are asked
10 not to give blood if they think they may have the
11 disease or be at risk from it."

12 In the next paragraph:

13 "Scotland is self-sufficient in whole blood and
14 virtually so in blood products. Nearly all the
15 factor VIII issued for the treatment of haemophilia is
16 produced from blood plasma donated to the SNBTS by blood
17 donors in Scotland."

18 **SIR BRIAN LANGSTAFF:** And that links back, does it, to the
19 second paragraph, the second sentence, where it
20 described as AIDS as a "comparatively new disease to
21 Britain"?

22 **MR BOUKRAA:** That's exactly right, sir, yes. So we can see
23 that link being made, we can see the emphasis on
24 self-sufficiency again. We can also see the use of the
25 "no conclusive proof" line without a qualification

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1 lower risk than imported ones, and wondering whether
2 Scotland could help to pick up additional production and
3 send some of it to England and Wales.

4 Now, the response to that enquiry doesn't come
5 until some months later in October and I'll come to it.

6 The answer was essentially no, but it is perhaps
7 notable, sir, that the points that are picked up by the
8 Minister and the concern with -- or the emphasis placed
9 on Scotland's self-sufficiency and the relative risks,
10 as they were understood at the time, between Scottish
11 and imported blood products.

12 Now, what the documents shown in the summer of
13 1983 is HHD officials continuing to be updated about the
14 DHSS's approach to this donor selection leaflet, this
15 AIDS leaflet which was still being prepared. It was
16 eventually agreed to be distributed in Scotland as well
17 as England and Wales from September 1983.

18 A separate Scottish press release was prepared at
19 the time that that leaflet was introduced, and I'm going
20 to turn it to very briefly. It's PRSE0002778.

21 So we can see the date of this document,
22 1 September 1983.

23 The first paragraph introduces the leaflet that's
24 been published. It says it's by the Health Department
25 in the UK for distribution in Scotland by the SNBTS.

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1 attached to it on whether or not a disease was likely to
2 be transmitted by blood and blood products.

3 It was in October 1983, the next month, that
4 Mr Davies provided a response to Mr MacKay's query about
5 whether the PFC could produce additional Factor VIII for
6 England and Wales. The response is summarised in the
7 written note. I won't go to it now. The short answer
8 was no, or rather, at least, no, not for the time being.

9 We move into late 1983 and the first half of 1984,
10 and the Department's officials, based on the documents,
11 appear primarily to have been monitoring developments
12 related to AIDS and blood products, including proposals
13 for further steps that might be taken in response.

14 Now, that included consideration of updates to the
15 donor leaflet, changes to distribution arrangements.
16 There's some reference to the possibility of small pool
17 blood products being prepared, some reference to
18 surrogate screening for AIDS, monitoring of AIDS cases,
19 monitoring of the DHSS approach.

20 HHD officials' involvement around this time often
21 seemed to take place by attendance at different
22 meetings, in particular attendance at meetings of SNBTS
23 directors, also attendance as an observer at meetings of
24 transfusion directors in England and Wales, and we've
25 summarised what we can get from the documents in the

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1 written note.
 2 I'm going to move forward fairly quickly, sir, to
 3 August 1984, when the Home and Health Department became
 4 aware that a haemophilia patient living in Scotland had
 5 contracted AIDS and the Minister was informed.
 6 Lawrence, could we please go to SCGV0000147_073.
 7 Sir, the date of this document is 29 August 1984,
 8 again from Mr Davies, and again to the Private
 9 Secretary, to Mr MacKay. Mr Davies wrote this:
 10 "We have recently heard that a Scottish resident
 11 haemophilic ... has [contracted] AIDS. We have
 12 hitherto reported that Scotland is virtually
 13 self-sufficient in Factor VIII, the blood product used
 14 in treating haemophiliacs; and therefore that there was
 15 no risk to Scottish haemophiliacs. This case may appear
 16 to provide contrary evidence, and may possibly be so
 17 reported by the Press.
 18 "We are informed that the patient concerned has
 19 only recently moved to Scotland. He has hitherto been
 20 treated in Newcastle where imported Factor VIII has
 21 probably been used. The disease takes some time to
 22 manifest itself, and the Scottish product is not
 23 implicated".
 24 Now, a number of points which arise from this
 25 document, sir. One of those that's perhaps most notable

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1 Now, the Inquiry has already heard evidence on the
 2 timing of this discovery from witnesses,
 3 Professor Ludlam and Dr McClelland. I'm not going to
 4 repeat it, but what that evidence would appear to
 5 suggest is that Scottish haemophilia clinicians and the
 6 SNBTS started to become aware of this development around
 7 or by late October 1984.
 8 Now, the precise date on which the Department's
 9 officials first became aware of the results of the
 10 Edinburgh patients is not entirely clear from the
 11 documents. The earliest one we have involving the Home
 12 and Health Department is dated 20 November 1984, and
 13 it's a minute from officials to the Minister, and I'm
 14 going to go to that now.
 15 It's SCGV0000147_058.
 16 We can see the date at the bottom,
 17 20 November 1984. It is from Hugh Morison, who was
 18 Under-Secretary at the Home and Health Department at the
 19 time, which is a grade higher than Assistant Secretary,
 20 effectively Mr Davies's superior. Addressed to the
 21 Private Secretary to Mr MacKay, and we can also see it
 22 is copied to the Private Secretary to the Secretary of
 23 State, so involving the Secretary of State in this
 24 development.
 25 Now, in the first two paragraphs Mr Morison gives

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1 is the way in which the risk arising from PFC factor
 2 products was described and appears to have been
 3 understood by Mr Davis:
 4 "We have hitherto reported that Scotland is
 5 virtually self-sufficient in Factor VIII ..."
 6 And that:
 7 "... therefore there was no risk to Scottish
 8 haemophiliacs."
 9 Rather than perhaps a reduced risk compared to
 10 other blood products.
 11 Perhaps also of interest in the final sentence of
 12 this document is what seems to be a reference to the
 13 incubation period in AIDS:
 14 "The disease takes some time to manifest
 15 itself ..." which will of course be relevant to an
 16 understanding of the risk posed by factor products.
 17 That's August 1984, and I'm going to turn now --
 18 and I've moved fairly swiftly through this period, of
 19 course there are a lot of fairly important developments
 20 that take place that are set out in the notes. I'm
 21 going to move forward to the Department's response to
 22 the discovery that group of patients treated PFC
 23 Factor VIII had developed antibodies to HTLV-III,
 24 a group of patients sometimes referred to as the
 25 Edinburgh cohort.

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1 an update on leaflets in particular in AIDS developments
 2 in relation to the AIDS donor leaflets. I'm going to
 3 draw your attention, sir, to the second half of this
 4 document, and in particular the paragraph that begins
 5 "A development", and Mr Morison wrote this:
 6 "A development of particular concern in Scotland
 7 is that 16 Scottish haemophiliacs have been identified
 8 as having antibodies to the virus HTLV III, which is
 9 implicated with AIDS. The presence of the antibodies
 10 indicates that the patients have been exposed to the
 11 virus but does not mean that they will necessarily
 12 develop AIDS. A batch of Factor VIII (the blood
 13 clotting agent given to haemophiliacs) produced at the
 14 Protein Fractionation Centre at Liberton appears to be
 15 implicated. As Factor VIII is produced from plasma
 16 recovered from blood donations it must be assumed as
 17 probable that the batch was contaminated by a Scottish
 18 donor. The batch has been withdrawn and the SNBTS are
 19 taking vigorous steps to identify the source of
 20 infection. This, however, will not be an easy task
 21 since blood from many donors is used to produce a single
 22 batch of Factor VIII. In the meantime, work is urgently
 23 proceeding to introduce heat-treatment for Factor VIII
 24 in order to kill the virus, and to develop a screening
 25 test for HTLV III antibodies. No such test is, however,

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1 likely to be readily available in the immediate future."
 2 Then the final paragraph:
 3 "It would not be appropriate at this stage to
 4 issue any statement on the discovery of the antibodies
 5 in the Scottish haemophiliacs. Suitable defensive
 6 briefing has however been given to the SIO."
 7 SIO is a reference to the Scottish Information
 8 Office.
 9 If we go over the page, we can see the first page
 10 of the briefing that's referred to in Mr Morison's note.
 11 As you can see, it's in the form of a Q&A. I'm not
 12 going to go through all of this document now. I'm going
 13 to highlight, please, the second half of this page which
 14 is of particular relevance to this Inquiry. It says:
 15 "Antibodies in Scottish Haemophiliacs
 16 "Antibodies to HTLV III, the virus which it is
 17 believed caused AIDS, have been discovered in
 18 16 Scottish haemophiliacs. A batch of Factor VIII
 19 produced at the Protein Fractionation Centre at Liberton
 20 is implicated."
 21 And then underlined:
 22 "No statement is to be released on this at
 23 present. If however there are specific enquiries from
 24 the media on this matter, the following material should
 25 be used."

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1 "In the meantime, [it says] work is urgently
 2 proceeding to produce heat-treatment for Factor VIII in
 3 order to kill the virus, and to develop a screening test
 4 for HTLV III antibodies. No such test is, however,
 5 likely to be readily available in the immediate future."
 6 This is 20 November.
 7 There was a record on 15 November -- a reference
 8 for those who are interested is DHSC0002309_055 -- which
 9 in the Department of Health recorded a screening test --
 10 that a screening test for HIV and blood products had
 11 been developed and a pilot scheme was due to start
 12 shortly. The cost was to come from existing RHA budgets
 13 of about £2 million.
 14 So some -- almost a week earlier, not quite, the
 15 position in London at least had been appreciated that
 16 they -- there was a test in the wings, although it might
 17 take some time to go through its pilot process,
 18 et cetera, and it's perhaps curious that there is no
 19 mention of that in this memo to this minister, who is
 20 concentrating, therefore, on heat treatment.
 21 **MR BOUKRAA:** That is absolutely right, sir. That is
 22 a curious feature of this memo.
 23 We'll come a little later to look at what
 24 information was provided when to ministers in Scotland
 25 and, in particular, Mr MacKay about HTLV-III screening

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1 There's then a series of further questions and
 2 answers, and we just go to the last page, and the final
 3 entry which is prefaced with "Only if pressed", so it
 4 appears to be directed at those who may need to answer
 5 press enquiries or enquiries from others and are being
 6 pressed about this issue:
 7 "What should Scottish haemophiliacs do?
 8 "[Answer]. They should make enquiries of the
 9 consultant treating their case."
 10 If we could go back, please, Lawrence, to the
 11 first page of this document, and the top manuscript
 12 addition. Now, this manuscript addition would appear to
 13 come from the Minister, Mr MacKay. It says this:
 14 "Thanks: While I fully appreciate that
 15 a statement would give rise to great concern among
 16 haemophiliacs -- and indeed among recipients of blood
 17 generally -- I do not want us to be accused of
 18 a 'cover-up'. If we are approached we must be perfectly
 19 open."
 20 Then the question:
 21 "When is heat-treatment likely to be ready?"
 22 **SIR BRIAN LANGSTAFF:** One of the curiosities about this
 23 particular document, if we just have a look back --
 24 thank you -- is what is said in the last couple of
 25 sentences in the third paragraph:

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1 and when it might be introduced and, in doing so, I'll
 2 seek to answer your question from this morning. But
 3 you're right, sir, there's no reference to that
 4 information that you've just described from the DHSS.
 5 **SIR BRIAN LANGSTAFF:** Well, what that at the moment suggests
 6 to me -- and this is open of course to submission and
 7 may be entirely wrong -- is that those who had come by
 8 some knowledge or developments in England haven't
 9 necessarily been in regular and constant touch with
 10 those in Scotland who were dealing with the same issues.
 11 **MR BOUKRAA:** That's right, sir. I'll make sure I get the
 12 timing right when we get to HTLV-III screening. From
 13 memory, by January 1985, we see information sharing
 14 between the DHSS and the SHHD. It could be that at this
 15 time, November 1984, we weren't quite there yet in terms
 16 of information sharing.
 17 **SIR BRIAN LANGSTAFF:** Well, there may well have been sharing
 18 of information but it may not have been comprehensive.
 19 **MR BOUKRAA:** Yes.
 20 So as we've seen, there is a query from the
 21 Minister about when heat treatment is likely to be
 22 ready.
 23 A further minute is provided from Mr Morison on
 24 26 November 1984. I won't go to it now but it outlines
 25 developments in trials of heat treatment of PFC

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1 Factor VIII, suggests when PFC heat-treated Factor VIII
 2 is likely to be introduced. Says that will be at the
 3 beginning of 1985. As for press statements, in this
 4 minute Mr Morison wrote:
 5 "Mr MacKay's point on publicity about antibodies
 6 is well taken. We are keeping in close touch with the
 7 Blood Transfusion Service on the matter, which has not
 8 so far been picked up by the media."
 9 This is late 1984. The Inquiry has previously
 10 considered some of the consequences of the time that
 11 passed between this discovery being made that Edinburgh
 12 patients had developed antibodies to HTLV-III, the time
 13 that passed between that recovery and the patients and
 14 their families being informed.
 15 One of the consequences it might be said, of the
 16 time that it took for that information to be shared and
 17 to become public knowledge was that public discussions
 18 of the safety of PFC Factor VIII at this time, late
 19 November 1984, took place in the absence of that
 20 information.
 21 I'm going to turn relatively briefly to
 22 a newspaper article, PRSE0003234.
 23 We can see the date of this article in the top
 24 left, November 28, 1984. The title gives a good
 25 indication of what the article is about:

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1 Royal College of Physicians of Edinburgh and chairman of
 2 the Scottish National Blood Transfusion Service (the
 3 donors' representative body) says: 'I think the public
 4 should be reassured -- I do not think people in Scotland
 5 have anything to worry about, whether they are getting
 6 blood transfusions or other treatment with blood
 7 products.'
 8 Thanks, Lawrence. That's all I wanted to cover
 9 with that document.
 10 Now, the following day, 29 November 1984,
 11 a meeting took place with representatives of the HHD,
 12 the SNBTS, and the Haemophilia Centre Directors in
 13 Scotland to discuss issues related to the Edinburgh
 14 patients. The meeting also discussed positive test
 15 results in haemophilia patients elsewhere in Scotland
 16 who had been treated not simply with PFC Factor VIII but
 17 also with imported Factor VIII. I won't go to the
 18 document but it was chaired, that meeting, by Dr Bell,
 19 attended by other HHD officials. The meeting notes
 20 described discussion of what were termed "very difficult
 21 ethical problems", including whether to tell patients
 22 and their relatives of the results.
 23 About a week later, 5 December 1984, the Minister
 24 was updated again. And I will go to this one.
 25 It's PRSE0003032.

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1 "'Good Scottish blood' lessens the risk of
 2 disease"
 3 I'm not going to go through all of it, sir, unless
 4 that would assist. I'll just highlight a couple of
 5 parts. We start with the introductory paragraphs:
 6 "Not one person has contracted AIDS in Scotland as
 7 a result of blood transfusions or treatment with
 8 preparations made from Scottish blood.
 9 "That's no nationalistic boast. It's a tribute to
 10 the Scottish Blood Transfusion Service who, from the
 11 first outbreak of AIDS here about two years ago, went on
 12 the alert for high-risk donations of blood."
 13 Now, it might be noted that that first paragraph
 14 might be strictly true in the sense that what happened
 15 is that it has been discovered that patients had
 16 developed antibodies to HTLV-III rather than developed
 17 AIDS. This varies. It might be thought nonetheless
 18 that there is a disconnect there between how the risk is
 19 described in this introductory paragraph and what was
 20 known about the risk from PFC factor products by this
 21 point.
 22 And if we could zoom out, please, Lawrence, and
 23 then the left-hand column that's headed "Caring", I just
 24 want to highlight the first paragraph there:
 25 "Professor Ronald H Girdwood, president of the

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1 Sir, this is addressed again to the Private
 2 Secretary to Mr MacKay, copied to the Secretary of
 3 State's Private Secretary. It's dated 5 December 1984
 4 and it's from Mr Davies.
 5 Now, in the first two paragraphs of this minute
 6 there's a summary of the meeting that I just described,
 7 which took place on 29 November. There is then in the
 8 third paragraph, that begins, "From the figures
 9 available", a description of the position as it was then
 10 understood to be by the officials.
 11 "From the figures available it appears that, out
 12 of the approximately 400 haemophiliacs in Scotland ..."
 13 And actually, if we could perhaps zoom in on this
 14 paragraph, Lawrence. Thank you.
 15 "... no more than about 10% have antibodies to
 16 HTLV III. Only other countries themselves
 17 self-sufficient in Factor VIII can match these figures.
 18 We understand that in England, where there is more
 19 reliance on imported Factor VIII, the incidence is
 20 therefore considerably greater. In the United States
 21 itself the great majority of haemophiliacs will have the
 22 antibodies. It should be stressed that, though
 23 antibodies to HTLV-III are believed to be a precursor to
 24 AIDS, their presence does not necessarily mean that the
 25 individual will develop that disease. Knowledge remains

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1 incomplete, but the current medical view is that only
2 a small proportion (probably less than 10%) of
3 individuals with antibodies will consequently contract
4 AIDS."

5 If we go to the next paragraph there is
6 a reference to recent press articles describing the
7 position as it was understood by the press in Scotland,
8 and then this:

9 "No statement can be made at the moment until the
10 haemophilia directors resolve the very difficult ethical
11 problem of what action to take with regard to their
12 patients about the matter."

13 Reference to the position in England and Wales.

14 And then briefly just over the page, the top of
15 the first paragraph on this page:

16 "The [Blood Transfusion Service] believe that they
17 have now identified the donor responsible for the
18 contamination of the batch of Factor VIII."

19 Then in the final paragraph, the Minister is
20 informed that the PFC has started heat treating
21 Factor VIII. The first batches are now being issued for
22 trial, and for all Scottish-produced Factor VIII to be
23 heat treated by the end of January. So that's
24 5 December 1984.

25 Mr MacKay's Private Secretary responded the
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1 the haemophiliacs or their parents, as I understand that
2 some of them are in fact children."

3 "Mr Hoy [who was an official in the Scottish
4 Information Office] tells me that, if the Yorkshire Post
5 do decide to follow up this story, it is not likely that
6 they will publish it before a week tomorrow. It would
7 therefore seem obvious that every effort should be made
8 to inform the people concerned as soon as possible and
9 definitely by the beginning of next week.

10 "In the meantime Mr MacKay feels that we should
11 respond to any press inquiries with the line that we
12 have identified various people with the problem, that we
13 are taking steps to inform them and that in the meantime
14 it would be extremely distressing for these people,
15 particularly the parents of children, to read about it
16 in a newspaper, not forgetting that press publicity on
17 this before the people have been informed could stir up
18 a totally unnecessary scare amongst the 400
19 haemophiliacs in Scotland."

20 Now, the meeting between patients and their
21 families and haemophilia clinicians was organised for
22 19 December 1984. In the lead-up to that date we can
23 see -- and around that date -- we can see the Department
24 officials working on a press release to be issued at the
25 same time as the publication of the Yorkshire Post

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1 following day, on 6 December, relaying that the Minister
2 hoped that the Blood Transfusion Service in England and
3 Wales had been informed about this donor who had
4 contributed to the contaminated batch so that they could
5 decline his blood if offered.

6 We move forward again to 12 December 1984 when
7 Home and Health Department officials were informed that
8 a journalist from the Yorkshire Post had learned about
9 the Edinburgh patients and intended to publish an
10 article, but also that the journalist had agreed to
11 postpone publication until 20 December.

12 I'm going to go to a document in which the
13 Minister's response to this development is recorded.
14 It's PRSE0001293.

15 Now, the date of this is 12 December. It's from
16 Ms Teale, who's private secretary to Mr MacKay,
17 addressed to Mr Davies, copied to various others, titled
18 "AIDS: Yorkshire Post Inquiry". The first paragraph
19 records that Ms Teale had discussed this issue with the
20 Minister and then goes on to say that:

21 "Mr MacKay is firmly of the opinion that we should
22 not make any announcement at this stage before those
23 concerned have been told that they have been affected.
24 He does however feel that it is now absolutely
25 imperative that every effort should be made to inform

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1 article which was expected on 20 December.

2 I'm going to turn briefly to that press release.
3 It's PRSE0000225.

4 We can see the date at the bottom of the document
5 is December 20, 1984. The title is "New measures to
6 counter AIDS":

7 "The Scottish National Blood Transfusion Service
8 has announced today that all Scottish produced supplies
9 of Factor VIII have now been heat treated to counter
10 HTLV III, the virus that can cause AIDS. Factor VIII is
11 the blood product used in the treatment of haemophiliacs
12 and supplied to the NHS in Scotland by the SNBTS."

13 So leading in this press release with developments
14 related to heat treatment.

15 Then in the second paragraph, reference to the
16 Edinburgh patients:

17 "This move follows the recent discovery that
18 15 ..."

19 And I should say, sir, by this point it had been
20 clarified that it seemed that 15 rather than 16 patients
21 were affected.

22 "... that 15 Scottish haemophiliac patients
23 treated with a particular batch of Factor VIII have
24 developed antibodies to HTLV III. It is suspected that
25 the pool of plasma used to prepare this batch of

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1 Factor VIII contained blood from a donor who had been
2 exposed to the virus. The batch has since been
3 withdrawn."

4 There is then, in the remainder of this press
5 release, reference to the understanding at the time that
6 developing HTLV-III does not necessarily mean
7 contracting AIDS. Then this:

8 "The problem is much smaller than in most other
9 countries, because in recent years Scotland has become
10 virtually self-sufficient in the production of
11 Factor VIII and has imported very little commercially
12 produced Factor VIII which carries a greater risk of
13 transmitting AIDS."

14 Just finally, before I leave this topic, picking
15 up on the date there, this is December 20, 1984, in the
16 introduction to the section has suggested that
17 haemophilia clinicians and the SNBTS became aware of the
18 results of at least some of the Edinburgh patients in
19 late October 1984. We know that the HHD's officials and
20 the ministers, the Minister involved, were made aware by
21 20 November 1984.

22 Sir, that was all I intended to say about this
23 particular issue relating to the Edinburgh patients and
24 their discovery. I'm going to move on fairly quickly,
25 because we've got a lot else to cover, to the

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1 focus on the response of the Department's officials to
2 this development in England and Wales.

3 The first is a minute from February 1985. It's at
4 PRSE000 --

5 **SIR BRIAN LANGSTAFF:** Can you just help me with this:
6 a little earlier this morning I drew attention to the
7 fact that the Minister wasn't told clearly that
8 a screening test might be in the wings and undergoing
9 pilot tests in England, and wasn't informed of that by
10 his officials.

11 You're now telling me there'd been discussions in
12 the summer and autumn of 1984, including contact with
13 the DHSS in London, updating on the progress that
14 science was making towards developing the screening test
15 which had been after all anticipated when Dr Gallo made
16 his announcement that he'd discovered the cause of AIDS
17 back in the -- in April.

18 So what was the state of the knowledge of
19 screening of HTLV-III amongst the officials in Scotland,
20 and at the time the Minister was briefed? Do you have
21 any information?

22 **MR BOUKRAA:** I hope that the documents we're about to look
23 at will help our understanding of the knowledge of
24 Scottish officials on that particular issue. The time
25 the Minister was briefed, would appear to be, the

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1 introduction of screening for HTLV-III.

2 Now, as a broad brush summary, what the evidence
3 suggests is that by the summer of 1984 HHD officials had
4 begun considering the introduction of an HTLV-III
5 screening test, had become -- had begun to become aware
6 that a screening test was being developed.

7 The written note summarises their involvement in
8 these developments in the summer and autumn of 1984,
9 including their contact with the DHSS about the creation
10 of a UK working party to consider the issue.

11 Now, we can see DHSS and SHHD officials
12 corresponding directly during this period.

13 The document I intended to take you to, sir, in
14 which we can see that happening, comes from
15 January 1985, and it's when DHSS officials provide
16 a copy of their ministerial submission on the
17 introduction of HTLV-III screening, rather than anything
18 earlier than that.

19 What we see in the documents is HHD officials,
20 both administrative and medical, looking at that
21 submission, beginning to consider the recommendation
22 that they should make to Scottish ministers.

23 Now the actual DHSS submission has been considered
24 by the Inquiry previously, and for reasons of time I'm
25 going to avoid going to it, but I'm going to instead

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1 Minister in Scotland, 21 March 1985. I'll also come to
2 that --

3 **SIR BRIAN LANGSTAFF:** Well, that's -- yes, but the document
4 I drew attention to earlier was in November, I think,
5 wasn't it?

6 **MR BOUKRAA:** Yes.

7 **SIR BRIAN LANGSTAFF:** About 20 November, I think. And if
8 that is so, then what you're telling me at the moment,
9 or what you've told me, you're summarising -- you're
10 moving toward, I appreciate, to 1985, but you are
11 summarising the knowledge they had been developing in
12 the Department in Scotland in the summer and autumn of
13 '84 I just want to understand what that broadly was.

14 Was it that that a test was about to be trialled?
15 A test could be used? They must have appreciated that
16 there was some form of screening if the Edinburgh cohort
17 had after all tested positive for having antibodies to
18 HTLV-III in their blood.

19 What was the position?

20 **MR BOUKRAA:** Most of the documents at least that we've
21 summarised in the written note, and it may be that we
22 can look at this further, seems to suggest a fairly high
23 level state of knowledge. There's one document which
24 might help, sir, from August 1984, which I could bring
25 up now which gives some insight into this issue.

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1 **SIR BRIAN LANGSTAFF:** Yes.

2 **MR BOUKRAA:** Lawrence, it's SCGV0000147_079.

3 **SIR BRIAN LANGSTAFF:** You mean_079?

4 **MR BOUKRAA:** I'm sorry, _079 is what I mean, yes.

5 Sir, it's a 16 August 1984 minute from Dr Bell to

6 Mr Murray in the Department, and it's titled "Testing of

7 blood donation of AIDS".

8 Dr Bell said this:

9 "I have information that research and development

10 work in London is proceeding with the objective of

11 introducing a screening test for HTLV III, the putative

12 causal agent of AIDS. Intensive work in this field is,

13 of course, also going on in the United States, suitably

14 encouraged by commercial motivation.

15 "Dr Cash has already indicated to Mr Davis that

16 additional revenue costs have to be foreseen for the

17 introduction of an AIDS screening test for blood

18 donation. I think Dr Cash's view that resources for

19 this purpose will be needed in the year 1986/7 is

20 probably right. The BTS in England are already

21 addressing themselves to this problem and DHSS is in the

22 picture. Until more information about the cost of a new

23 test is available we can only work on the estimates

24 already given by Dr Cash."

25 An example of a document which might be suggested

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1 **SIR BRIAN LANGSTAFF:** Yes, thank you.

2 **MR BOUKRAA:** Sir, if you do want to get a clearer picture of

3 this time period in the second half of 1984 and what the

4 understanding of SHHD officials was, it may be worth

5 looking briefly at a December 1984 SNBTS directors'

6 meeting which was attended by officials from the Home

7 and Health Department where there was an update on where

8 matters had development in the introduction of screening

9 test.

10 Lawrence, it's PRSE0001767.

11 Sir, we can see 11 December 1984, that meeting

12 chaired by Dr Cash, attended by Dr Bell and Mr Murray.

13 And if you could zoom back out, please. Go over

14 the page. Over the page again.

15 I'm sorry, I'm just going to have to identify the

16 entry dealing with screening.

17 It's the second half of this page.

18 **SIR BRIAN LANGSTAFF:** It's when Dr McClelland reports back

19 on the meeting he's been at in the late November.

20 **MR BOUKRAA:** That's right, sir, yes.

21 **SIR BRIAN LANGSTAFF:** That was the 27 November '84 meeting

22 he was reporting back on?

23 **MR BOUKRAA:** 27 November '84, that's right. We've made

24 reference to a note of that meeting which Dr McClelland

25 believes he prepared, although I think it's not very

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1 to illustrate a high level sort of knowledge in

2 anticipation that a screening test was being developed

3 and would eventually be introduced, not, at least from

4 this document, an understanding that that was going to

5 happen imminently.

6 **SIR BRIAN LANGSTAFF:** The other curiosity, I suppose -- you

7 can tell me -- in the documents you've been looking at,

8 has there been any reference to the article in

9 The Lancet on 1 September 1984 which was reporting on

10 North London, but plainly they'd conducted a fairly wide

11 screening of people who were haemophiliacs being treated

12 in North London, and had discovered that 34% of them

13 had -- were positive for antibodies.

14 So that might have suggested that there was a test

15 available, at least for the researchers, plainly it

16 wasn't a general screening test, but any reference to

17 that in The Lancet article at all in any of the material

18 that you've looked at?

19 **MR BOUKRAA:** Not that I can recall off the top of my head,

20 sir. We will double check and find out if there are any

21 references to that article. I can put it this way: it

22 sounds like the sort of article that I would have picked

23 up and included in this section of the written note if

24 it had been referred to, but we will double check the

25 position and see if we can find any reference to it.

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1 clear from the document itself he prepared it, but

2 Dr McClelland believes he prepared that document, which

3 recorded that he could get no clear picture of when or

4 how a serviceable assay would be provided so suggests

5 a good deal of uncertainty at this time about the timing

6 of the introduction, the timing of the introduction for

7 this screening test, and just in this document, there'd

8 been unanimous agreement to test all donors once an

9 antibody test was available, a matter of how to counsel

10 and take care of antibody positive donors was

11 acknowledged to be a very difficult problem.

12 All of those documents together appear to suggest

13 the Department's officials being aware that work was

14 ongoing to introduce a test but a good deal of

15 uncertainty about when the screening test that could be

16 used to screen blood donations and, in particular, for

17 routine screening of blood donations would be available,

18 so that's late 1984.

19 We get into January and February 1985, so

20 January 1985 is when a copy of the DHSS submission is

21 provided to officials in the Home and Health Department

22 and we can then see how that -- the contents of that

23 submission and developments in England and Wales are

24 discussed by officials in the Department.

25 If we could go, please, first to PRSE0001054.

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1 Now, this another minute from Mr Davies, dated
2 7 February 1985, to Dr Scott, copied to a number of
3 other officials in the Department.

4 It begins with the following:

5 "DHSS Ministers have now agreed [and added in
6 manuscript '(apparently with great reluctance)'] that
7 all donations of blood in England should be tested for
8 the presence of antibodies to HTLV III. We now have to
9 decide whether we have any alternative to advising our
10 Ministers that it is necessary to follow suit in
11 Scotland.

12 "There are over [a quarter of a million] donations
13 of blood in Scotland each year. As far as we are aware,
14 only one destination to date has contained antibodies to
15 HTLV III. We now require a signed statement from all
16 potential donors that they are not in one of the at risk
17 categories for contracting AIDS. Hence the number of
18 'infected' donations, already vanishingly small, should
19 decrease still further."

20 There's then reference to some guidelines prepared
21 by the ADCP, and then, staying in the same paragraph:

22 "Haemophiliacs in Scotland are now not at risk" --

23 I think that should say "at all" -- I'm so sorry
24 it's right as it is:

25 "Haemophiliacs in Scotland are now not at risk as

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1 to this minute.

2 PRSE0003846.

3 In the first paragraph Dr Scott says that
4 Mr Davies's minute summarised clearly and succinctly the
5 problems associated with the routine testing of all
6 donations of blood for HTLV-III, and then the third
7 paragraph:

8 "From a cold objective scientific viewpoint the
9 case for the introduction of a test for HTLV-III
10 antibodies in the present state of development and
11 without being properly validated is not clear cut.
12 There is no doubt, however, that there is a lot of
13 public interest and we are liable to be carried along on
14 the rising tide of the motion. We are in a particular
15 only difficult situation in that DHSS ministers have
16 agreed, however reluctantly, to the introduction of the
17 test. It is most unfortunate that a policy decision on
18 this matter is not made at a UK level, though
19 understandable, given the degree of public and media
20 hysteria."

21 Further down the page, just the first sentence of
22 the penultimate paragraph, Dr Scott says:

23 "in the end I think we shall have to put up a full
24 submissions to Ministers, pointing out the issues as
25 summarised in your minute and the distortion of

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1 all Factor VIII is heat treated -- the situation in
2 England is different. In any case, only a proportion of
3 those with antibodies develop AIDS. I have seen figures
4 ranging from 10% down to one, several hundred."

5 There's some discussion in the next paragraph of
6 the implications of introducing a routine screening test
7 for blood donors. Reference to any test inevitably
8 being imprecise, problems created by false positives,
9 suggestion there may always also be false negatives.

10 The next paragraph, if I can summarise, deals with
11 the potential financial implications of introducing
12 a screening test as they were understood this time. In
13 the middle of this paragraph, Mr Davies said:

14 "I have discussed the problem with Mr Robertson
15 [who is in the finance department], and though the
16 financial angle cannot be ignored, we are both agreed
17 that it should not be the determining factor in this
18 case."

19 In the final paragraph, the first sentence:

20 "It seems to me that the balance of rational
21 argument would be heavily against introducing a test on
22 all donations. I accept, however, that there is little
23 rationality to be seen where AIDS is concerned."

24 So that's the view of Mr Davies in February 1985.

25 I'm going to briefly turn to Dr Scott's response

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1 priorities that will arise, though in the end saying we
2 doubt if they have an option."

3 Sir, one example here, as well as the issues
4 particular to HTLV-III screening, one example of how the
5 relationship between decisions taken by the DHSS and the
6 SHHD may have played out, a suggestion here from
7 Dr Scott that it was going to be necessary for Scotland
8 to follow a decision which had been taken in England and
9 Wales.

10 There's a further response to Mr Davies's minute,
11 which I'm not going to bring up, from Mr Macpherson on
12 11 February 1985. It makes similar points. Accepts
13 a lot of what Mr Davies says and then comments:

14 "... I very much doubt if we can hold this line
15 now that English blood donations are being tested."

16 Comments:

17 "... the pressure on us to follow the English
18 example will be irresistible."

19 The following month, on 21 March 1985, after work
20 by medical administrative officials took place on the
21 preparation of the submission, it goes to the Minister.
22 We'll turn to that now.

23 It's PRSE00004593.

24 Now, the date of this is 21 March 1985. It's from
25 Mr Macpherson in the Department. It's addressed to both

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1 the private secretary, to Mr MacKay, and to the
2 Secretary of State, headed "(AIDS)". It covers two
3 broad issues, the first is notification of AIDS.

4 I'm not going to look at that issue any further.
5 If we go through to the next page, please, to the bottom
6 half of the page, the heading that begins
7 "Blood Transfusion", there's reference to some of the
8 background to this submission in paragraph 6, in
9 particular reference to the Edinburgh patients,
10 reference to the introduction of heat treatment in
11 Scotland.

12 In paragraph 7, some more detail on tests.
13 Mr Macpherson wrote:

14 "Tests are becoming commercially available for the
15 screening of blood donations for the presence of
16 HTLV III antibodies. The first of these tests, from the
17 USA, was marketed in the UK at the beginning of March.
18 DHSS Ministers have agreed in principle that, in
19 England, all blood donations should be screened and that
20 Regional Health Authorities should meet the cost of
21 this."

22 There's then reference to an article that appeared
23 in The Lancet from Professor Cash and others, supporting
24 the introduction of HTLV-III screening, but on the basis
25 that it took place after evaluation of tests before they

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1 financial implications, though again in the middle of
2 paragraph 10 the point is made:

3 "Nevertheless, we should not wish to stand in the
4 way of testing solely on financial grounds."

5 In paragraph 11, a description of what was
6 understood to be a potential problem, which is at-risk
7 individuals presenting themselves to the Blood
8 Transfusion Service in order to have their blood tested
9 and the need to set up alternative testing facilities
10 for such individuals.

11 Then finally in paragraph 12, the conclusion and
12 the recommendation:

13 "No doubt there will be public pressure for
14 routine screening of blood donations once it is known
15 that commercial tests are readily available. However,
16 having regard to:

17 "(a) the limitations of currently available tests;
18 "(b) the disproportionate effect of a high rate of
19 false positive findings; and
20 "(c) the need to provide alternative screening
21 facilities to divert 'at risk' individuals from the
22 Blood Transfusion Service,

23 "we recommend the adoption of a phased policy
24 leading to the routine screening of blood donors, which
25 would take into account a comparative evaluation of the

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1 could be introduced for routine screening of blood.

2 Over the page -- this is a long document, sir, so
3 I'm going to -- so I'm not going to go through all of it
4 here unless that would assist. But what we see in the
5 first few paragraphs of this page, the submission
6 developing first of all by describing the risk as it was
7 understood by officials at the time, some of which
8 reflects the minute from Mr Davies that we saw earlier.
9 Mr Macpherson wrote:

10 "As noted above, all Scottish Factor VIII [in
11 paragraph 8] is heat treated; the risk from ordinary
12 blood transfusions is believed to be very small; as far
13 as is known, in Scotland where 280,000 donations are
14 collected each year, there has only been one infected
15 donation of blood (the one which contaminated the batch
16 Factor VIII); there is other evidence that blood donated
17 in Scotland is 'clean'; and donors are now required
18 before giving blood to sign a statement that they are
19 not in a group at risk of contracting AIDS."

20 In the next paragraph a description of what was
21 understood at this time about the screening tests
22 themselves and some of their drawbacks, in particular
23 the higher rate of false positive rates may be 4%. An
24 unpredictable false negative rate.

25 In the next paragraph, some discussion of the

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1 tests available, the need for ready access to testing
2 facilities outwith the transfusion service and
3 a recognition of the considerable requirement for
4 additional testing, monitoring and counselling of donors
5 with positive tests. We should be glad to go whether
6 Ministers agree that we should proceed in this way."

7 So that was how this issue was put to
8 Scottish Office Ministers on 21 March 1985 and how the
9 evaluation programme was described.

10 At this point, sir, I'm going to try to answer the
11 question that you asked me earlier, which came about in
12 the context of the statement from Alexander Murray.

13 It may be helpful if we quickly go back to that
14 statement, PRSE0002440, then to page 4.

15 Thank you.

16 The sentence:

17 "I believe the Scottish Ministers were told about
18 the evaluation programme at this stage. Mr Macpherson's
19 submission [then a reference given is] refers to this."

20 Now, from the preceding paragraphs of Mr Murray's
21 statement, it looks like he's referring to a period
22 around 21 February 1985. The submission he's referring
23 to here for Mr Macpherson is the one that we just looked
24 at, 21 March 1985. So when Mr Murray referred to
25 Scottish Ministers being "told about the evaluation

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1 programme at this stage", this appears to be referring
2 to the period leading up and to around 21 March 1985, at
3 least some time between 21 February and 21 March.

4 So I hope that assists with the question from this
5 morning.

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

7 **MR BOUKRAA:** Very briefly, the response from Mr MacKay to
8 Mr Macpherson's submission, PRSE0000850.

9 Sir, not the easiest document to decipher
10 immediately. The date of this is 22 March 1985. We get
11 that from about the middle of this page. It refers at
12 the bottom to Mr Macpherson's minute of 21 March, and
13 includes comments from the Minister. He said:

14 "I fully appreciate the logic of this advice,
15 especially the danger that 'at risk' men may use the
16 transfusion service as a screen, and as the test is not
17 absolutely reliable some blood may enter the system
18 which is infected. Whatever we do on the BTS,
19 recommendation 12(c) is essential."

20 Recommendation 12(c) related to the need to
21 introduce alternative testing facilities for at-risk
22 individuals.

23 The Minister added:

24 "Also we do have to keep in line or ahead of
25 England, otherwise we will be subject to very severe

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1 albeit a brief one, was provided to the Minister.

2 We can see that in the following document,
3 SCGV0001146_042.

4 20 June 1985, again from Mr Davies to the Private
5 Secretary to Mr MacKay. We can see from the first
6 paragraph that it's prompted by a recent DHSS press
7 notice in response to an article:

8 "Mr MacKay will wish to see the attached DHSS
9 Press Notice. It was issued yesterday in order to
10 refute a report in the Guardian that one particular test
11 [for HTLV-III screening] had already been chosen and was
12 about to introduced."

13 And in the second paragraph:

14 "The SNBTS are taking steps to ensure that the
15 test will be introduced in Scotland as quickly as
16 possible, once the evaluations have been completed and
17 facilities for suitable confirmatory tested are
18 available. We are not convinced that the DHSS timetable
19 is achievable, but the intention is that routine testing
20 should start at the same time throughout the
21 United Kingdom."

22 Now, I don't need to go to the press notice but,
23 as a summary, on the timetable, what it says in the
24 press notice is that the DHSS hopes to introduce routine
25 screening in four to five months' time.

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1 criticism."

2 Sir, I note the time. We're getting close to
3 one o'clock and we started a bit earlier than we might
4 otherwise have. I have a relatively small amount left
5 on HTLV-III screening and I'm hoping to speed up
6 a little bit as I move through the remaining topics
7 I hope to cover today. Would it perhaps be a convenient
8 moment for a break now, and we can pick up the end of
9 HTLV-III screening after the break? There are --

10 **SIR BRIAN LANGSTAFF:** Roughly how much more have you got to
11 do on HTLV screening? Roughly.

12 **MR BOUKRAA:** Roughly, I would say about ten minutes or so,
13 I'd hope.

14 **SIR BRIAN LANGSTAFF:** Right, okay. Let's do that at 2.00,
15 shall we?

16 **MR BOUKRAA:** Thank you, sir.

17 **SIR BRIAN LANGSTAFF:** So 2.00.

18 (12.58 pm)

(The Luncheon Adjournment)

20 (2.00 pm)

21 **SIR BRIAN LANGSTAFF:** Yes?

22 **MR BOUKRAA:** Sir, the last document we looked at on the
23 introduction of HTLV-III screening was from March 1985
24 and it was that ministerial submission. I'm going to
25 move forward to late June 1985, when a further update,

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1 So that will take us to about October/November.

2 And that's what Mr Davies appears to be suggesting might
3 not be achievable, and then the final important point to
4 pick up from this document is:

5 "... the intention ... that routine testing should
6 start at the same time throughout the United Kingdom."

7 The following months show that SNBTS and SHHD
8 officials began discussing and referring to an
9 anticipated start date for screening of October 1985.
10 There are also further repeated references in the
11 documents to the simultaneous introduction of screening
12 throughout the United Kingdom.

13 In terms of ministerial involvement, and to round
14 off the picture on this topic, I'm going to move forward
15 to 20 September 1985 with one more document,
16 PRSE0001516.

17 This a further submission to the Minister copied
18 to the Secretary of State. It's dated 20 September 1985
19 and it comes from Mr Liddle. It addresses a number of
20 different topics related to AIDS. The one which is of
21 interest to us is over the page under the heading
22 "Blood Tests", paragraph 6. I'm not going to go through
23 the whole of this paragraph. I'd highlight the first
24 sentence in particular. It says:

25 "Since AIDS can be transmitted through transfusion

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1 of blood or blood products from an infected donor,
 2 arrangements have been made to screen all blood
 3 donations as from mid October."
 4 There is then mention of alternative testing
 5 facilities, confirmatory testing facilities, and
 6 funding, and then the final sentence in this paragraph:
 7 "The commercially available test kits for the
 8 detection of HTLV-III antibody have been evaluated by
 9 a panel of experts from the Public Health Laboratory
 10 Service on behalf of the DHSS and we have made a summary
 11 of the results available to Health Boards."
 12 Now, that would appear to be the key documents
 13 during the course of 1985 that seek to involve ministers
 14 in these decisions and to inform them both that an
 15 evaluation programme were to take place, the anticipated
 16 timing of the introduction of HTLV-III screening, and
 17 that it was intended for screening to be introduced
 18 throughout the United Kingdom simultaneously.
 19 Now, a press release was subsequently issued on
 20 the introduction of screening from mid-October 1985.
 21 We've summarised its contents in the written note.
 22 A bit faster than ten minutes in the end sir, but
 23 that was all I intend to cover on the HTLV-III
 24 screening, and I am going to move on to a new topic now,
 25 which is the Department's knowledge of and response to

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1 viruses were perhaps being introduced through the use of
 2 commercial blood products, namely Factor VIII and
 3 Factor IX."
 4 So linking non-A, non-B hepatitis to factor
 5 concentrates.
 6 The minutes add that:
 7 "Members agree that the hazard from
 8 non-A, non-B hepatitis should now be recognised and
 9 brought to the attention of the appropriate departmental
 10 bodies responsible for control of hepatitis."
 11 The following year, 1981, another meeting
 12 highlighted in the written note which took place on
 13 25 June 1981, there was a meeting of the MRC's Blood
 14 Transfusion Research Committee attended by Dr Bell.
 15 During that meeting, Dr Gunson described the work of the
 16 Working Party on Post-transfusion Hepatitis.
 17 The minutes record that Dr Gunson reported that
 18 reach was being carried out into identifying the agents
 19 of non-A, non-B hepatitis, that that was complex
 20 research. And perhaps significantly, Dr Gunson noted
 21 during that meeting that:
 22 "... large-pool blood products were especially
 23 likely to cause liver damage in haemophiliacs."
 24 One more document from the first half of the 1980s
 25 that I would highlight is from 23 May 1984. It's from

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1 the risk of non-A, non-B hepatitis, and hepatitis C.
 2 Now, the Inquiry has previously heard
 3 a significant amount of evidence on these areas,
 4 particularly on surrogate screening, that includes the
 5 evidence of Dr McClelland, it also includes the evidence
 6 of witnesses like Mr Macniven. I am not going to cover
 7 surrogate screening in a great deal of detail. I'm
 8 going to attempt to highlight in particular documents
 9 that relate to the Department's understanding of the
 10 risks posed by non-A, non-B hepatitis, dividing the
 11 period up roughly to pre-1986 and post-1986.
 12 I start with pre-1986.
 13 Relatively little evidence is available in the
 14 documents on the Department's understanding of non-A,
 15 non-B hepatitis before that period, about the mid-1980s.
 16 Most of the available documents relate to officials
 17 attending meetings or working groups.
 18 One example that we've highlighted in the note is
 19 from 6 March 1980. It's a meeting of the reconvened
 20 advisory group on hepatitis B testing, that meeting was
 21 attended by Dr Bell. During the course of it there was
 22 reference made to work by the Medical Research Council
 23 on non-A, non-B hepatitis. The minutes record that:
 24 "Members were concerned about the incidence of
 25 non-A, non-B hepatitis and the possibility that new

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1 Dr Bell to Mr Murray, so an internal departmental
 2 document. It's about funding for heat treatment of
 3 Factor VIII at PFC, and it will probably be easiest if
 4 I bring it up.
 5 It's PRSE0004029.
 6 As we can see, it's a minute from Dr Bell to
 7 Mr Murray, May 1984, and if we go into the second
 8 paragraph, which is in the context of an application for
 9 funding for heat treatment, Dr Bell said:
 10 "At present nearly all 'virgin' (newly-treated)
 11 haemophiliacs become infected with
 12 non-A, non-B hepatitis, though not usually of dramatic
 13 severity. About 40% show evidence of infection by
 14 hepatitis B. The longer term effects of such infection
 15 in haemophiliacs is not known with certainty because
 16 until relatively recent years haemophiliacs had little
 17 prospect of living into middle or old age. However
 18 a significant proportion of 'normal' patients infected
 19 with hepatitis B go on to suffer severe liver impairment
 20 which, apart from the personal aspect, makes significant
 21 demands on health care resources."
 22 Now, that's referring both to impact from
 23 hepatitis B and non-A, non-B hepatitis. I flag it as
 24 one of the documents we have, which are relatively few,
 25 providing insight into the Department's understanding of

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1 non-A, non-B hepatitis in the first half of the 1980s.
 2 From around late 1985, the evidence we have
 3 relating to this issue becomes closely linked to the
 4 question of whether or not surrogate screening for
 5 non-A, non-B hepatitis and surrogate screening of blood
 6 donors should be introduced in Scotland.
 7 We're finished with that document, thanks.
 8 The official at the Department who seems to have
 9 been most involved with this topic was Dr Forrester.
 10 Dr Forrester replaced Dr Bell in 1985.
 11 In March 1986, Dr Forrester attended an
 12 SNBTS directors meeting at which this issue, the
 13 possibility of surrogate screening for non-A,
 14 non-B hepatitis, was discussed. He prepared a note of
 15 the meeting for his departmental colleagues, sent it to
 16 Dr McIntyre and Dr Scott shortly afterwards.
 17 I should say that Dr Forrester's notes of
 18 meetings, such as this one of SNBTS directors, often
 19 provide useful insight into his thinking around this
 20 issue in the years that we're looking at. I won't go
 21 into the document, this one, but I'm going to go to some
 22 later ones.
 23 In this one, which is from March 1986,
 24 Dr Forrester described non-A, non-B hepatitis as
 25 a medley of conditions.

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1 in 1985. It related to research into non-A, non-B
 2 hepatitis in the West of Scotland under the supervision
 3 of Dr Mitchell and Dr Follett, and Dr Forrester obtained
 4 a copy of that thesis.
 5 We can see how it informs Dr Forrester's
 6 understanding of non-A, non-B hepatitis in a document
 7 from June 1986. I'm going to go to that now.
 8 It's PRSE0000857.
 9 Now, this document is dated 12 June 1986. It's
 10 a note prepared by Dr Forrester titled:
 11 "Transmission of non-A, non-B hepatitis by blood
 12 and blood products: is it practicable to reduce or
 13 prevent it by introducing ALT testing of donations?"
 14 ALT testing of donations, I'm sure that everyone
 15 who has followed the Inquiry will be familiar with, is
 16 one of the methods by which you carry out the surrogate
 17 screening for non-A, non-B hepatitis.
 18 Now, in the first paragraph Dr Forrester recorded.
 19 "1. The information in this note is mostly
 20 derived from the PhD thesis entitled:
 21 'Non-A, non-B Hepatitis in the West Scotland', completed
 22 in 1985 by Dr BC Dow under the supervision of Dr Follett
 23 and others."
 24 If we look at paragraph 4, we can see
 25 Dr Forrester's description of non-A, non-B hepatitis.

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1 He wrote that:
 2 "... any additional test [like surrogate
 3 screening] ... must necessarily be non-specific and
 4 could well prove expensive ..."
 5 He said that he'd made further enquiries and
 6 discovered that the number of cases of non-A,
 7 non-B hepatitis due to blood transfusion in Scotland was
 8 probably exceedingly low.
 9 He referred to a PhD thesis, and we'll come on in
 10 a moment to which thesis that was.
 11 He also reported that it had been argued by
 12 directors at the meeting that urgent action was required
 13 with respect to surrogate screening for non-A,
 14 non-B hepatitis, and that the case was comparable with
 15 that of AIDS.
 16 Dr Forrester said that he challenged this
 17 comparison on the basis that the steps taken to deal
 18 with AIDS were taken in a face of a rapidly rising
 19 incidence whereas the incidence of non-A,
 20 non-B hepatitis as far as he knew, was small and steady.
 21 He said there was no justification for panic measures
 22 and that there might be a justification for research,
 23 rather than what he described as panic measures.
 24 Now, the thesis referred to by Dr Forrester was by
 25 Dr Dow, and was earned at the University of Glasgow

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1 He says:
 2 "... it is not uncommon in the population ..."
 3 The suggestion of an incidence in Scotland of 184
 4 cases per year, but a suggestion that might not be
 5 a reliable figure.
 6 "It is common among drug-abusers."
 7 And then:
 8 "But in association with blood transfusion it is
 9 very uncommon in the west of Scotland. Over the last
 10 8 years, 1-5 cases are found each year there, and there
 11 is no upward trend. There are peculiar difficulties in
 12 identifying its presence in haemophiliacs since their
 13 blood exhibits diverse reactions because of repeated
 14 administration of blood products, but Dr Dow found no
 15 evidence of any substantial problem. Dr Dow reckons that
 16 the proportion of donations infected with
 17 non-A, non-B hepatitis may be 18 per hundred thousand."
 18 He goes on to discuss the merits of surrogate
 19 screening before concluding in the last paragraph that
 20 Dr Dan Reid and Dr Follett do not recommend the
 21 introduction of ALT testing of Scottish blood donations,
 22 for reasons he describes in the note.
 23 Now, over the months that followed and during
 24 further meetings attended by departmental officials,
 25 there appears to have been an increasing emphasis on the

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1 need to carry out further research before additional
2 consideration could be given to whether or not to
3 introduce surrogate screening.

4 This issue was also considered in Scotland
5 alongside consideration elsewhere, for example, in the
6 reconvened UK Working Party on Transfusion Associated
7 Hepatitis.

8 We can see Dr Forrester referring to some of these
9 issues in January 1987 at PRSE0001376.

10 Now, this is dated 26 January 1987. We can see at
11 the top its title, "Material for PMO Report".

12 This morning I described one of the means by which
13 Dr Macdonald said that the CMO and DCMO were kept up to
14 date with what was happening amongst medical officials
15 in the Department, described monthly PMO reports. We
16 don't have those reports but this looks like
17 a contribution to one such report prepared by
18 Dr Forrester.

19 If we go down to the second half of this document,
20 at paragraph 2:

21 "Blood transfusion and non-A, non-B Hepatitis
22 (Dr Forrester)"

23 This is how he describes the condition:

24 "This 'hepatitis' is a residual rag-bag when
25 Hepatitis B and Hepatitis A are excluded, and

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1 January 1987.

2 In March 1987, on 3 March of that year, a meeting
3 of SNBTS directors took place. It was attended by
4 Dr Forrester. The minutes of that meeting record that
5 the directors, following a discussion, decided to
6 recommend to the SHHD that non-A, non-B surrogate
7 screening should be introduced in Scotland. I won't go
8 to the minutes today but what they record is the
9 following recommendation:

10 "To recommend to the SHHD that surrogate testing
11 for [non-A, non-B] should be implemented with effect
12 from 1 April 1988 as a national development requiring
13 strictly new funding."

14 That was a meeting attended by Dr Forrester.

15 Dr McIntyre picked up on this recommendation in
16 a minute to departmental colleagues on 6 April 1987.
17 I won't go to the document but he summarises the
18 background. Dr McIntyre wrote that in the USA:

19 "... largely one suspects because of the fear of
20 litigation, there has been a great deal of pressure to
21 introduce this indirect screening for
22 'Non-A, Non-B Hepatitis' ... we understand this is
23 likely to happen soon. A similar situation is said to
24 exist in Germany."

25 He added that the directors of the SNBTS were

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1 consequently no specific test can detect it. It is
2 relatively benign. But US blood banks have noted that
3 the combination of a liver function test and a test for
4 the core (not the surface) antigen of Hepatitis B
5 distinguishes perhaps a third blood donations which
6 would convey non-A, non-B 'Hepatitis' and allows them to
7 be excluded. Exclusion is far from complete, and
8 besides, some 2% of 'innocent' donations may also be
9 excluded.

10 "Nevertheless, US blood banks are evidently about
11 to adopt this pair of tests and shoulder the expense.

12 Here, it is intended instead to enquire into the number
13 of relevant donations and the characteristics of the
14 donor, before taking any further step."

15 So now no doubt you may wish to consider and hear
16 submissions on the characterisation of non-A, non-B
17 hepatitis that we see in this document in particular,
18 the suggestion that it's relatively benign and how that
19 falls to be considered alongside all of the other
20 evidence the Inquiry has heard about non-A,
21 non-B hepatitis.

22 The final sentence I've highlighted here picks up
23 the view that further research needed to be undertaken
24 before any decisions could be made about the
25 introduction of surrogate screening. So that's

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1 "unanimous" and that they were "pressing fairly
2 strongly" that this screening should be instituted in
3 Scotland, while adding that the directors were:

4 "... perfectly aware that it would be costly and
5 could not abolish transmission completely, they could
6 then claim to have taken all steps open to them to
7 reduce transmission. Before embarking on such an
8 expensive programme it would seem logical to participate
9 in the proposed research [that was discussed elsewhere
10 in the document] and to delay any further action until
11 the results of this were known."

12 What we see around this time, and later into 1987
13 is some uncertainty around Scottish participation in
14 a proposed UK study of non-A, non-B hepatitis. As well
15 as a concern in the Department that the SNBTS directors
16 might simply begin surrogate screening without direct
17 SHHD authorisation.

18 We move into 1988. By this point little progress
19 seems to have been made on the introduction of surrogate
20 screening, or on decisions about the introduction of
21 surrogate screening. Despite some of those departmental
22 fears, SNBTS directors did not in fact introduce
23 screening unilaterally.

24 By the time that we get to a 12 April 1988 meeting
25 of SNBTS directors, attended by Dr Forrester, there was

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1 a suggestion that directors were already undertaking
 2 their own research on this issue leaving open the
 3 possibility that they might introduce surrogate
 4 screening in the future, and the minutes include the
 5 following, and this passage is particularly relevant to
 6 the relationship between decisions in Scotland and
 7 decisions in the rest of the UK:
 8 "... it was confirmed that it had been agreed not
 9 to introduce ALT testing in Scotland until it had become
 10 UK policy, but Directors wished to reserve their
 11 position on this matter in the light of reports at the
 12 commencement of ALT testing in at least one [England and
 13 Wales] RTC."
 14 Now, by the time we get to later in 1988, the
 15 question of whether to introduce surrogate screening for
 16 non-A, non-B hepatitis in Scotland became interlinked
 17 with and was eventually overtaken by developments
 18 related to the discovery of the hepatitis C virus, and
 19 I'm going to turn to that issue now.
 20 That was a fairly quick move through, sir, the
 21 evidence that we have relating to
 22 non-A, non-B hepatitis. There is, as ever, more detail
 23 contained in the written note.
 24 Now hepatitis C screening.
 25 The chronology and our understanding of this

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1 Now, as hepatitis C screening was considered by
 2 officials in the Department from early 1989, one of the
 3 issues that emerges is the relationship between
 4 a decision to be taken in Scotland on both the principle
 5 and timing of the introduction of screening, and
 6 decisions taken elsewhere in the UK. What we see in the
 7 documents from 1989 are a number of references to
 8 a UK-wide approach to the introduction of screening.
 9 One example of that sort of reference is in an
 10 August 1989 letter from Dr McIntyre to Professor Cash,
 11 which made reference to the work of the ACVSB, and in
 12 which Dr McIntyre wrote:
 13 "If it is considered desirable to introduce
 14 a further routine screening test for blood donors [ie,
 15 the screening test] I understand that this will be done
 16 simultaneously throughout the UK -- as was done in the
 17 case of the current HIV test."
 18 I note that at this stage, that policy decision,
 19 if it can be described in that way, didn't yet seem to
 20 have been put to ministers in the Scottish Office.
 21 I can turn to what seems to be the first time that
 22 officials bring this issue to the attention of ministers
 23 in the Scottish Office, in the summer of 1989.
 24 It's the document at PRSE0000558.
 25 Now, this is a minute prepared by Mr Tucker, who

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1 section might conveniently be thought of to begin with
 2 the announcement in May 1988 that the Chiron Corporation
 3 in the USA had discovered the non-A, non-B hepatitis
 4 virus, which of course became known as hepatitis C.
 5 It appears that departmental officials became
 6 aware of this discovery by at least June 1988 through
 7 their attendance at meetings of SNBTS directors.
 8 Soon thereafter an important development in this
 9 chronology is the creation around late 1988 and early
 10 1989 of two Advisory Committees which worked at
 11 UK level: the Advisory Committee on the Virological
 12 Safety of Blood, ACVSB, and the Advisory Committee on
 13 Transfusion Transmitted Diseases, ACTTD.
 14 Both of those committees played an important role
 15 in considering the introduction of hepatitis C
 16 screening. The written note makes brief reference to
 17 their creation. Their deliberations have been
 18 considered previously by the Inquiry. I'm only going to
 19 refer very briefly to the outcome of some of their
 20 meetings.
 21 A point to note for our purpose is that
 22 departmental officials attended meetings of the ACVSB as
 23 observers. It was usually Dr McIntyre who attended
 24 those meetings in this period. Officials don't seem to
 25 have attended meetings of the ACTTD.

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1 replaced Mr Macniven as Assistant Secretary in the HHD,
 2 directed to Mr Forsyth, the Private Secretary to
 3 Mr Forsyth. We can see what's prompted this document in
 4 the first paragraph.
 5 "This note is to advise the Minister about an
 6 article in today's Guardian [attached is a copy] ...
 7 which seems likely to prompt other media enquiries."
 8 I note at this stage in parentheses, earlier on
 9 this morning we looked at Mr Murray's description of
 10 some of the factors or circumstances which might lead to
 11 ministers being updated or informed of developments, he
 12 included media interest or media articles, and this
 13 seems to be an example of that happening.
 14 Now, Mr Tucker set out the background to this
 15 issue in the first few paragraphs. I'm not going to go
 16 through all of that now. I'm going to pick up in
 17 paragraph 4 his description of the effect of infection
 18 with hepatitis C.
 19 "Only a minority of those infected with HPC
 20 [ie hepatitis C] display any symptoms either in the
 21 short or long term ..."
 22 It suggests that the way this point had been
 23 described in The Guardian article was unnecessarily
 24 alarmist.
 25 Over the page, there's reference to the work of

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1 the ACVSB. In paragraph 7 Mr Tucker wrote that:
 2 "The accuracy of the test for hepatitis C has not
 3 been fully established ..."
 4 Describes further work which was considered to be
 5 essential to be undertaken. And then finally, the line
 6 to take.
 7 "If asked to comment it is suggested that the
 8 Minister uses the following:
 9 "(a) Donors should not be deterred from giving
 10 blood."
 11 It highlights entry (d):
 12 "The prevalence of HPC in the population in this
 13 country has not been established, nor has the role of
 14 blood in its transmission."
 15 Finally:
 16 "This is a UK issue and D of H [Department of
 17 Health] will be taking the lead but SHHD and SNBTS will
 18 be represented in any meeting and the Minister will be
 19 consulted before any decisions are taken."
 20 Now, over subsequent months the introduction of
 21 hepatitis C screening was considered at meetings of
 22 those two committees I mentioned earlier, ACVSB and
 23 ACTTD. The Department was kept informed of their
 24 deliberations, in particular from Dr McIntyre's
 25 attendance that the ACVSB meetings.

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1 of framing bids for [the budget]. (Eg the prospect of
 2 a two year settlement for pay of ambulance staff and the
 3 introduction of routine blood testing for Hepatitis C
 4 which is expected to become unavoidable following expert
 5 advice that such testing should be introduced in order
 6 to prevent the risk of future claims against the
 7 Government similar to those now pending in respect of
 8 haemophiliacs with HIV.)"
 9 So that's February 1990. I'm going to move
 10 forward to mid-1990, when officials in the Department
 11 became aware that the FDA had approved hepatitis C
 12 testing, had granted a licence for a screening test.
 13 In response to that, a meeting of the ACVSB was
 14 brought forward. We can get some insight into
 15 Dr McIntyre's view of that development in this document.
 16 It's PRSE0003099.
 17 So this is a 6 June 1990 minute from Dr McIntyre
 18 to Dr Young, copied to colleagues in the Department,
 19 including Mr Tucker, headed "Hepatitis C Testing".
 20 If we zoom in on the first half of the page,
 21 Dr McIntyre reported:
 22 "Things are moving very fast on the Hepatitis C
 23 front. The FDA have now approved the Hepatitis C
 24 antibody test. Until this approval was given in the
 25 country in which the test originated the Advisory

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1 I've highlighted one of those meetings, it's
 2 referred to in the note, on 17 January 1990 when the
 3 minutes of the ACVSB record a general consensus that
 4 routine testing should not be introduced in advance of
 5 an FDA decision on whether to licence this particular
 6 hepatitis C screening test. It was suggested that
 7 scientifically not enough is known yet about the
 8 screening test to justify its introduction.
 9 One more document involving ministers from around
 10 this time, SCGV0000230_145.
 11 Now, this is from 1 February 1990. It's a minute
 12 to the Private Secretary to Mr Forsyth, copied to the
 13 Secretary of State. As will be apparent from the title
 14 it is primarily concerned with a different issue which
 15 we'll come back to later. If you go over -- sorry, not
 16 over the page, to the bottom of this page, please.
 17 There's discussion of challenges from a budgetary
 18 perspective facing the Department and, in that context,
 19 brief reference to the possible introduction of
 20 hepatitis C screening:
 21 "All budgets are likely to be very tight next
 22 year ..."
 23 The CSA budget was described as:
 24 "... likely to come under severe pressure from
 25 a number of sources which were not foreseen at the time

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1 Committee on the Virological Safety of Blood was
 2 reluctant to recommend its introduction in the
 3 United Kingdom. It was agreed at the last meeting that
 4 there should be a study to investigate the significance
 5 of positive finding using the ELISA Hepatitis C antibody
 6 screening tests followed up with an extended study of
 7 RIBA and PCR techniques."
 8 We then can see the paragraph towards the bottom
 9 of this current view:
 10 "I am in little doubt that for a variety of
 11 reasons, many of them non-scientific, it will be decided
 12 that there is no alternative but to recommend the
 13 introduction of the test."
 14 If we go down to the bottom of this page,
 15 Mr Tucker -- sorry, not Mr Tucker, Dr McIntyre wrote:
 16 "As you will remember one of the problems in the
 17 litigation in relation to HIV infection of haemophiliacs
 18 is whether or not the HIV testing was introduced as
 19 early as was possible. Although Hepatitis C is not such
 20 a fatal condition as HIV infection litigation would be
 21 possible if a patient was subsequently to determine that
 22 he had been transfused with Hepatitis C positive
 23 blood -- or blood which had not been tested for
 24 Hepatitis C antibodies. It is of course well known that
 25 there are many patients who suffer from Hepatitis C who

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1 never have blood transfusions. The whole issue is
 2 something of a minefield."
 3 Now, the ACVSB meeting which was brought forward
 4 in response to the FDA announcement took place on
 5 2 July 1990. It was attended by Dr McIntyre. As will
 6 be familiar to the Inquiry, it was recommended, or
 7 rather it was agreed at that meeting to recommend
 8 hepatitis C screening to ministers after a pilot study
 9 to determine whether one of two tests, the Ortho or the
 10 Abbott test, was most suitable for use in Regional
 11 Transfusion Centres, and the estimated timescale for
 12 study was around four months. That's July 1990.

13 If we move forward to November 1990, Dr McIntyre
 14 attends another meeting of the ACVSB. He prepares
 15 a note of the meeting and circulates it to colleagues in
 16 the Department. In that note there's some discussion of
 17 possible start dates for hepatitis C screening.

18 Dr McIntyre's note of the meeting recorded that
 19 some attendees wanted testing to start forthwith, while
 20 the Chair of the Committee was said to have suggested
 21 that 1 April 1991 might be more realistic.

22 Dr McIntyre also suggested that the Department
 23 should wait to receive a draft submission being prepared
 24 by the Department of Health. So we see in that
 25 November 1990 note, reference to a possible start date,

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1 It seems that around late February 1991, following
 2 an ACVSB meeting, officials in the Department came to
 3 understand that the likely start date for screening was
 4 being pushed back from 1 April to 1 July 1991.

5 It appears that by late March, they became aware
 6 of a suggestion that that 1 July date might be pushed
 7 back again. We can see an example of that in a letter
 8 from Professor Cash, which is at PRSE0003692, dated
 9 27 March 1991. It's a letter from Professor Cash to
 10 Mr McIntosh, who I understand was a general manager of
 11 the SNBTS at the time.

12 If we go over the page we can see the letter was
 13 copied to Dr McIntyre in the Department.

14 Professor Cash wrote, and if we can go back to
 15 page 1, please:

16 "You will want to know that our NBTS colleagues
 17 are struggling, on a number of accounts, to meet the
 18 1st July deadline, as previously discussed and I thought
 19 agreed. We believe the fundamental problem is one of
 20 financial resourcing.

21 "At a meeting of the UK BTS Advisory Committee on
 22 Transfusion Transmitted Diseases in Manchester [the
 23 previous Monday], the following was agreed:

24 "(a) Harold Gunson would advise DoH that the
 25 1st July start date should be delayed until such time as

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1 1 April 1991.

2 Now, the DoH submission was finalised and put to
 3 ministers in England and Wales on 21 December 1990. It
 4 was copied to the SHHD. That submission recommended the
 5 introduction of hepatitis C screening. It recorded that
 6 other UK Health Ministers were being asked to approve
 7 the introduction of screening in their transfusion
 8 services. So that's December 1990. As we'll see, and
 9 this is to jump ahead, the submission which went to
 10 ministers in Scotland on this particular issue, and
 11 addressing it directly, didn't go in until July 1991.

12 So December 1990 the DoH submission is made. The
 13 departmental officials in Scotland had become aware
 14 of it by January 1991. They also became aware that
 15 ministers in the Department of Health had given their
 16 approval to the introduction of hepatitis C screening.
 17 Officials in Scotland then began considering
 18 a submission to their own ministers.

19 As I've said, that submission was not
 20 eventually -- was not put in until July 1991. What we
 21 see over the months between January 1991 and July 1991
 22 is what appears to be an awareness amongst officials in
 23 the Department of the start date, the proposed start
 24 date, for routine screening of hepatitis C being pushed
 25 back.

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1 an evaluation of the new generation of HCV screening
 2 tests had been completed. If this is accepted it could
 3 push a start date to September."

4 Some more material, I know, sir, related to these
 5 developments and the introduction of new second
 6 generation screening tests will have been considered by
 7 the Inquiry previously. We can see here the officials
 8 in the HHD becoming aware -- being made aware of these
 9 developments. I'm also going to try to decipher, in the
 10 top right-hand corner, a manuscript note, which seems to
 11 be between two officials in the HHD. I believe it's
 12 from Mr Panton to Mr Hogg, dated 2 April 1991.

13 "This is worrying. [Please] speak to DoH. We
 14 can't go to the Minister until we know the start date".

15 Now, a number of other documents which are
 16 summarised in the written note suggest that officials in
 17 the Department continue to monitor the position in the
 18 Department of Health and developments in the ACVSB over
 19 subsequent months. It became apparent that the start
 20 date was in fact pushed back to 1 September 1991.

21 Now, the extent to which officials in the
 22 Department considered proposing an earlier start date to
 23 Scottish ministers is unclear from the available
 24 documents. We have some evidence, some of which I've
 25 just pointed to, of officials becoming aware of

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1 proposals and an agreement to push the start date back.
 2 What we don't seem to have clearly from the
 3 documents is the extent of any thinking about whether
 4 officials should go to ministers in Scotland to say,
 5 "The start dates have been pushed back, would you like
 6 to make a decision about whether to introduce screening
 7 earlier in Scotland than the rest of the UK?"

8 We, in fact, have couple of documents from
 9 July 1991 which suggest that Dr McIntyre thought it
 10 might be possible that the start date would be pushed
 11 back further from September 1991. We can see that in
 12 a letter that Dr McIntyre wrote to Dr Metters to his,
 13 I believe, DCMO in the Department of Health. The letter
 14 was prompted by an article that had been published in
 15 the British Medical Journal about sexual transmission of
 16 hepatitis C. Dr McIntyre explained in the letter that
 17 he thought that might lead to difficulties around
 18 counselling of patients who tested positive for
 19 hepatitis C, enquired whether that might have an effect
 20 on the September start date and whether it might be
 21 pushed back.

22 I'm going to look at Dr Metters' response to that
 23 letter. It's at PRSE0001103, so 11 July 1991, from
 24 Dr Metters to Dr McIntyre.

25 I only need to summarise very briefly the contents
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1 2 September 1991 to announce the introduction of
 2 hepatitis C screening in Scotland.

3 Now, again, sir, I've moved fairly quickly through
 4 that material. As ever, there's more in the written
 5 note. That all I intend to say for the moment about the
 6 introduction of hepatitis C screening in Scotland.

7 The next topic which comes up for those following
 8 using the written note is prisons. It's a very short
 9 section. There's not a great deal in there. I'm going
 10 to suggest that those who are interested in reading more
 11 about that topic look at the written note and I'm going
 12 to move to a final set of issues/topic for today:
 13 compensation, litigation, and financial support.

14 Now, I can pick up the chronology on these issues
 15 in early 1987, when the Department became aware of calls
 16 for the Government to compensate haemophilia patients
 17 who had been infected with HIV blood products.

18 The documents suggest that at this stage,
 19 early 1987, officials in the Department were emphasising
 20 the importance of following, at the very least having
 21 regard to the DHSS position, following it closely.

22 I'm going to go to a document which shows how
 23 officials put this issue to ministers in early 1987.

24 It's SCGV0000229_232.

25 Sorry, sir, if I could just have one moment to get
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1 of the letter in essence towards the bottom of the page.
 2 Dr Metters says that it was thought unlikely that this
 3 recent article that had been published would have an
 4 impact on the September 1991 start date. But if we go
 5 up the page to the manuscript notes which seem to be
 6 between officials in the Department, it says:

7 "We can now proceed with the Hep C submission. We
 8 must get it up this week before Recess."

9 So it appears to suggest a belief that it was
 10 necessary to get an answer to Dr McIntyre's letter
 11 before finalising and putting a submission to ministers
 12 in Scotland.

13 Now, that submission was finalised and put to
 14 Mr Forsyth, as he then was, on 24 July 1991. I'm not
 15 going to go to it. It was considered in Lord Forsyth's
 16 evidence.

17 The URN for those who would wish to have it to
 18 hand is PRSE0004608.

19 That submission recommended that hepatitis C
 20 testing of blood donations be introduced in Scotland
 21 from 1 September 1991, after setting out some of the
 22 arguments for and against screening.

23 Lord Forsyth accepted that recommendation, asked
 24 that a press release be prepared to announce it. That
 25 press release was issued by the Scottish Office on
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1 the document in my notes.

2 **(Pause)**

3 Sir, we can see the document is dated
 4 9 February 1987. It is addressed from Mr Lugton to the
 5 Minister of State. At this time that Minister was
 6 Lord Glenarthur. The minute describes correspondence
 7 which had been received as part of a campaign to obtain
 8 compensation for haemophiliacs infected with the AIDS
 9 virus via contaminated Factor VIII.

10 In paragraph 2 I pick up the way in which that
 11 infection is described: from supplies which were
 12 unwittingly provided before treatment was introduced to
 13 minimise the risk of Factor VIII containing the AIDS
 14 virus.

15 Mr Lugton goes on to explain the reasons behind
 16 the Government position at the time, which was not to
 17 accept calls for such compensation. We can see that at
 18 the end of paragraph 3 where he says:

19 "Before compensation to haemophiliacs could be
 20 seriously considered, therefore, it would have to be
 21 clearly established that they were a unique group who
 22 could be clearly distinguished from any other victims of
 23 drug mishaps or other medical accidents."

24 It made some reference to a Pearson report of 1978
 25 on no-fault compensation, and at paragraph 6 it says:
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1 "Against this background, we consider that the
2 Minister's replies should not hold out any hope of
3 a change of the Government's policy on this matter ..."

4 It also makes reference to responses which had
5 been sent by Lady Trumpington in the Department of
6 Health.

7 Now, the written note describes Lord Glenarthur's
8 response to this minute in which he asks for some
9 changes to be made to the draft replies which had been
10 prepared to these letters while, it seems, not
11 challenging the substantive policy decision which was to
12 refuse calls for compensation.

13 I'm going to move forward to autumn 1987, by which
14 time Lord Forsyth had replaced Lord Glenarthur as the
15 Minister in the Department with responsibility for
16 Health.

17 What we see in the documents is the SHHD position
18 being maintained, refusing calls for compensation with
19 officials in the Department monitoring developments at
20 the DHSS.

21 As will be familiar to the Inquiry, the position
22 changed, at least to some extent, in November 1987, when
23 there was no acceptance that compensation was
24 appropriate, but a UK Government decision was taken to
25 make an ex gratia payment to haemophilia patients and

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1 effectively, November 1989, Scottish Office officials
2 and ministers learn that this decision had been taken.

3 There then followed discussion within the HHD and
4 with the Department of Health about whether the
5 Scottish Office should be required to contribute to the
6 funding of this additional payment, particularly given
7 that the Department hadn't been consulted at all, before
8 the decision was taken and announced, if it should be
9 asked to contribute, how much of the funding should it
10 be asked to provide.

11 It was eventually agreed that the Scottish Office
12 should contribute, and that it should do so on the basis
13 of the proportion of haemophilia patients infected with
14 HIV from blood products who lived in Scotland.

15 Now, that agreement to contribute to this funding
16 was obtained by officials in the Department from
17 Lord Forsyth in early February 1990, following
18 a submission which was put to the minister setting out
19 the background to the announcement, setting out the
20 discussions which had followed it about the Scottish
21 Office's contribution or potential contribution to the
22 funding, and we can see that Lord Forsyth accepted that
23 the Department should contribute to this additional
24 payment.

25 I'm moving on now, sir, to the HIV Litigation.

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1 their families who had been infected with HIV.

2 Now, that decision was considered at a meeting of
3 the Subcommittee on AIDS of the Home and Social Affairs
4 Committee, H(A) Committee, on 10 November 1987, worth
5 noting that that was a meeting and a committee attended
6 by Malcolm Rifkind, who was at that time Secretary of
7 State for Scotland. So Mr Rifkind, as Secretary of
8 State for Scotland, was involved in the discussions and
9 the decision-making process that led to the announcement
10 of the ex gratia payment in November 1987.

11 The documents suggest that in early 1988, the
12 course of 1988, after this announcement was made,
13 officials in the Department had relatively little
14 involvement in the setting up of the Macfarlane Trust
15 which was to administer this ex gratia payment. That's
16 1988.

17 We're going to jump forward again to
18 November 1989, the reasons I'm jumping forward will
19 I hope become apparent. In November 1989,
20 Kenneth Clarke, the Minister in England and Wales,
21 announced that an additional ex gratia payment to the
22 Macfarlane Trust would be made. Part of the reason for
23 jumping forward in the way that I did is that decision
24 seems to have been taken without any consultation or
25 discussions with officials in the Scottish Office so,

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1 Moving back slightly in time from November 1989,
2 when the additional ex gratia payment was announced, to
3 1988, and the documents show that claims in the
4 HIV Litigation began to be lodged in the Scottish courts
5 against Scottish health boards, the SNBTS, and the
6 Secretary of State for Scotland.

7 Now, those three individuals and bodies referred
8 to in the Scottish litigation generally as defenders.
9 What we can see in the document summarised in the notes,
10 during the course of 1988, representatives from those
11 different defenders, so the Secretary of State, the
12 Health Boards, the SNBTS, met to discuss their responses
13 to the claims. The documents suggest that at this time
14 they shared the view that the actions should be
15 defended.

16 In early 1989 the Health Minister in the
17 Department, Lord Forsyth, asked for an update on the
18 litigation in light of a newspaper report. And I'll go
19 to that document in which he was provided the update
20 now. It's SCGV0000229_052.

21 Sir, this is advice provided by Mr MacNiven to
22 Mr Forsyth. We can see that the article was prompted
23 by -- sorry, the advice was prompted by an article in
24 the Daily Record, January of that year, that said, "You
25 gave us AIDS". In response to it, the Minister made

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1 a request for advice.
2 Mr MacNiven begins by summarising the background
3 and the nature of the claims. If we go down, we can see
4 that in paragraph 5. Paragraph 6, the number of claims
5 to date is outlined. Then in paragraph 7, at the
6 bottom, Mr MacNiven noted that the Department was
7 working with the Solicitor's Office to prepare defences
8 on behalf of the Secretary of State for keeping in touch
9 with the other defenders in the action. Then over the
10 page:

11 "Should the Minister be asked to comment on any of
12 these cases I would advise him to point to the £10m
13 ex gratia payment (which was evidence of the
14 Government's concern and sympathy for the plight of the
15 haemophiliacs infected with HIV) and to say that the
16 cases alleging negligence are a matter for the courts to
17 decide."

18 In other words, reflecting the UK Government
19 position that compensation was not to be paid in
20 response to these claims.

21 Now, as we've seen in late 1989, the additional
22 payment to the Macfarlane Trust was announced without
23 any consultation with the Scottish Office, and then
24 during the course of 1990, the following year, officials
25 continued to monitor the Department of Health's position

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1 documents show solicitors acting for the litigants in
2 Scotland expressing their dismay at being excluded from
3 the negotiations leading to this announcement. What
4 became clear was that negotiations had been taking place
5 in England and Wales between the lawyers, the litigants
6 there, and the Department's representatives. The
7 parties of the lawyers in Scotland, as well as the
8 officials, had been excluded from those negotiations.

9 We can see that dismay being expressed in a letter
10 from Mr Tyler, who worked at Balfour and Manson
11 solicitors, and who was also chair of the Scottish
12 Haemophilia HIV Litigation Group. That was an
13 association of Scottish firms representing individuals
14 in Scotland who were involved in the litigation.

15 One point to note, my understanding here is that
16 the procedural rules that applied in Scotland at this
17 time didn't allow for a group litigation claim, as was
18 the case in England. Instead, you had a number of
19 different claims but which were coordinated through this
20 association of which Mr Tyler was the chair.

21 Now, from December 1990, after this announcement,
22 officials in the Scottish Office, both in the Department
23 and in other departments, like those in the Scottish
24 Legal Office, worked on preparing and negotiating
25 settlement terms for the Scottish claims. That involved

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1 on the HIV Litigation, particularly in light of their
2 experience with the announcement of the additional
3 payment to the Macfarlane Trust, to try to understand
4 the position of the Department of Health and the
5 possibility that any further payment might be made.

6 Now, there is some suggestion in the documents
7 that in early December 1990, the Scottish Office came to
8 believe that there was some possibility that a payment
9 might be made to settle the litigation. That's a brief
10 handwritten reference in some of the Scottish Office
11 SHHD documents we have rather than anything formal from
12 the Department of Health to the Scottish Office.

13 Then on 11 December 1990, the Prime Minister
14 announced, in response to a Parliamentary question, that
15 the Government had agreed in principle to settle the
16 HIV Litigation.

17 Now, similarly with the announcement of
18 the additional payments to the Macfarlane Trust, the
19 Scottish Office does not seem to have had any
20 involvement in the negotiations leading to this
21 announcement. The documents indicate that this resulted
22 in difficulties for the Department's attempts to settle
23 the Scottish claims.

24 As well as Scottish Office officials expressing
25 their concern to other UK Government officials, the

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1 a number of challenges, and this is a trite point for
2 which I apologise, but Scotland having a separate legal
3 system, it was not simply the case that the terms could
4 be proposed, agreed in England and Wales, and be
5 transposed to Scotland. Work had to be undertaken in
6 Scotland to make any potential settlement work there.

7 One of the key issues that became apparent in the
8 months that followed, so from December 1990, in the
9 first few months of 1991, was that additional time was
10 going to be necessary for this process to take place
11 and, in particular, for the lawyers representing the
12 Scottish litigants to be able to investigate their
13 clients' claims.

14 Issues related to funding for lawyers, the
15 availability of Legal Aid and other funding, meant there
16 had been relatively little investigation of the facts
17 underlying the claims. This was a point considered
18 internally by Scottish Office officials, discussed with
19 lawyers representing Scottish litigants. It became
20 apparent that it was going to be necessary for the
21 Scottish lawyers to have some additional time to those
22 in England and Wales to investigate and consider their
23 claims.

24 Now, this issue was addressed in a minute from
25 Mr Tucker to Mr Forsyth and the Secretary of State who

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1 at the time was Ian Lang. That minute came about
2 following a suggestion from Mr Forsyth that the
3 Department should try to move speedily towards
4 a settlement in Scotland. Mr Tucker described some of
5 the factors I've just outlined, and suggested that
6 additional time be given for litigants in Scotland to
7 consider the possibility of settlement.

8 Now, in order for that to be possible, it was
9 suggested that ministers and, in fact, the Secretary of
10 State for Scotland get in touch with his counterpart in
11 England and Wales in order to ask for additional time
12 for litigants in Scotland.

13 We can go just briefly to a couple of documents
14 before the break on this issue.

15 The first is DHSE0003660_009.

16 This is a letter dated 17 January 1991. It's from
17 the Secretary of State for Scotland, Mr Lang, to
18 William Waldegrave, the Secretary of State for Health.

19 If we go down, we'll see in the first paragraph
20 the letter describes some of the background to
21 the recent agreement in principle that had been reached
22 in England and Wales to settle the litigation.

23 Then, on to the next paragraph, the letter sets
24 out that there are separate Scottish legal actions for
25 compensation that hadn't progressed as far as the

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1 consider the settlement offer.

2 If we go just briefly to Mr Waldegrave's reply,
3 which is at DHSC0003660_010, 30 January 1991.

4 The letter records that a deadline of the
5 acceptance of the offer made in England and Wales had
6 not yet been set. Down the page, the Secretary of
7 State, Mr Waldegrave, comments:

8 "... I quite understand the difficulties you would
9 face in trying to complete a settlement in Scotland in
10 the same timescale [as has had been proposed in England
11 and Wales]. I have no objection, therefore, to your
12 proposal to set a reasonable period for Scottish
13 litigants to be advised by their lawyers on a response
14 to the offer."

15 Then in the next paragraph:

16 "While differences over timing are manageable,
17 I think that the terms to of the settlement must be the
18 same for all to avoid reopening the whole issue."

19 Then the bottom of this paragraph, the final
20 sentence:

21 "I hope, therefore, you will accept that the size
22 and categories of payment on offer must be common to all
23 litigants wherever they have pursued their action."

24 So an emphasis on the need for the nature of the
25 settlements in Scotland and England and Wales to match,

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1 English claims, that the Scottish lawyers concerned were
2 not represented on the Steering Committee and had not
3 been party to the preparation of the proposals nor
4 involved in the discussions which had taken place with
5 the Steering Committee:

6 "This has placed the Scottish Office in
7 a difficult position since all the discussions on the
8 details of the settlement have been in relation to the
9 English plaintiffs and there have already been
10 representations made to me by the Scottish lawyers that
11 they were not consult before the offer was made public.
12 They consider that they are not in a position to advise
13 their clients on acceptance or otherwise until they know
14 and can assess the contents of the offer and conditions
15 of acceptance but also until they are fully investigated
16 their clients' claims."

17 That summarises some of the points I was just
18 trying to make.

19 If we move down to the bottom of this page, and on
20 to the next one, we see that the letter sets out that
21 the Scottish lawyers estimate that they would need some
22 additional time, over the page, to carry out the further
23 assessment of the acceptability of the proposals for the
24 settlement. Mr Lang proposes that a reasonable further
25 period be allowed to the lawyers in order for them to

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1 even if some additional time might be needed in Scotland
2 as a result of the way that the compromise announcement
3 was made.

4 Sir, I note the time. I have a few -- a number of
5 further documents and issues to highlight in relation to
6 litigation, including one I prefaced right at the
7 beginning of today, this morning, the question of the
8 waiver which applied in Scotland as against the waiver
9 which applied in England and Wales. I wonder if it
10 might be a convenient moment.

11 **SIR BRIAN LANGSTAFF:** Well, let's take a break then until
12 3.45. 3.45.

13 **(3.14 pm)**

(A short break)

15 **(3.45 pm)**

16 **SIR BRIAN LANGSTAFF:** Yes.

17 **MR BOUKRAA:** Sir, I'm going to continue with documents
18 relating to the HIV Litigation in Scotland and I'm going
19 to pick matters up shortly after the correspondence we
20 looked at before the break, a minute dated
21 8 February 1991 from Mr Tucker to the Private Secretary
22 to the Secretary of State.

23 The reference is SCGV0000232_110.

24 Now, we can see in paragraph 1 of this document
25 that Mr Tucker made reference to the correspondence we

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1 looked at a little bit earlier.

2 In paragraph 2, I just want to pick up a few
3 points in the first part of this paragraph.

4 Mr Tucker wrote:

5 "The Secretary of State for Health seeks assurance
6 however that the terms of settlement in relation to the
7 size and categories of payments must be common to all
8 litigants and we can readily give this assurance."

9 So making the point that the size, the category of
10 payment for litigants in Scotland should be the same as
11 that in England and Wales.

12 "On the matter of informal soundings, Solicitor's
13 Office has already shown a draft settlement adjusted to
14 reflect the Scottish legal situation to the solicitors
15 representing the main group of Scottish litigants. But
16 the main difficulty to a speedy conclusion of the
17 consideration of the offer, and consequently the reason
18 for a more protracted timescale in Scotland, lies in the
19 investigative work which Scottish solicitors require to
20 undertake if they are to be in a position to give advice
21 to their clients as to the merits of settlement. In the
22 vast majority of cases Scottish solicitors are unable to
23 undertake that work until legal aid has been granted."

24 Then some more detail on how that problem might be
25 overcome, concluding with a recommendation at the bottom

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1 particular, to developments which relate to the question
2 of a waiver for those who agreed to the settlement
3 terms. This waiver issue related to an undertaking that
4 litigants were asked to give. In order to get the
5 benefit of the settlement, the undertaking was to
6 effectively give up the right to bring a further claim
7 against the different defendants or defenders to these
8 actions arising from infection with blood products,
9 Factor VIII and Factor IX.

10 Now, the particular issue that we're concerned
11 with was whether that undertaking was supposed to or was
12 intended to and did waive litigants' rights to future
13 claims concerning only infection with HIV or also
14 infection with hepatitis.

15 Now, the detail of the correspondence and the
16 drafts of terms and drafts of declaration of trust for
17 the Macfarlane Trust No 2 that's eventually declared is
18 going to come in the note. For the purposes of today,
19 I can pick up the chronology on 3 May 1991 with
20 a declaration of trust for the Macfarlane (Special
21 Payments) (No 2) Trust.

22 That is at MACF0000083_004. We have a date at the
23 top, 3 May 1991:

24 "Declaration of Trust
25 Constituting

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1 of this paragraph that an additional three months be
2 offered to litigants in Scotland.

3 So we can see there officials agreeing that
4 effectively the settlement, at least in terms of size
5 and categories of payment, should be the same in
6 Scotland as in England and Wales, referring to some of
7 the reasons that I outlined earlier for why more time
8 might be needed in Scotland, and also referring to draft
9 settlement terms having been shown by Scottish Office
10 solicitors and lawyers involved to those representing
11 litigants in Scotland, so that's February 1991.

12 Over the months that follow, and I'm going to
13 start by going up to May 1991, there are a series of
14 letters, meetings going back and forth between officials
15 in the Scottish Office and officials in the Department
16 of Health, and also lawyers representing Scottish
17 litigants, on the terms of settlement in Scotland,
18 negotiations over their terms and liaising between the
19 two departments about what the settlement terms should
20 look like and how they should be framed exactly in their
21 detail.

22 In the addendum notes that the Inquiry is going to
23 provide to Core Participants as quickly as we can, we
24 are going to attempt to trace the back and forth of some
25 of that correspondence over the months with an eye, in

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1 "The Macfarlane (Special Payments) (No 2) Trust"

2 Now, this is the document which reflects
3 compromise reached in England and Wales for the
4 HIV Litigation. At the time that this trust deed was
5 executed, negotiations over the Scottish settlement were
6 still ongoing and some of the contents of this document
7 reflect that.

8 Before I go to the parts of it that relate to
9 Scotland, I just want to pick up on page 22, please.

10 This was the undertaking to be given by litigants
11 in England and Wales. We don't need to go through all
12 of the technical detail. What we can see is that what
13 this undertaking required is to undertake that:

14 "... I will not at any time hereafter bring any
15 proceedings against the Department of Health, the
16 Welsh Office [various other defendants] or any other
17 Government body [and this is towards the bottom of this
18 passage] involving any allegations concerning the spread
19 of the human immuno-deficiency virus or hepatitis
20 viruses through Factor VIII or Factor IX (whether
21 cryoprecipitate or concentrate) administered before
22 13th December 1990."

23 So an undertaking that appears to cover both
24 future claims relating to HIV and hepatitis viruses.

25 If we go, please, first to page 24. We don't need
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1 to go to the detail of these pages but this is
 2 a schedule 3, which modifies some of the provisions of
 3 the trust deeds so that they can apply to the
 4 settlements. In Scotland they cover a number of
 5 particular issues. If we could go to page 27,
 6 schedule 4, an undertaking to be given --
 7 **SIR BRIAN LANGSTAFF:** Just go back for a moment to
 8 schedule 3, please.
 9 **MR BOUKRAA:** Of course.
 10 Back to page 24, please.
 11 **SIR BRIAN LANGSTAFF:** Thank you.
 12 Thank you.
 13 **MR BOUKRAA:** And if we go back to page 27, please, Lawrence,
 14 schedule 4.
 15 Here we have the undertaking to be given by
 16 a qualifying person in Scotland to receive payment from
 17 this Trust.
 18 The second half of the page, please. I won't go
 19 through all the detail but I'm going to pick out few
 20 references. Paragraph 1:
 21 "I hereby discharge the said Secretary of State
 22 [the Secretary of State for Scotland] and all other
 23 Ministers [different defenders] ... from any liability
 24 they may have in respect of the infection of [X person]
 25 with human immunodeficiency virus or hepatitis viruses,
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1 **MR BOUKRAA:** Sir, you're right that on their face those two
 2 different versions of this waiver ...
 3 **SIR BRIAN LANGSTAFF:** Yes, so you say this waiver, there are
 4 two different waivers. They may come to the same effect
 5 but the one is in respect of the spreading of, any
 6 allegation about the spread of, which is peculiarly
 7 vague, and -- or might be thought to be -- and this one,
 8 which is much more specific to the individual, which is
 9 the infection, presumably of the individual, that's the
 10 blank, by HIV or hepatitis. Does anything turn upon
 11 that distinction or do you want time to consider that?
 12 **MR BOUKRAA:** Time to consider it, sir.
 13 **SIR BRIAN LANGSTAFF:** Thank you.
 14 **MR BOUKRAA:** That sounds to me like one of the issues which
 15 should and could sensibly be addressed in the addendum
 16 notes that we are intending to disclose. Looking at
 17 those differences in the wording of these waivers, the
 18 extent to which their legal effect changed as a result
 19 of that different wording, "spread" versus "infection",
 20 as a part of trying to disentangle the nature of the
 21 infection that they covered.
 22 **SIR BRIAN LANGSTAFF:** Can you help at all, this waiver --
 23 can we just go back to the start of this waiver. Thank
 24 you.
 25 "A qualifying person" it relates to. The
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1 alleging arising out of treatments before
 2 13th December 1990 with Factor VIII or Factor IX ..."
 3 This document continues over the page with
 4 references made at various points to both HIV and
 5 hepatitis, for example we can see that in paragraph 4.
 6 "I undertake not to bring any proceedings against
 7 the Crown or any health service body now or at any time
 8 in the future in respect of infection ... by [HIV] or
 9 hepatitis viruses."
 10 So what we appear to have here is it being
 11 envisaged that in Scotland, as in England and Wales,
 12 there will be an undertaking to waive the right to bring
 13 future claims and that waiver will cover both hepatitis
 14 and HIV.
 15 **SIR BRIAN LANGSTAFF:** Just one question about it.
 16 **MR BOUKRAA:** Yes.
 17 **SIR BRIAN LANGSTAFF:** The waiver, so far as it related to
 18 England and Northern Ireland, et cetera, was a waiver
 19 which in terms, as I read it on the screen, that the
 20 proceedings were not related to the spread of or
 21 spreading of HIV or hepatitis viruses. This is rather
 22 different because it doesn't mention the words "spread"
 23 or "spreading"; it does mean the infection of somebody,
 24 which I think the first part of the first waiver
 25 doesn't. Am I right in that distinction?
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1 undertaking so far as the English and Northern Irish and
 2 Welsh claimants were concerned was -- it excluded those
 3 under a disability. In other words, it excluded
 4 children from the waiver, so it wasn't a question of the
 5 waiver being a contract, or a minor's contract, which
 6 was given validity by the judge's approval. That issue
 7 never arose, presumably. But I don't know. You can
 8 tell me. Or you may want to time to --
 9 **MR BOUKRAA:** I think that will be another one to address in
 10 the notes, sir.
 11 **SIR BRIAN LANGSTAFF:** In due course, very well.
 12 **MR BOUKRAA:** In due course. It's certainly the case that we
 13 can see in the documents referred to in the current
 14 presentation note that we have, that the Scottish
 15 lawyers who were involved in trying to reach agreement
 16 on settlement terms in Scotland were alive to
 17 differences between England and Wales and Scotland on
 18 issues like minors, under 18s, and how these settlements
 19 might apply to them.
 20 **SIR BRIAN LANGSTAFF:** Yes, well, I would expect -- I expect
 21 that to be the case, but I'm just curious about the
 22 position of those in England and Wales, as it happens,
 23 who were under a disability, that is not legally capable
 24 of giving consent to a waiver, not legally capable of
 25 making a contract, at least in the minor's case, without
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1 an approval if the contract was thought to be for their
2 benefit. But I'm summarising the provisions of the Act,
3 but that I think would be the position in England and
4 Wales. And presumably Northern Ireland as well.
5 **MR BOUKRAA:** Sir, we'll seek to bottom out some of those
6 differences that I've described and that you've alighted
7 on.

8 For today's purposes, we can turn next to the
9 formal offer that was made by the Scottish Office to
10 solicitors representing litigants in Scotland to settle
11 the litigation, which took place nearly two months, six,
12 seven weeks after this document of 24 June 1991.

13 Can we please go first to DHSC0003635_065.

14 So a document dated 24 June 1991, addressed to
15 Balfour and Manson. It comes from Richard Henderson,
16 from the Scottish Solicitor's Office.

17 If we look at the second paragraph, Mr Henderson
18 wrote:

19 "I am authorised on behalf of the Secretary of
20 State to offer formally to you terms of settlement for
21 individual claims at the instance of pursuers listed in
22 Annex A to this letter and for the settlement of claims
23 for damages against the Secretary of State on behalf of
24 those claimants listed in Annex B. The terms of
25 settlement are set out in the document labelled Annex C

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1 proposed substituted undertakings which accompanied this
2 letter, we understand to be the document at BNOR0000329.

3 Now, we can see in the top right-hand corner,
4 annex C, which was the same annex letter referred to in
5 that cover letter we just looked at, the title of this
6 document:

7 "Detailed Terms of Settlement of HIV/Haemophilia
8 Claims in Scotland"

9 Now, we don't need to go through all of the terms
10 that are offered in this document. If we could please
11 go through to page 11, we have an undertaking which, as
12 we'll see, is different to the undertaking contained in
13 the 3 May 1991 declaration of trust. The title:

14 "Undertaking to be given by a qualifying person to
15 receive payment from the Macfarlane Trust"

16 If we go down to the bottom half of the page:

17 "I hereby discharge the said Secretary of State
18 [Secretary of State for Scotland] and all other
19 Ministers of the Crown, Government departments and other
20 bodies from any liability that they may have in
21 respect of the infection of X person with
22 immunodeficiency virus ..."

23 No reference to hepatitis viruses:

24 "... allegedly arising out of treatment with
25 Factor VIII or Factor IX, whether cryoprecipitate or

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1 attached with this letter.

2 "I also attach a copy of the Macfarlane (Special
3 Payments)(No 2) Trust dated 3 May 1991 [the document we
4 just looked at] together with a copy of revised draft
5 Schedule 4 to the Deed of Trust. Arrangements are being
6 made to vary the terms of the Deed of Trust to
7 facilitate payments in terms [I think that should say
8 'in terms'] ... of settlement. This will entail
9 substitution of Schedule 4 and also Schedule 3 (Form of
10 Undertaking). The appropriate Form of Undertaking is
11 set out in Schedule 1 to the terms of settlement.
12 I understand that you will arrange for the offers to be
13 communicated to the individual pursuers and claimants
14 through their appropriate legal advisers."

15 Just over the page, the first paragraph there,

16 Mr Henderson writes:

17 "Upon receipt of that pro forma letter and
18 schedule, we will issue the appropriate certificate to
19 the Macfarlane Trust."

20 So outlining the procedure for claims to be
21 settled.

22 "We understand that thereafter the Trust should be
23 in a position to release payments to individual
24 claimants."

25 Now, the detailed terms of settlement with the
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1 concentrate."

2 The remainder of the undertaking sets out other
3 forms of wording, discharging parties from agreeing to
4 give up the right to bring future claims. Again, it
5 seems relating only to HIV and not hepatitis viruses.

6 Sir, we seem to see, in this document, a different
7 undertaking and a waiver that's different in its scope
8 addressing only HIV and not also hepatitis.

9 I can then move on, please, to the variation to
10 the deed of trust which took place in September 1991.
11 A minute ago, when we looked at the cover letter that
12 was sent to Scottish litigants' representatives, it
13 pointed to the fact that -- or suggested that it was
14 going to be necessary to vary the deed of the
15 Macfarlane Trust.

16 And we can see that document at MACF0000083_003.

17 So, 19 September 1991, deed of variation relating
18 to the Macfarlane (Special Payments) (No 2) Trust. And
19 over the page, following an introductory wording, at the
20 bottom of this page, now this deed witnesses as follows:

21 "Substitution of schedule 3. For schedule 3 to
22 the Trust Deed there shall be substituted the
23 following ..."

24 And if we go over the page, a different schedule 3
25 is proposed. For current purposes, going to focus on

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1 page 7, where there is substitution for schedule 4, and
2 this schedule 4 appears to be in the same terms as that
3 which we just considered, in other words only containing
4 a waiver for HIV, also containing a waiver for
5 hepatitis.

6 What that suggests is that waiver which applied in
7 Scotland rather than England and Wales, applied only to
8 future payments relating to HIV and not also to
9 hepatitis. We are going to come back in the note that
10 we're going to disclose to try and trace in a bit more
11 detail how it was that came about, if indeed that's
12 right, as well as addressing, sir, the points that you
13 raised in our discussion earlier.

14 Now, one of the issues that arose following the
15 settlement of the main HIV Litigation claims in Scotland
16 related to a category of claims which was termed
17 "Category G". The written note sets out some detail on
18 this issue. It arose around September 1991, concerns
19 Category G claims. Broadly put, these were claims for
20 compensation by spouses, parents and children of
21 HIV-infected haemophiliacs, who had not themselves been
22 infected with HIV, but were at risk of doing so because
23 of their close and regular contact with an infected
24 haemophiliac.

25 Now, those claims were restricted by certain
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1 was given within the HHD to the question of compensation
2 or other payments for patients who had been infected
3 with HIV through blood transfusions rather than
4 treatment with factor concentrates.

5 In early 1990 Lord Forsyth, who was the relevant
6 minister at the time, was advised that the UK Government
7 position was that compensation would not be paid to such
8 individuals. So no doubt you'll recall Lord Forsyth
9 gave oral evidence on this issue. He described, if
10 I can paraphrase it, being unconvinced by some of the
11 reasons that were put to him by officials for this
12 position. Nonetheless, the overall policy position of
13 the Home and Health Department remained in line with
14 that of the wider UK Government, and the position was
15 that no money would be paid to such patients.

16 This issue arose again a little while later in
17 early 1991 in the context of the HIV Litigation. The
18 document suggested that around this time when the issue
19 came up again, Lord Forsyth effectively reaffirmed the
20 view that he'd expressed previously that the
21 distinctions that were being sought to be made between
22 haemophilia patients and transfusion patients didn't
23 stack up.

24 We can see a number of documents that are
25 summarised in the written notes in which this particular
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1 criteria because of differences in the way the
2 litigation in England and Wales proceeded and that in
3 Scotland. Because of ways related to the settlement was
4 being reached the restriction on eligibility for
5 Category G claimants had the effect of excluding more
6 claims in Scotland than England and Wales. This issue
7 arose. It was considered by officials in the
8 Scottish Office. There were discussions between those
9 officials and representatives of the Department of
10 Health.

11 What appears to have happened is that the
12 eligibility criteria in Scotland were changed. As
13 a result, more claims became eligible, and this was at
14 least an attempt to mitigate or reduce the disparity
15 that seemed to have arisen for this category of claims
16 between Scotland and England and Wales. There's some
17 detail contained in the written note and I'm not going
18 to address it any further today, sir.

19 Now that concludes what I intended to cover today
20 about the HIV Litigation. I'm going to finally address
21 quite briefly compensation claims and decisions related
22 to HIV infection through blood transfusion.

23 Now, if we go back in time, we can see in the
24 documents that around the time of the additional payment
25 to the Macfarlane Trust in November 1989, consideration
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1 issue was discussed by departmental officials, discussed
2 with lawyers in the Scottish Office, and that some of
3 those discussions were prompted by correspondence which
4 had been sent by campaigning groups to the Department of
5 Health and responded to by Department of Health
6 Ministers. The HHD became involved. There was some
7 criticism we can see in the documents summarised in the
8 notes of the distinction which was being maintained
9 between haemophilia patients and transfusion patients.

10 Nonetheless, the position continued to be that of
11 the wider Government, which was no payments would be
12 made. We can get an insight into Lord Forsyth's views
13 from a contemporaneous document at SCGV0000234_198.

14 Now, it's dated 2 May 1991. I haven't gone to the
15 minute which preceded this document, but it was one
16 which reaffirmed the Government position that no money
17 was to be paid to individuals who'd been infected with
18 HIV through blood transfusion, and it records this.
19 It's from Mr Forsyth's private secretary:

20 "Mr Forsyth has seen Mr Tucker's minute of
21 29 April 1991 and your minute of 1 May 1991 about whole
22 blood transfusions. Mr Forsyth considers that this is
23 an extremely serious matter and that the Government's
24 position is indefensible. He has commented that we are
25 in danger of losing a lot of goodwill carping over
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1 a small financial obligation. Our refusal to release
 2 information on records leaves us particularly
 3 vulnerable. Mr Forsyth hopes we might try to change the
 4 Government's line on this matter."
 5 Now, despite the view that was expressed there on
 6 behalf of Lord Forsyth, the Government position adopted
 7 by the Scottish Office was maintained for most of the
 8 rest of 1991.
 9 The position changed in December 1991 when the
 10 Secretary of State for Health in England and Wales
 11 recommended a change of policy to the Treasury that was
 12 accepted.
 13 Now, similarly to other examples we've considered
 14 today, that change of policy appears to have happened
 15 with little or no consultation between the
 16 UK Government's Secretary of State for Health and
 17 ministers and officials in Scotland. Despite that lack
 18 of consultation there was again a request for Scotland
 19 and the other departments in the UK to contribute some
 20 of the funding that would be required for this change of
 21 policy, and there are a number of documents in which
 22 officials and subsequently ministers address this
 23 question of how much -- whether and how much they should
 24 be expected to contribute to the payments to these
 25 individuals, despite the lack of consultation from

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1 go into that detail now. I'm just going to pick up on
 2 page 2, the section headed "Differences with English
 3 Scheme", and then paragraph 9.
 4 "I should also draw to your attention the terms of
 5 Annex 1 to the Scheme which sets out the form of
 6 undertaking to be given by the applicant. Our form does
 7 not require an undertaking discharging the Secretary of
 8 State in respect of liability for infection of the
 9 applicant with hepatitis virus. In that respect it
 10 differs from the English form of undertaking. However
 11 again we consider ourselves to be bound by the terms of
 12 the haemophilia settlement which did not limit
 13 an applicant's rights in connection with hepatitis
 14 infection. We have had strong representation against
 15 extending the undertaking into this area. Our medical
 16 and legal advisers specifically support the exclusion of
 17 reference to hepatitis from the undertaking."
 18 So again, difference in the nature of the waiver
 19 undertaking applicable in Scotland as with England and
 20 Wales, to be explored further in the note which will be
 21 prepared by the Inquiry team and disclosed as soon as we
 22 can.
 23 So that completes the material I intended to cover
 24 today. We've covered a large number of documents,
 25 a large number of documents. I hope it's been of

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1 Central Government.
 2 These issues were set out in a minute,
 3 a submission from Mr Tucker to ministers in
 4 December 1991, which proposed that the Scottish Office
 5 should accept the change of policy and also that
 6 a financial contribution should come from the
 7 Scottish Office to these payments. That was accepted by
 8 ministers.
 9 Now, there was then over the next few months work
 10 to finalise and set up the scheme through which payments
 11 would be made to individuals who had been infected with
 12 HIV by blood transfusion or tissue transfer.
 13 In the last document I'm going to bring up today,
 14 I'm going to highlight how the document describes the
 15 scheme, which was agreed and set up, but also link back
 16 to the waiver issue we were discussing earlier.
 17 It's dated April 1992 and it's at SCGV0000239_024.
 18 Now, this is a minute dated 9 April 1992 from
 19 Mr Tucker to the chief executive of the NHS in Scotland,
 20 I believe it was Mr Cruickshank at the time, seeking his
 21 approval for the Scottish scheme for payments to HIV
 22 infected recipients of blood and tissue and we can see
 23 that from the first paragraph.
 24 The remainder of this document sets out the detail
 25 of the scheme, the background to it and I'm not going to

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1 assistance in setting the framework and the structure of
 2 the detail which is contained in the written note, which
 3 has already been disclosed.
 4 **SIR BRIAN LANGSTAFF:** Yes. Well, thank you very much
 5 indeed.
 6 Tomorrow?
 7 **MR BOUKRAA:** Sir, tomorrow we return with a witness who will
 8 be attending remotely, John Canavan, an official from
 9 the Department of Health.
 10 **SIR BRIAN LANGSTAFF:** So John Canavan tomorrow at 10.00.
 11 10.00. Thank you very much.
 12 (4.20 pm)
 13 (The hearing adjourned until 10.00 am the following day)
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124/10 126/14 136/19 137/2 138/13 139/6</p>	<p>139/19 140/9 148/4 151/19 151/23 154/10 154/13 154/15 155/1</p> <p>up' [1] 66/18</p> <p>update [5] 64/1 83/7 94/25 128/17 128/19</p> <p>updated [8] 24/5 27/19 28/6 28/12 45/8 58/13 71/24 112/11</p> <p>updates [1] 60/14</p> <p>updating [2] 43/3 79/13</p> <p>upon [2] 143/10 146/17</p> <p>upward [1] 104/11</p> <p>urgent [1] 102/12</p> <p>urgently [2] 64/22 67/1</p> <p>URN [1] 122/17</p> <p>us [19] 9/4 12/7 12/7 17/8 17/12 22/24 26/17 27/12 33/8 34/6 55/14 66/17 88/17 96/1 96/21 106/2 106/10 128/25 153/2</p> <p>USA [3] 89/17 107/18 110/3</p> <p>use [21] 16/20 18/17 19/8 24/25 25/4 38/15 39/20 42/4 43/9 43/22 44/8 44/9 46/7 50/9 51/22 55/16 59/9 59/24 93/15 99/1 117/10</p> <p>used [13] 14/6 23/8 45/9 51/16 57/20 61/13 61/21 64/21 65/25 76/11 76/25 80/15 84/16</p> <p>useful [1] 101/19</p> <p>uses [1] 113/8</p> <p>using [4] 21/22 25/17 116/5 123/8</p> <p>usually [3] 17/17 100/12 110/23</p> <p>utilisation [1] 33/13</p> <p>V</p> <p>vague [1] 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(74) treatment - valuable

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(75) vanishingly - when

W	6/13	41/24 42/5 42/11	won't [11] 1/16 19/19	94/12 97/12 99/25
when... [2] 151/18	why [9] 9/24 9/25	42/25 44/5 44/11 48/4	36/16 53/4 60/7 68/24	106/6 108/4 108/8
153/9	10/1 10/3 16/4 16/11	49/9 50/25 51/6 51/10	71/17 101/20 107/7	116/20 119/24 121/5
where [13] 11/2 51/3	26/23 36/23 138/7	53/23 54/8 54/14 58/8	107/17 141/18	121/10 122/3 122/17
51/16 59/3 59/19	wide [4] 7/4 43/17	59/9 64/9 66/3 68/9	wonder [3] 25/11	124/20 126/22 129/12
61/20 72/18 83/7 83/7	82/10 111/8	68/10 69/6 70/5 70/7	46/16 136/9	134/21 135/8 144/20
86/23 90/13 124/18	widely [4] 26/19	71/6 71/9 71/11 71/16	wondering [1] 58/1	145/3 151/7 151/15
149/1	39/25 41/8 42/21	71/17 73/3 73/11	word [5] 50/10 51/15	152/11 153/20 154/11
whereas [1] 102/19	wider [8] 4/16 5/2 8/2	74/19 75/11 75/12	51/16 51/22 52/10	wouldn't [1] 19/7
whereby [2] 39/25	12/22 14/4 19/25	76/13 76/23 78/9 79/5	wording [9] 49/22	write [1] 35/24
42/20	151/14 152/11	79/12 81/10 83/16	49/25 52/17 52/20	writes [2] 23/10
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whether [29] 2/5 8/4	1/22 2/16 2/20 2/23	86/14 87/5 92/5 93/4	148/3 148/19	written [46] 1/12 1/13
22/7 28/19 34/21 38/3	3/15 3/23 6/23 7/1	96/15 98/12 100/11	words [6] 28/7 29/7	1/17 1/20 2/20 2/24
57/18 58/1 60/1 60/5	7/22 9/12 10/10 11/10	100/15 100/19 101/7	129/18 142/22 144/3	3/4 3/9 3/23 4/9 7/14
71/5 71/21 85/9 92/5	13/9 13/11 13/21 16/7	101/9 102/13 102/14	149/3	8/10 13/1 14/14 14/24
101/4 105/2 109/15	26/10 26/14 27/3	102/18 103/15 104/8	work [25] 7/8 21/12	15/2 18/18 19/19
114/5 116/18 117/9	27/11 27/11 32/15	104/16 105/14 107/11	21/15 29/12 30/8	19/20 23/4 32/20
121/3 121/6 121/19	38/18 38/20 49/19	109/17 110/1 112/18	30/10 48/15 53/8	39/13 44/19 51/10
121/20 127/4 139/11	52/22 52/22 62/15	112/19 114/14 115/8	64/22 67/1 81/10	52/12 52/15 53/12
140/20 147/25 153/23	64/11 64/20 69/2	116/6 116/22 122/7	81/12 81/23 84/13	53/14 60/7 61/1 78/7
which [233]	71/24 72/21 72/25	123/17 124/8 125/15	88/19 98/22 99/15	80/21 82/23 97/21
while [8] 40/25 43/12	73/3 75/6 79/23 81/19	125/18 126/1 126/25	111/11 112/25 113/4	99/12 109/23 110/16
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(76) when... - yes

Y yes... [2] 144/20 156/4 yesterday [1] 95/9 yet [9] 19/2 19/7 47/25 48/7 49/18 68/15 111/19 114/7 135/6 Yorkshire [4] 74/8 74/18 75/4 75/25 you [78] 8/23 9/2 9/4 9/10 10/6 10/8 10/8 10/11 10/13 11/13 11/25 12/4 12/19 14/10 16/19 22/15 24/14 24/20 24/21 25/7 29/15 30/23 31/14 32/21 33/1 37/14 40/5 40/18 40/21 40/24 41/13 44/10 45/18 45/20 50/13 51/17 56/25 65/11 66/24 72/14 78/13 79/5 79/20 80/10 81/3 82/6 83/1 83/2 83/13 92/11 92/15 93/6 94/10 94/16 103/16 106/15 114/15 116/16 119/16 121/5 128/24 131/18 135/8 135/21 141/11 141/12 143/3 143/11 143/13 143/22 143/24 144/7 144/8 145/20 146/12 149/12 156/4 156/11 you'll [1] 151/8 you're [10] 10/3 12/10 42/15 49/25 68/3 79/11 80/8 80/9 80/9 143/1 you've [5] 68/4 80/9 82/7 82/18 145/6 Young [1] 115/18 your [10] 1/23 33/18 34/14 51/14 64/3 68/2 87/25 135/11 152/21 155/4 <hr/> Z zoom [6] 24/14 24/20 70/22 72/13 83/13	115/20			
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(77) yes... - zoom