

Thursday, 8 May 2025

(10.00 am)

**SIR BRIAN LANGSTAFF:** Before Mary invites Sir Robert Francis to take the oath, just one announcement. You will have noticed this morning as you came in there are a number of crowd control barriers outside. That is because the service in remembrance of the VE Day is taking place today in Westminster Abbey. At the Abbey, and here, we will be observing, as we are observing nationally, the two-minute silence. So at 12.00, we will stop, we will be silent for two minutes, and then we will start again, subject to the question of any noise from the 80 bells which are then going to be rung in close proximity to us.

They may mean that we are delayed slightly longer, but, if so, we'll have the bells to listen to and think about as well.

**SIR ROBERT ANTHONY FRANCIS (sworn)**

**DAVID ANTHONY FOLEY (sworn)**

**Questions by MS RICHARDS**

**MS RICHARDS:** Mr Foley, Sir Robert, most of my questions will be addressed generally, and whichever of you wants to answer the question, please do so. Sometimes there will be one that's very specifically directed to one or other of you, but for the most part, I am happy to leave

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the service of the arm's length body.

The post is interim, and currently I am serving a one-year appointment which actually expires at the end of this month. And, as far as I'm aware, no announcement has been made about what follows, but as far as I'm aware, I'm not going anywhere any time soon.

It's not a full-time job, but when I started, I was -- at my insistence, I said I needed four days a week to do this, which shows an indication that this wasn't entirely non-executive. By agreement, that, at the end of last year, was reduced to three days a week. But my principal duties are, of course, leading the board.

When David and I started, we were the board; there were only two of us. Since then, in accordance with the Act, the minister appointed three non-executives; I appointed three more. David -- and together, we appointed three of his executive colleagues. At one point, I would like to make clear, because I think someone said something slightly different yesterday which is that the board does not consist entirely of civil servants. The majority of the board are like myself, non-executive directors who are not employed in any sense at all by the Government. They are people chosen from -- through an interview process to be

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it in your hands as to who answers the question.

Sir Robert, you are obviously well known to the Inquiry. You produced the compensation framework study in 2022, and you gave evidence to this Inquiry that same year, and then more recently, you undertook the engagement exercise in the summer of last year.

You're currently the Interim Chair of IBCA.

Mr Foley, you are the Interim Chief Executive.

Could I ask each of you just to briefly explain what those roles comprise.

**SIR ROBERT FRANCIS:** Yes, certainly. Well, as Interim Chair, sir, my job is a non-executive role which means that I am there to provide, with the assistance of the board that is now being appointed, strategic leadership to the arm's length body that has been set up.

Because it's been a body which is being set up, I think it would be fair to say that my job does have an executive tinge to it in that I probably do rather more by way of, for instance, meeting members of the public, talking to ministers, civil servants, and so on than I would -- and staff -- than perhaps I would normally expect from a conventional non-executive role. And, of course, as you have pointed out, because I have been involved in this long before that, I bring with me certain views and experience which I, of course, put at

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independent directors, and they exercise an independent mind in challenging and holding to account the executive on matters that are brought before us.

**MS RICHARDS:** I can't remember off the top of my head the names of the board, and I'm not asking you to list them, but I think they include Sir Rob Behrens; is that right? Former ombudsman --

**SIR ROBERT FRANCIS:** They include Sir Rob Behrens, who is the former Parliamentary and Health Service Ombudsman. And, actually, by coincidence in July when, sadly, we will lose her, we have an executive member who has been appointed the new Parliamentary and Health Service Ombudsman.

Other colleagues come from a wide range of experience, including auditing public bodies, accountants and finance. We have a chair of the accountants -- of the -- sorry, the audit committee, and people who sit on a number of different boards, both in the private and public sector.

So that's the experience they bring, and we sit as what we call a unitary board; in other words, the executive members and the non-executives act as one and each share the responsibility for the decisions that we make at board level.

**MS RICHARDS:** Thank you.

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1 **SIR ROBERT FRANCIS:** I hope that helps a little bit.

2 **MS RICHARDS:** Yes, thank you. Mr Foley, could you outline

3 your role?

4 **MR FOLEY:** Good morning. I am the Interim Chief Executive

5 officer, as you said. That means I lead the executive

6 team. It's a full-time role and in this context

7 involves the building of an independent arm's length

8 body, the development of the compensation scheme and it

9 spans all of the functions that you would expect in such

10 an organisation including digital data, operations,

11 communications, HR and finance.

12 As well as being the chief executive officer, I'm

13 also the accounting officer for the Authority and that

14 means I am responsible to Parliament for the proper use

15 of public money in the Authority.

16 **MS RICHARDS:** I want to start by a short examination of the

17 respective roles and responsibilities of on the one hand

18 the Cabinet Office and Government and on the other hand

19 IBCA so that there is a clear public understanding of

20 the position and then come back to the idea of arm's

21 length body and try and place that in context.

22 The scheme, by which I mean the compensation

23 scheme, was designed and structured by the Cabinet

24 Office and the Government; that's right, isn't it?

25 **SIR ROBERT FRANCIS:** Yes and, as it were, is a scheme which

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1 had operational implications, I have on occasion felt it

2 appropriate to raise those implications with the

3 Government.

4 **MS RICHARDS:** And so IBCA's role, and I'm not suggesting

5 it's not an important one -- it's a very important

6 one -- but IBCA's role is to apply the rules set out in

7 the regulations to the individual claims and then,

8 having done the necessary assessment and calculations of

9 the individual claims, to make the payments; is that

10 right?

11 **SIR ROBERT FRANCIS:** Yes.

12 **MS RICHARDS:** Now you described IBCA as an arm's length

13 body. You will know that many people don't see it that

14 way. Is it right to understand the position in this

15 way: IBCA is an arm's length body in the sense that that

16 which IBCA is empowered to do under the regulations, you

17 do that autonomously. You are not the arm's length

18 scheme that was envisaged in the Inquiry's

19 recommendations and that may be where some of the

20 concern and confusion has arisen.

21 **SIR ROBERT FRANCIS:** Yes, you are obviously correct in both

22 those suggestions. It is an arm's length body because

23 that's what the act says it is. If no -- it is in

24 structural terms in a process of transition. If I can

25 put it this way, Parliament passed an Act setting up a

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1 was and still is in effect, or was until 31 March at

2 least, being delivered to us by the Government via in

3 ministerial terms the minister to the Cabinet Office

4 through regulations which the Government put before

5 Parliament. That is and always has been the

6 Government's role in this and as a postscript I should

7 say, as I think was clear from yesterday, that was not

8 what was initially recommended, but that's what the then

9 Government decided to do.

10 So that's I think an answer to your question.

11 **MS RICHARDS:** And the tariffs and bands, those were devised

12 and set by Government and we now see them in the

13 regulations.

14 **SIR ROBERT FRANCIS:** Absolutely.

15 **MS RICHARDS:** So IBCA has no say over those matters?

16 **SIR ROBERT FRANCIS:** No, and I should say that I, because of

17 my previous role, have found it necessary to be

18 extremely careful and precise about what my

19 responsibilities now are and I have throughout thought

20 it our responsibility to focus on putting that scheme

21 into operation in terms of its roles and to pass on the

22 many concerns that we have heard from many of the people

23 we know well sitting in this room, and others, to the

24 Government, but that it was not our role to express a

25 view except in one respect. If matters in that scheme

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1 legal entity called IBCA and set a very basic framework

2 within which it would work. Clearly the Parliamentary

3 intention and our understanding is that in relation to

4 delivering the scheme in terms of paying money to people

5 who are entitled under the scheme is concerned we would

6 have operational independence and accountability in

7 relation to how we went about doing that and, of course,

8 in relation to individual decisions.

9 Those are the matters that the board I chair have

10 focused on from the outset.

11 What being an arm's length body doesn't mean,

12 however, is that we are entirely free in relation to the

13 taxpayers' money that we spend; in other words, all

14 arm's length bodies, so far as I am aware, are subject

15 to the rules that are set by the Treasury in particular,

16 but also Parliament, in relation to the proper

17 stewardship of public money.

18 That means there are processes which are in place

19 which involve us as an organisation, for instance,

20 having to seek via the Cabinet Office to the Treasury a

21 budget every year for our administrative expenses. The

22 £11.8 billion you have heard allocated in relation to

23 compensation is that; it's the compensation, the money,

24 funding required to run the infrastructure of the arm's

25 length body is a separate budget which we have to

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1 negotiate in the same way as I would believe any other  
 2 arm's length body.  
 3 That has certain consequences. It does mean, and  
 4 has meant, that there are steps that have to be gone  
 5 through in the normal course of events as to how you  
 6 acquire money in order to do something. If I give you  
 7 an example. The Government agreed with my  
 8 recommendation that legal support should be funded. It  
 9 is a matter that has to go as far as the Treasury to get  
 10 the funding in order to do that. Unfortunately, in my  
 11 view, that is something which take time. At the normal  
 12 pace of Government working, I won't say it's leisurely  
 13 but it goes at a pace. So a matter has to go through  
 14 a number of different committees, both at the Cabinet  
 15 Office and then to the Treasury, before authority comes  
 16 back to spend money on legal support.  
 17 The same applies to mundane matters such as buying  
 18 computer software or hiring consultants to do whatever  
 19 it is. So we have operational freedom but within a  
 20 structure that requires us to justify in terms of value  
 21 for money, budgetary controls and so on what we do.  
 22 I'm happy to say that we have now negotiated, for  
 23 instance, in relation to procurement of stuff we have to  
 24 buy that we would be able to set up our own in-house  
 25 governance systems which means that we can bypass quite  
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1 **MS RICHARDS:** And so the process of having claims managers,  
 2 you may have to get funding for that from the Government  
 3 but the decision to organise the workings of the scheme  
 4 in that way, that's IBCA's decision, not Government's?  
 5 **SIR ROBERT FRANCIS:** Yes.  
 6 **MS RICHARDS:** Anything in relation to how you then go about  
 7 the process of assessing individual claims against the  
 8 rules set by Government, that "how" question, how you  
 9 organise your own processes, that's for IBCA, not  
 10 Government?  
 11 **SIR ROBERT FRANCIS:** Yes.  
 12 **MS RICHARDS:** Is that a broad understanding of the  
 13 respective roles?  
 14 **SIR ROBERT FRANCIS:** Yes. I would add one qualification  
 15 I think to that which is that we do not live in a vacuum  
 16 and I'm sure we'll come to this. We seek to involve the  
 17 community, the users of our scheme, if you like, in this  
 18 might there's and we will no doubt discuss something  
 19 about that, but also as I think you heard yesterday, the  
 20 minister has views and he's free to express them to us  
 21 and does.  
 22 So it is our decision and our responsibility and  
 23 our accountability as to how we use that material and  
 24 make decisions.  
 25 **MS RICHARDS:** Now, I want to turn just to examine a bit  
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1 a lot of these procedures and get on with things  
 2 quicker, if I can put it in the vernacular.  
 3 So I believe over a period of time we are  
 4 developing more independence in relation to that.  
 5 That's a very long answer and it's covered a wide field  
 6 but I thought it important to say that the reality of  
 7 a public body, even as an arm's length body, as one  
 8 would expect is that there are rules around the  
 9 stewardship of taxpayers' money that we have to follow  
 10 like all other bodies.  
 11 **MS RICHARDS:** If we put to one side those matters over which  
 12 IBCA has no say, because that's the way the Government  
 13 has chosen to set it up, so how much each tariff or band  
 14 is worth, what the criteria are, the very complicated  
 15 equations that we see in the regulations, that's all set  
 16 by Government and you have no power to change that;  
 17 that's right?  
 18 **SIR ROBERT FRANCIS:** Correct.  
 19 **MS RICHARDS:** So the things that are within IBCA's autonomy  
 20 then I will include some of the topics that we'll come  
 21 to but will include, for example, the order in which you  
 22 invite will come back to the term invite, but the order  
 23 in which you invite applications, that's for IBCA to  
 24 set, not the Government?  
 25 **SIR ROBERT FRANCIS:** Yes.  
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1 about some of the roles within IBCA in terms of the  
 2 processing of the scheme. We know that I think many of  
 3 the staff of IBCA are or have been civil servants whilst  
 4 IBCA transitioned, as I understand it, to being in  
 5 a position to have its own employees. What's the state  
 6 of affairs in relation to that? Perhaps I can ask  
 7 Mr Foley that.  
 8 **MR FOLEY:** Yes. I think when you think about this, it's  
 9 worth remembering where we started from. So when this  
 10 Inquiry reported, our appointments were announced the  
 11 day after, and at that point, the two of us were IBCA.  
 12 That was it.  
 13 Our relationship with our sponsoring department,  
 14 the Cabinet Office, has been a strong one, and they have  
 15 been very helpful, as have other Government departments  
 16 as well, in terms of helping us to move very rapidly  
 17 from being just two people to being an organisation that  
 18 can start delivery. And, as part of that, we did loan  
 19 and second civil servants into our organisation in order  
 20 to be able to start rapidly.  
 21 At the moment, all of our employment is still  
 22 under the aegis of the Cabinet Office. So everybody who  
 23 is employed to work on IBCA is employed by the Cabinet  
 24 Office as a civil servant. We have lots of people who  
 25 are contracted to work with us who aren't employees as  
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1 well, and once we're in a position to employ people  
2 ourselves, then all of those people who are in those  
3 roles will transfer into the employment of the  
4 authority, and from that point on, everybody we recruit  
5 will be employees of the authority, not the Cabinet  
6 Office.

7 But the assistance that we've had from the Cabinet  
8 Office in doing that has meant that we've been able to  
9 move at the speed we have been able to.

10 **MS RICHARDS:** Do you have a rough timescale of when that  
11 transition to IBCA being the employer will take place?

12 **MR FOLEY:** We're expecting that by October, all of that will  
13 have happened.

14 **MS RICHARDS:** Now, you will I know understand, and  
15 Sir Robert, in particular probably will understand, but  
16 I am sure you will both understand that in the context  
17 of the events which this Inquiry investigated and which  
18 the authority was set up to compensate for, there is a  
19 profound and deep and inherent distrust of civil  
20 servants and of institutional defensiveness. And I'm  
21 sure the authority recognises that.

22 Has any consideration been given to how you try  
23 and ensure that anyone who is working for IBCA who may  
24 have a history of working in the Civil Service -- even  
25 when they transitioned over to you, they may still have

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1 intent which included what I believe should be the  
2 values of the organisation, which, of course, included  
3 propriety and so on, but most importantly, perhaps,  
4 independence.

5 Everyone who has been employed or seconded to us  
6 is imbued by me personally, but also by David and  
7 others, with the idea that you're no longer working for  
8 the Civil Service; you're working for the community,  
9 some of whose members we see sitting in front of you.

10 You are here to support people get compensation.  
11 You are not here to obstruct people doing it. We  
12 exposed, particularly our claims managers, to the full  
13 horror, as far as we can -- never completely -- of the  
14 scandal that has happened. We make them read the stuff  
15 that tells them that. We introduce them to people who  
16 have suffered, and that includes the board. One of the  
17 first things I did was to introduce my board to some of  
18 the extraordinary people who give us -- who come to us  
19 with the views of their community.

20 I'm happy to say -- and I visit the office on a  
21 regular basis -- I talk, address, the claims managers  
22 every time I go, and particularly the new cohorts as  
23 they come through, and I'm happy to say that they have,  
24 in my view, completely bought into the idea they are  
25 independent people undertaking an extraordinarily

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1 that history of working in the Civil Service. How have  
2 you thought about addressing that?

3 **SIR ROBERT FRANCIS:** Can I start, but I'm sure David will  
4 have something to add to this.

5 When we started, the two of us, there was a choice  
6 to be made about what would happen. There was, indeed,  
7 as I understand it, a planning assumption at the time,  
8 a Cabinet Office planning assumption, that actually IBCA  
9 would -- we would spend a year, 18 months setting up an  
10 arm's length body with employees of its own and the  
11 structure of its own -- its payroll, pension scheme and  
12 all the rest of it -- and then start to work. Both of  
13 us thought that was -- bearing in mind the history of  
14 delays that had taken place so far -- totally  
15 unacceptable. That we needed to start delivery, as it  
16 were, of compensation as soon as we could while, at the  
17 same time, setting up the organisation.

18 The only way of doing that was to take a pool of  
19 people who were available (namely, existing civil  
20 servants). So that's what started to happen at an  
21 executive level.

22 Later on, we started to recruit. Again, largely  
23 but not exclusively from the Civil Service people who  
24 became our claims managers. I set out -- the first  
25 thing I did was to set out what I called a statement of

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1 important job in favour of the people who they serve,  
2 and they do regard themselves as serving the community.  
3 And, difficult though this may be to believe, every time  
4 a payment goes out, they rejoice and celebrate that.

5 This is not -- they help each other help people in  
6 a human and compassionate way. This is what they do.

7 Now, David will probably have some more detail  
8 about that, but I just thought it important to explain  
9 the values that I believe that we have imbued in our  
10 staff.

11 **MS RICHARDS:** Mr Foley.

12 **MR FOLEY:** Yes, I agree with you. We do understand and  
13 recognise why people are suspicious and untrusting of  
14 the Civil Service. The Inquiry found -- you know,  
15 incredible about what had happened in the past, and  
16 I understand the impact that had on everybody.

17 We were faced with a choice. We could not employ  
18 civil servants and take longer, or we could use some  
19 civil servants and move rapidly, and we chose on the  
20 balance that that was the best choice to make.

21 We are really, really careful (a) when we recruit,  
22 we look for the right sets of values and the approach  
23 people will take and whether that matches what we are  
24 setting out inside the authority, and (b) we have, you  
25 know, a detailed and comprehensive training programme

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1 for people and, as Sir Robert has said, it does involve  
2 meeting people from the community, and there are some  
3 people from the community who are very generous in the  
4 time they give to help support that, and that is what  
5 motivates them. They are -- you know, they come in  
6 every day to work as hard as they can because they feel  
7 very strongly every person due compensation should have  
8 it as quickly as possible, and it's because of that  
9 involvement with people that they feel that way.

10 **MS RICHARDS:** But there's a proposal or intention to have an  
11 advisory board comprising people who are infected or  
12 affected. What is the state of play of that proposal?

13 **MR FOLEY:** So the state of play with that is the board is  
14 finalising its arrangements about how it would like that  
15 to be built. There is obviously the challenge of -- and  
16 we've understood this in previous things we've done  
17 about how do you ensure that it is a fair spread of  
18 people from across all of the community, that everybody  
19 has a fair opportunity to say that they would like to be  
20 on it and also that it's very clear to everybody how it  
21 functions and what it does.

22 My hope is that we can agree that approach at the  
23 next board meeting and then we'll be ready to launch.

24 **MS RICHARDS:** And the next board meeting is?

25 **MR FOLEY:** I can't remember. They are every month. I can

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1 a medical practitioner?

2 **MR FOLEY:** This is a doctor, a medical practitioner.

3 **MS RICHARDS:** Is this someone who is a full-time employee of  
4 IBCA?

5 **MR FOLEY:** So they are a contractor at the moment. So  
6 they're not employed directly by us but we have  
7 a contractual arrangement with them to use their  
8 services.

9 **MS RICHARDS:** What is in relation to both the person you  
10 have and the people you are seeking to recruit to the  
11 role, what kind of expertise are you looking at? In  
12 other words, given as you have correctly identified that  
13 one of the most controversial issues may be the severity  
14 bandings in relation to hepatitis C, are they  
15 hepatologists?

16 **MR FOLEY:** So we're looking for a range of medical  
17 experience, including understanding about, in  
18 particular, hepatitis and HIV. So those specialisms,  
19 they are absolutely at the centre of it but there is a  
20 range of medical expertise that we are looking for.

21 **MS RICHARDS:** Is there a description of the role of the  
22 clinical assessor and the range of areas of expertise  
23 you want the clinical assessor role to cover that can be  
24 made public, because you will understand the absolute  
25 importance of transparency, particularly when it comes

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1 look up the exact date.

2 **SIR ROBERT FRANCIS:** It's later this month.

3 **MS RICHARDS:** Can I just then touch: I'm going to come back  
4 to claims managers in a little more detail. I want to  
5 ask about the clinical assessors. You refer to them,  
6 Mr Foley, in your statement I think as the "qualified  
7 clinical assessors". Who are they and what is their  
8 role?

9 **MR FOLEY:** Yes. So we have one clinical assessor in our  
10 organisation at the moment. We are going through the  
11 commercial arrangements to be able to recruit more.  
12 They play a very important function in our organisation.  
13 We have claims managers who manage the claim from start  
14 to finish and then what they are trying to do, as you  
15 described earlier on, is they are trying to take the  
16 regulations, take an individual's case and situation,  
17 and then in our language to support them to get the  
18 right compensation.

19 There are parts in there where there are decisions  
20 that have to be made that require clinical expertise in  
21 particular, for example, thinking about the degree of  
22 severity of fibrosis and that would be an example of  
23 where a clinical assessor would provide some expert  
24 advice that a claims manager simply wouldn't have.

25 **MS RICHARDS:** Is this a doctor, first of all? Is this

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1 to knowledge of doctors who may be effectively  
2 influencing what people get. You will know the  
3 controversy of the fact that the names of the expert  
4 group were not made public for a number of months. So  
5 people need to understand who the clinical assessors are  
6 and what their expertise is and what they are asked to  
7 do. Can that be made public on your website or through  
8 whatever appropriate means?

9 **MR FOLEY:** Yes, we would be happy either to put it on the  
10 website or to provide to the Inquiry a description of  
11 the skills and expertise that we're seeking in those  
12 roles.

13 **MS RICHARDS:** Is there any document or guidance or policy  
14 that sets out their role at the moment?

15 **MR FOLEY:** I don't think there's policy or guidance but we  
16 will have a document that describes what it is that the  
17 role entails and what we're looking for.

18 **MS RICHARDS:** Certainly the Inquiry has powers to request  
19 you or indeed require you to provide information and we  
20 will obviously ask you for whatever we think we need,  
21 but in terms of the infected and affected having access  
22 to that freely, is that something that can be placed on  
23 the website so there is a description of the clinical  
24 assessor role and who's undertaking it?

25 **MR FOLEY:** We would be very happy to do that.

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1 **MS RICHARDS:** Now, are there legal assessors?  
 2 **MR FOLEY:** No, there are no legal assessors. We do have  
 3 legal capability within the Authority which if we need  
 4 legal advice we can seek.  
 5 **MS RICHARDS:** Is that somebody who works for the Authority  
 6 or is a separate firm of solicitors who is consulted by  
 7 the Authority? How does it work?  
 8 **MR FOLEY:** We employ and have appointed a legal counsel. We  
 9 have a contract with a firm of solicitors, Gowlings, who  
 10 provide legal advice to us.  
 11 **MS RICHARDS:** Does that legal advice -- is that part of  
 12 every determination of every claim or is that just  
 13 something that you use as and when there's a legal issue  
 14 that might arise?  
 15 **MR FOLEY:** As and when a legal issue arises.  
 16 **MS RICHARDS:** Now, the claims managers -- you have referred  
 17 to the training materials. Is it possible for the  
 18 training materials to be made public again so that  
 19 everybody here and everybody infected and affected, the  
 20 many thousands, can see or get some flavour at least of  
 21 the kind of training and kind of information that's  
 22 shared?  
 23 **MR FOLEY:** So the only times we publish this -- we are  
 24 constantly changing them and iterating them, this is  
 25 part of our Test and Learn philosophy which is that you

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1 entire system and then we will open it to everybody at a  
 2 point in time. That has, you know, a number of  
 3 challenges and that's why it is not usually used  
 4 nowadays in terms of developing digital systems.

5 The challenge is that those of us sitting in a  
 6 room specifying what has to be built and then building  
 7 it have to have the hubris to think we can understand  
 8 the circumstances of every individual who will be due  
 9 compensation. Then of course it is a big effort on  
 10 building and then it gets released and, by that point,  
 11 it is hard to change it because so much effort has been  
 12 made in building it and that's where you get that kind  
 13 of classic characterisation of "computer says no". You  
 14 know, there's something that needs to happen on a case  
 15 that is very obvious to the agent, the claims manager,  
 16 and the individual doing it but the computer just won't  
 17 fit it.

18 By doing it in a Test and Learn environment, what  
 19 you do is you take real cases but of course you do have  
 20 to start with a small number because what you have to be  
 21 able to do is to bring your multi-functional team  
 22 together as soon as the case hits something that is not  
 23 yet known or understood or is a problem. So if there's  
 24 a legal dispute, you immediately have to bring your  
 25 lawyer and everybody else in to fix it. If it was

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1 start small in order to be able to learn very quickly  
 2 and that you constantly iterate. So I'm sure we would  
 3 be comfortable sharing some information about how our  
 4 training is done and the information that's in there.  
 5 It will constantly change, though. It will constantly  
 6 iterate and develop as we learn and develop.  
 7 **MS RICHARDS:** In that case at least a description on the  
 8 website of the kind of issues and processes that the  
 9 training entails may be of assistance again to try and  
 10 dispel some of the distrust that you will understand  
 11 arises.  
 12 **MR FOLEY:** Yes, we can do that, yes.  
 13 **MS RICHARDS:** Are there any operational policies, policies  
 14 on: this is how you approach this question in the  
 15 regulations, this is how you approach that question in  
 16 the regulations, or this is how long we expect you to  
 17 spend processing an individual claim, anything of that  
 18 kind that applies to claims managers?  
 19 **MR FOLEY:** So, again, I think it's worth emphasising how  
 20 Test and Learn works. If you don't mind, I will spend a  
 21 little bit of time explaining that.  
 22 **MS RICHARDS:** Yes.  
 23 **MR FOLEY:** So the great advantage of Test and Learn is that  
 24 it is based in the real world. So to paint the two  
 25 extremes, we could have sat down, said we will build the

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1 something about interpreting medical data then you have  
 2 to be able to bring your medical assessor in, along with  
 3 the people who build the digital system, the people who  
 4 write your policies and that's the great advantage of  
 5 it, it means that you are constantly building  
 6 something that works and it works for the people who are  
 7 using it.

8 It also means that although you start small, you  
 9 are then able to accelerate and go faster because you  
 10 have built a system that works for the real world, for  
 11 the people who are using it. What that does mean then  
 12 is your policies are a constantly additive approach. We  
 13 don't sit down and write -- we don't sit down with the  
 14 regulations and say: write all of the policies that  
 15 interpret this; we are constantly adding and adding and  
 16 adding.

17 So I think it's a similar approach to you were  
 18 talking about the training materials. I think we would  
 19 be very happy to talk about the and to publicise the  
 20 themes that are on there and what we have considered.  
 21 What we don't have is a single manual that we could  
 22 publish which will have and forever more have all of the  
 23 policy interpretations for the regulations.

24 **MS RICHARDS:** Is there an intention to get to the stage  
 25 where you have, effectively, a manual and, if so, will

24

1 you commit to that being published?

2 **MR FOLEY:** It's a -- I sort of hesitate on the word "manual"

3 because there's no --

4 **MS RICHARDS:** A set of -- a suite of policies, or guidance

5 notes, or whatever they might be. I understand Test and

6 Learn. I understand that this is an iterative process.

7 I understand that these documents may change -- may

8 sometimes change quite rapidly, but the question really

9 is this: whatever is operating at any particular time,

10 can those be published so everybody sees, understands?

11 Again, you will know from the Inquiry report,

12 Sir Robert will know from all of his involvement of

13 everything that went wrong with the Alliance House

14 organisations, and one of those things that went wrong

15 was a lack of clarity and a lack of transparency about

16 how they were operating.

17 **MR FOLEY:** We would certainly be keen to, you know, make

18 available to people what is understood and how we are

19 using it. I would urge everybody to read that in the

20 context of: things are constantly iterating.

21 **MS RICHARDS:** Yes. Now, the decision-making process, then,

22 in relation to a claim -- so we take a hypothetical

23 claim. I'm going to take what I think will be, for

24 obvious reasons, a hypothetical hepatitis C claim. And

25 I am going to come back to ask about documents and

25

1 that there is a dedicated claims manager for each claim.

2 So throughout this, the person making the claim will

3 deal with the same person which means there's no

4 repetition, no having to repeat themselves, no trying to

5 find the right place in the case. It's the -- that

6 dedicated case manager stays with the case all the way

7 through.

8 The first stage, then, is preparing the right

9 information in order to calculate the claim. Now, we --

10 our ethos is that we are supporting people to get the

11 right compensation. And the first thing that we do, and

12 we do this prior to starting them, is gather the right

13 sets of information for them and say: with the

14 information that we already hold, this is the

15 information that we think is -- do you think this is the

16 right information? Is there anything you would like to

17 change? Is there anything that you would like to add?

18 Do you have anything -- indeed, you may have a

19 representative who has something as well. Is there

20 anything that you would like to provide?

21 **MS RICHARDS:** Sorry, Mr Foley, can I just stop you there

22 because I have question arising from what you described.

23 You talk about essentially before the claims

24 manager, in a sense, even starts any meaningful

25 interaction with the individual that there will be some

27

1 burden of proof and so on, but let's assume you get --

2 the claims manager has got to a point in the life of

3 that claim where they think they have the material they

4 need. And a decision has to be taken, first of all, as

5 to which band, which severity banding for the

6 hepatitis C claim the individual's claim falls in, and

7 then there will be a whole range of calculations that

8 will follow.

9 Who takes that decision? I think you have

10 described the case managers, the claims managers,

11 Mr Foley, in your statement, I think, as autonomous

12 decision-makers in that regard. Is that their decision?

13 **MR FOLEY:** Sorry, would you mind just repeating which

14 decision you're talking about --

15 **MS RICHARDS:** So the key decisions that are taken in the

16 life of this fictional claim, which in a hepatitis C

17 case, by way of example, will include not just a series

18 of important mathematical calculations, but will include

19 an exercise of judgment as to which level the individual

20 falls within.

21 **MR FOLEY:** Yes. So it's probably helpful if I walk through

22 the process so you can see who does what at which stage.

23 So it obviously starts with starting the claim

24 and, at that point, the claims manager will write to the

25 individual. We are -- you know, we work on the basis

26

1 information that the claims manager will already have

2 obtained. Is that information from the support schemes

3 that you are talking?

4 **MR FOLEY:** Exactly. So the support -- under the Victims and

5 Prisoners Act, we have the authority to take information

6 from those organisations. We take them. We gather them

7 together for the individual, and then when we start the

8 case, we say to the individual: are you happy for us to

9 use this? And if we are, here is the information that

10 we have.

11 **MS RICHARDS:** So, again, I just want to be very clear

12 I understand the process. I'm going to come back to the

13 question of prioritisation, but at the moment, as I

14 understand it, there's an random exercise. So Mr X's

15 name comes up in the randomly generated exercise. Is

16 this right, then: Mr X's case is assigned to claims

17 manager A, and before claims manager A even -- is this

18 before the invitation even goes out, claims manager A

19 will have accessed and obtained the information from the

20 support scheme for Mr X?

21 **MR FOLEY:** So the information from the support schemes are

22 transferred to us.

23 **MS RICHARDS:** So you have that within you can digital

24 system?

25 **MR FOLEY:** Exactly, yes. They are put together into a

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1 package that the claims manager will have. The claims  
2 manager then says: this is the information we have. Do  
3 you want us to use it, and is it the right information?

4 **MS RICHARDS:** Okay, right. So carry on with your  
5 explanation, then.

6 **MR FOLEY:** Thank you.

7 So that then builds to the point in the process  
8 which is called declaration letter, and this is where,  
9 having presented all information we have, having the  
10 chance for the individual to give all the information  
11 they have. It's also at that point that the individual  
12 says: I think there's a bit of other information  
13 somewhere that I don't have, and we'll say: we will go  
14 and get that for you if you would like us to.

15 Once we've got to that point, we then write in the  
16 declaration letter and say: this is the information that  
17 we have and upon which we will calculate the claim.  
18 That letter is issued by the claims manager.

19 The individual whose claim it is then writes back  
20 and says: I am happy that this is the information upon  
21 which you calculate the claim. Once we receive that  
22 reply, we then make the calculation. The calculation is  
23 done by the claims manager, and then we write back with  
24 an offer, and the individual then has the chance to  
25 consider the offer and to decide if they think it is the

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1 clinical assessor gives the claims manager shared with  
2 the claimant? And if it isn't, do you accept it should  
3 be?

4 **MR FOLEY:** I don't know. Can I go away and find out?

5 **MS RICHARDS:** Thank you. We will ask you to confirm. There  
6 may be a number of other issues where you may have to do  
7 likewise.

8 Leaving aside the question of sharing of clinical  
9 assessors' advice, if the decision of the claims manager  
10 is -- and, again, I'm going to use the hepatitis C  
11 examples but, obviously, there are a number of different  
12 judgments that might fall to be made. But if the  
13 decision is this person is level 2 and there may be a  
14 case that actually they should be level 3, is the  
15 decision explained? Does a communication, whether it's  
16 a letter or an email, set out: these are the reasons why  
17 we assess you as being level 2?

18 **MR FOLEY:** So my understanding is that the claims manager  
19 has -- both writes to the individual and explains the  
20 decision to them as part of their ongoing relationship.  
21 But, again, it might helpful if we write to you to set  
22 out exactly how that --

23 **MS RICHARDS:** That would be very useful. I have seen  
24 examples of communications with claims managers, and  
25 they're very -- they're very friendly communications

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1 appropriate offer. If it is, then they can write back  
2 and say: I accept the offer. And then we will put the  
3 claim into payment, and it is paid four days later from  
4 that.

5 You asked about different roles. In the role of  
6 assessing severity, this is where the claims manager may  
7 need the support of, for example, a clinical assessor.  
8 And the area that you raised like, for example, the  
9 severity of fibrosis, is a good example of one where  
10 they would need the assistance of the clinical assessor  
11 to make the right decision.

12 Just finally on other roles, when we make the  
13 payment, there are some other roles that are involved.  
14 So in order to make the payment, we need the agreement  
15 of the claims manager, a financial assessor who checks  
16 the calculations and the Authority's, a fraud assessor  
17 who checks that this is not a fraudulent account, and  
18 then a supervisor. And it's the four -- it requires  
19 agreement from all four in order to press the button and  
20 make payment.

21 **MS RICHARDS:** If the claims manager has gone to the clinical  
22 assessor for advice, and one can absolutely understand  
23 why that might be the case and not just on that issue,  
24 but that is obviously one issue, the issue of the  
25 hepatitis C severity bandings, is the advice that the

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1 which are seeking a degree of engagement, but what  
2 I haven't ascertained, in the limited communications  
3 I've seen, is essentially reasons for a decision are  
4 communicated. Because you will appreciate someone --  
5 it's difficult to challenge something or say something.  
6 There might be an error in that if you don't know the  
7 reasoning basis. So if you can confirm that position,  
8 I would be grateful.

9 Can I come then to the question of documents and  
10 the documents that people may have to supply. Typically  
11 if there is such a thing as a typical case, do you know  
12 what kind of documents the support schemes supply? My  
13 understanding from talking to individuals and RLRs is  
14 that's what's held by the support schemes in many cases  
15 may be either quite limited or rather variable. Is that  
16 your experience?

17 **MR FOLEY:** That's certainly been our experience, yes.

18 **MS RICHARDS:** And so in terms of the documents or other  
19 information that either the individual has to supply or  
20 the claims manager goes away themselves and obtains, my  
21 understanding is that even for those registered with the  
22 existing schemes who will have already gone through a  
23 process of proving infection through blood or blood  
24 products, that they are still being required to provide  
25 that information again. Is that right in your

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1 experience or not?

2 **MR FOLEY:** So people who are already registered with the  
3 existing schemes are automatically eligible under the  
4 Act. So it's not a question of proving eligibility but  
5 there is a question then about evidencing the point of  
6 infection.

7 Now, we do look for evidence but where evidence is  
8 not forthcoming or can't be provided then we move to the  
9 balance of probability in terms of determining those.

10 So those are the sort of things -- we're not  
11 looking for proof of eligibility in these cases but we  
12 are looking for evidence that will allow us to make the  
13 appropriate calculation.

14 **MS RICHARDS:** One of the requirements -- and this is  
15 a requirement in the regulations, so I'm not suggesting  
16 that it is something that IBCA have dreamed up and it is  
17 something I will be asking Mr Quinault about -- but  
18 there is a requirement to prove date of diagnosis,  
19 I think. Is that something you have detected so far  
20 whether that's causing problems, because we know from  
21 thousands of accounts that particularly when it comes to  
22 hepatitis C, many people were not diagnosed for years,  
23 many people were diagnosed by their clinicians but not  
24 told for years, many people have no records which record  
25 date of diagnosis, an accurate date of diagnosis until

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1 balance of evidence because we are still in that phase  
2 where we are iterating the learning. So each case tells  
3 us something more about how to do that and also because  
4 we have in many cases been able to build a suitable  
5 evidence base that has allowed us to proceed. It might  
6 be helpful if we write to you with the number of times  
7 we have had to invoke that balance --

8 **MS RICHARDS:** That would be extremely helpful, thank you.  
9 Again, you will probably know from the Inquiry report  
10 that in relation, in particular, to the Skipton Fund and  
11 the way it operated, one problem was a seeming inability  
12 to understand that what a person says is itself  
13 evidence.

14 Does IBCA understand, do the claims managers  
15 understand, that a person's own account of what they  
16 understand to have happened to them is evidence?

17 **SIR ROBERT FRANCIS:** Perhaps I could intervene there. You  
18 might imagine the balance of probabilities is something  
19 I've dealt with for quite a few years and I do emphasise  
20 every time I see claims managers that obviously what  
21 a person says is evidence and must be assessed in the  
22 same fair way that you assess any other evidence.

23 When it comes to guidance about the balance of  
24 probabilities, I was always taught when sitting as  
25 a judge that your direction of that should be very

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1 something comes up much, much later, which isn't the  
2 actual date of diagnosis but this first proper record of  
3 it in medical records. So is that causing problems, do  
4 you know at the moment?

5 **MR FOLEY:** I don't have the statistics in front of me as to  
6 which data points are proving more or less problematic  
7 but we certainly have seen cases where that has been the  
8 case, yes.

9 **MS RICHARDS:** Now, when it comes to individuals whose  
10 medical records, relevant medical records are either  
11 sparse or non-existent, for reasons that you will know  
12 well, what is IBCA's approach to satisfying the burden  
13 of proof and is there any guidance that's been given to  
14 claims managers in that regard or any training that's  
15 been given to them?

16 **MR FOLEY:** So we do see if there's evidence and whether we  
17 can help find evidence. Obviously, for all of the  
18 reasons that the Inquiry found, in many cases records  
19 are patchy or are non-existent and that is the point at  
20 which we move to the balance of proof.

21 The balance of proof, then, is looking at: is it  
22 more likely rather than less likely and that sometimes  
23 requires clinical input as to: do those look like the  
24 likely sequence of clinical events? I don't think we  
25 have a document that says this is how you should apply

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1 simple because you have got to take into account any  
2 number of different circumstances. But I would say that  
3 I personally have always encouraged IBCA to, for  
4 instance, look for evidence from the statements that  
5 this Inquiry itself has had and the evidence that it has  
6 because -- and I'm happy to say, as you might expect,  
7 the Inquiry's been very co-operative in giving us  
8 material. So we are fully aware of the fact it's not  
9 just about medical records or a signed piece of paper,  
10 it's about people's recollections and so on.

11 Obviously it is -- and I should say behind that is  
12 also our philosophy which is to be supportive towards  
13 people, rather than to make negative presumptions.

14 **MS RICHARDS:** Now, I am going to come on to in due course  
15 some questions about timescales and cohorts and opening  
16 up the claim and so on, and I will come back to the  
17 particular cohort I am going to ask you about now in  
18 that regard. But whilst we're still looking at  
19 evidentiary requirements, documentation, there are  
20 people who have never been registered with the scheme  
21 either because they have hepatitis B or because their  
22 claims were rejected on an evidentiary basis, or because  
23 -- and I'm going to take the hepatitis C example  
24 again -- they were infected not long after but after  
25 1 September 1991 cut-off date that bound the

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1 Skipton Fund and binds the support schemes.  
 2 Is there -- what thought has IBCA currently given  
 3 to how it's going to assess those claims that have never  
 4 previously been assessed before and what kind of  
 5 material is it likely to need or want to see?  
 6 **MR FOLEY:** Yes. So we've heard very clearly about the  
 7 circumstances from the representatives of those groups.  
 8 We are working with those representatives now to work  
 9 out what is the best approach that we can take to those  
 10 circumstances. So as we're working through that, we  
 11 would be very happy once we've got, you know, an idea  
 12 about what those will require to publish them. At the  
 13 moment we don't have it.  
 14 **MS RICHARDS:** Thank you. That anticipates my next question.  
 15 Can I come on then --or what was going to be my  
 16 next question. Can I come on then to the question of  
 17 progress. Now, before we look at the most recent update  
 18 of figures which I think was published the day before  
 19 yesterday on your website, in your first statement,  
 20 Mr Foley, you described the Test and Learn approach to  
 21 those first 250 claims and so can you share with us  
 22 what's been learnt so far about the process of those  
 23 first 250 or however many it precisely has been?  
 24 **MR FOLEY:** Yes, certainly. I think I will probably start  
 25 this with thinking about, you know, the progress that

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1 having to continually repeat themselves to reinvent  
 2 themselves, the fact that the dedicated claims manager  
 3 gives them that certainty and contact all the way  
 4 through. We've learned a lot about the way people like  
 5 to be contacted and that is, as you can imagine, varied.  
 6 Everybody has an individual choice how they would like  
 7 to be contacted by IBCA and we can put in place the  
 8 processes to be able to do that.  
 9 We've learnt an awful lot about the amount of  
 10 information and type of information that is held by the  
 11 Infected Blood Support Schemes and the gaps that leaves  
 12 and then how we go about asking other organisations for  
 13 that when we need to and there's a whole load of  
 14 technical things that we have learned like, for example,  
 15 you know, where things become difficult to interpret  
 16 like the severity of the fibrosis, for example, and how  
 17 to bring those in.  
 18 So all those things, all of them sound, you know,  
 19 small things but the really important thing is all of  
 20 those small things add up to a better claims journey  
 21 than if we had sat in a dark room, developed it  
 22 ourselves and assumed we knew what would happen when in  
 23 the real world, real cases were being processed.  
 24 **MS RICHARDS:** Now, in terms of the most recent numbers  
 25 published on 6 May they are 106 people paid, 160

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1 has been made. So as we described in May last year,  
 2 this Inquiry reported. Our appointments were announced  
 3 the following day and then on the Friday of that week  
 4 the Victims and Prisoners Act received Royal Assent in  
 5 what is called wash-up in terms of what happens after  
 6 a General Election is called.  
 7 As described, it was just the two of us at that  
 8 point of time. As Sir Robert has described, we needed  
 9 the regulations to start to be able to process claims.  
 10 When the first set of regulations, were they in August  
 11 less than two months after that we started the first  
 12 claims and less than four months after that, we made the  
 13 first payments. So from a standing start in May, that  
 14 has been rapid progress.  
 15 We also said we would do 250 claims by the end of  
 16 March for the learning process that you are describing  
 17 and we've managed to do those as well and the latest  
 18 figures obviously show the acceleration phase that we  
 19 promised after the learning phase. You can see those  
 20 numbers come through. We publish those numbers every  
 21 month. We're going to publish them every fortnight  
 22 going forward so that people can see how that  
 23 acceleration is progressing.  
 24 But the learnings are really important. So we  
 25 have learnt about the importance people place on not

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1 received offers. Is that including the 106?  
 2 **MR FOLEY:** Exactly.  
 3 **MS RICHARDS:** That's what I thought. So there's 54  
 4 effectively who have received offers but not yet been  
 5 paid, so that's still in that stage, and 432 having  
 6 started the claims process.  
 7 Now, given that it's I think three and a half  
 8 years since -- or over three years, sorry, since  
 9 Sir Robert's report was presented to Government, over  
 10 two years since the chair's second interim report was  
 11 presented, those figures, looked at in those absolute  
 12 terms, can I think probably rightly be described as  
 13 shockingly low. I am not suggesting in my questions  
 14 that will follow that that is the fault of IBCA because  
 15 we know, obviously, that effectively action to set up  
 16 IBCA began only last May, effectively, and so you have  
 17 been working since then. You are not responsible for  
 18 the years of delay before that.  
 19 But what you have set out in your statement is  
 20 some broad timescales and that's what I want to come to  
 21 now. You talked, I think, in your statement,  
 22 Mr Foley -- and this is the expectations from the  
 23 Cabinet Office -- of paying the first infected claim by  
 24 the end of 2024. Obviously, that did happen. Paying  
 25 the first affected claim by the end of 2025, paying the

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bulk of the infected claims by the end of 2027, paying the bulk of the affected claims by the end of 2029, and in fairness to you your statement said, obviously the aim is to do it more quickly than that, but that is effectively the broad timescale, the parameters that have been mapped out in terms of expectation in the framework agreement between IBCA and the Cabinet Office.

Now, you will understand how that news felt to those who we'll hear that there are still for many people years potentially before they are paid. Is there anything by way of update you can give as to now that you have got past those first 250 now that you are as I think you said scaling up, is there anything more concrete you can give as to how you think the numbers are going to operate and increase?

**MR FOLEY:** So, yes, I can. I completely understand why this is so important to people and why, you know, they are worried about that. As you rightly point out, you know, we started in May last year and one of the things that we've really tried to avoid is to make rash promises about what might happen and then not to be able to deliver. So we've tried to be prudent in the things we say.

Now that we've learnt all of the things we have learnt in the cases that we've progressed so far, we are

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**MR FOLEY:** So that does vary. So obviously the number of claims that somebody who has just come out of training will have will be different from somebody who has established and is well trained. It's also going to vary in time because we are constantly iterating and improving our services. But at the moment around ten is a reasonable number to assume somebody might have.

**MS RICHARDS:** And is there a projection that you are working on as to how long the typical average -- probably there is no such thing, but given that you are dealing with the infected living registered with the schemes at this stage, how long roughly does the claims process take from beginning to end?

**MR FOLEY:** So you are right that there is no typical case. On average from when we contact somebody to when we pay them it's 39 days but we have paid, you know, our quickest one has been five days. So there is -- as you can see, there is a range.

**MS RICHARDS:** That's the living infected registered.

**MR FOLEY:** Yes.

**MS RICHARDS:** The living infected not registered, the cohort who has never received a penny of anything under the previous financial support schemes, still less anything less that could be described as compensation, what is the proposal in relation to that cohort?

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now in this acceleration phase. You can see the numbers that are being published and you can also see that we have committed to starting on average 100 claims every week which again points to the acceleration.

On the cohort that we have built so far, which is those who are living have been infected and have been registered with the existing support schemes, you know, on that basis I can be pretty confident that for the living registered infected we should have started all of their claims this calendar year which gives an idea of the -- you know, the acceleration that we have talked about and also illustrates, you know, our commitment to as the minister said yesterday, those dates are the backstops and our ambition is to do everything much faster and that starts, I think, now that we know a bit more, to paint a bit more light on that commitment.

**MS RICHARDS:** How many claims managers do you currently employ, or have seconded?

**MR FOLEY:** We currently have just over 100 claims managers.

**MS RICHARDS:** What's the intention in terms of increasing that?

**MR FOLEY:** To increase at 40 a fortnight until we have 500 in total.

**MS RICHARDS:** How many claims does each claims manager have assigned to them at any one time?

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**MR FOLEY:** We don't know yet. We're working with that group to understand, you know, as we said earlier, the circumstances of what claims might look like and how they could be progressed. As soon as we know more about that and are firmer, we will be able to talk to people, but at the moment we don't know.

**MS RICHARDS:** Do you have a timescale? Do you have a series of meetings either planned or envisaged that will enable you then to formulate a plan for that cohort?

**MR FOLEY:** I don't have a timescale but we're working through it as quickly as we can, yes.

**MS RICHARDS:** Again, that may well be a matter that the Inquiry will want to come back to you on for something a little more precise in writing in the very near future.

The affected then, the living affected, and you will absolutely understand again the importance of that because under the current scheme their claim dies with them and so again I am sure you will understand the profound cynicism that many have voiced to us and I am sure voiced to you and to the Cabinet Office that there's almost a financial incentive for their claims to be dealt with slowly. I'm not suggesting that's an IBCA position because the money is not IBCA's, but you will understand that strength of feeling, I have no doubt.

What's the proposal and any updated timescale for

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1 the living affected?

2 **MR FOLEY:** So we have said that we are looking to start  
3 claims for the affected this calendar year.

4 **MS RICHARDS:** The end of the calendar year the middle of the  
5 calendar year? I know it's not always easy to be  
6 precise and that's why I'm not asking for an actual date  
7 at this point but just something --

8 **MR FOLEY:** It will be towards the end of the calendar year.

9 **MS RICHARDS:** Is there any update to the "we hope to have  
10 paid the bulk by the end of 2029"? Is there a date by  
11 which you can say "we expect to have paid, you know, a  
12 very significant proportion by an earlier date"?

13 **MR FOLEY:** We will approach them all in the same way that  
14 we've approached the development of the living  
15 registered infected cohort. So we will take a Test and  
16 Learn approach, we will make sure that what we build is  
17 fit for the real world and then as we go through that,  
18 we will have greater clarity about how long it will take  
19 and at that point we'll be able to say more about it.

20 You know, I really appreciate that this is, you  
21 know, that everybody would like to have clarity about  
22 this but doing it in this way means that our service  
23 fits the people that are using it and that when we say  
24 something it's based on reality, not a projection or a  
25 prediction or an estimate and I think that is really

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1 trauma and distress that that is visiting upon people.

2 **MR FOLEY:** We definitely will. And just to iterate, the  
3 point of doing it this way is to have a system that  
4 works, but it's also the fastest way of getting through  
5 to the end of all cases because then you get better flow  
6 through the system then. But as soon as we know when  
7 each one will start, we will communicate that, yes.

8 **MS RICHARDS:** Does the Authority think it's been given  
9 enough resources to process claims as reasonably as --  
10 sorry, as quickly as it can, or are there further  
11 resources it thinks it needs from the Cabinet Office or  
12 elsewhere?

13 **MR FOLEY:** So I was very pleased to hear the minister  
14 yesterday as he described -- you know, he has asked us:  
15 can you go faster? And we are in discussions with him  
16 and the Cabinet Office as to what resources would be  
17 required to go faster.

18 So, you know, we are going as fast as we can with  
19 the resources we've got. There are some things we think  
20 we could do faster with more resources, and we're in  
21 discussions with the minister and the Cabinet Office  
22 about providing those.

23 **MS RICHARDS:** One of the things the minister mentioned  
24 yesterday was discussions with IBCA about attitude to  
25 risk and not being too risk averse.

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1 important.

2 So the ability that I have now to sit here and say  
3 I think we will start all of the living registered  
4 infected cases this year is because we have worked  
5 through real cases and understand what they entail and  
6 we will adopt the same approach for all of the other  
7 groups that we build as well.

8 **MS RICHARDS:** So just sticking with the living affected, is  
9 the plan then effectively to have a first 250 cohort or  
10 something along those lines to do a Test and Learn  
11 approach in relation to that cohort?

12 **MR FOLEY:** For all of the other cohorts, we will definitely  
13 take the same mantra which is to start small, to have a  
14 small number of cases that are real cases that we will  
15 learn from and experience, and then we will grow them  
16 out into bigger cohorts, yes.

17 **MS RICHARDS:** As soon as you have a clearer idea of when  
18 that process will start for each of the cohorts, and  
19 I've not mentioned estates, but that's obviously another  
20 deeply important one, will you publish so that everybody  
21 knows when that process is going to be, and then how  
22 long it's anticipated, without giving false hope, but  
23 anticipated that Test and Learn approach will be because  
24 the anxiety, the uncertainty, the not knowing, we are  
25 hearing numerous accounts, and I'm sure you are, of the

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1 What can you tell us, from IBCA's perspective,  
2 about those discussions and how it's going to inform  
3 IBCA's approach going forward?

4 **SIR ROBERT FRANCIS:** Perhaps I could start that, and you  
5 might want to ask David as well, because clearly risk is  
6 one of those things that a board is responsible for in  
7 terms of what's called the risk appetite.

8 When we started, we were advised by the relevant  
9 fraud experts that there were some 80 fraud risks  
10 attached to this scheme. And I know, from conversations  
11 I have had, the community are as worried about  
12 fraudulent people intervening as we are.

13 However, we are absolutely aware that we mustn't  
14 use sort of precautions against fraud as barriers that  
15 prevent genuine people applying. And as I've said  
16 already, our philosophy is very much we are supportive  
17 towards people in terms of the evidence they bring  
18 forward. But we do have to be realistic that,  
19 unfortunately, there are some people out there who would  
20 much like to intervene.

21 So that is just one of many risks that we have to  
22 guard against. And, obviously, the systems you build  
23 can either try and guarantee there's no -- this doesn't  
24 happen at all, or you take a risk. The better appetite  
25 you have for risk, you know, the more you are prepared

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1 to tolerate it, the quicker you can go.

2 Now, not surprisingly in Government, but in this  
3 wonderful document called Managing Public Money, and  
4 there are others, there are approaches, philosophies and  
5 policies about how you take risk, and it is David's job  
6 as accounting officer to remain within the requirements  
7 of that.

8 Now, it is possible to release an accounting  
9 officer from those risks, or at least some of them, and  
10 I should say that's one of the things we are looking  
11 into, and there are procedures for doing that.

12 Obviously, we don't want to work in an environment  
13 where we take no responsibility at all for being  
14 defrauded, but there are issues there. There are, of  
15 course, other risks about estates, and so on, which we  
16 have to guard against.

17 So, yes, we are in discussion with the minister  
18 about risk appetite and whether we can lower some of the  
19 institutional risks that we're obliged to take care of,  
20 and in conversation with auditors,  
21 National Audit Office, and so on.

22 It's a question, I should say, we at the board  
23 continually ask, as does minister of us: is there  
24 anything we can do to go faster and be reliable at the  
25 same time?

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1 two things. One is making sure that everybody gets the  
2 compensation that they are due, and then, secondly,  
3 trying to do it as fast as we can, and it's utterly  
4 regrettable that that post was put --

5 **MS RICHARDS:** And on that, just again before we break,  
6 there's one document that I think has been shown to you  
7 this morning that I'm going to ask you about.

8 Lawrence, could we have HSOC0029918. If you could  
9 just zoom in the bottom half of the page. So you will  
10 see here, and we've redacted the details because the  
11 individual's details are not relevant, and it was a  
12 letter sent to the Haemophilia Society, or an email then  
13 forwarded to us:

14 "My husband is going through the compensation  
15 process, having been randomly selected. He has  
16 haemophilia and was infected with Hep C as a child.  
17 Thankfully, he went through interferon and ribavirin  
18 treatment early in 1997 and is reasonably well, so one  
19 would think would be one of the easiest claims to work  
20 out.

21 "However, it has taken over two months for this to  
22 happen -- when we had the date of infection, I was able  
23 to use the online claims calculator to work out what he  
24 was entitled to -- this took three minutes -- it was two  
25 weeks before we heard the same information from IBCA.

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1 **MS RICHARDS:** Just two matters before I think it's then  
2 probably the right time to take a break.

3 You will be aware, and I probably don't need to  
4 put it on the screen, of a post, I think it was in  
5 LinkedIn, in which again I think someone from IBCA  
6 talked about the scaling up of the process. And then  
7 there was an observation from somebody who, as I  
8 understand it, is contracted to provide digital services  
9 to IBCA, and that -- digital services are obviously a  
10 hugely important part of the speed at which you go --  
11 saying something along the lines of: don't make it too  
12 quick, smiley face, or something like that. I've  
13 slightly paraphrased, but I'm pretty sure most people  
14 here know the post I'm referring to.

15 **SIR ROBERT FRANCIS:** It was appalling. David might wish to  
16 go further than that. And it does not, so far as I'm  
17 concerned, reflect in any way the values of the  
18 organisation or the people who work for it.

19 **MR FOLEY:** Exactly right. So, you know, it should never  
20 have been posted. It should never have been said. The  
21 individual regrets it bitterly. It is something that he  
22 did in haste. It is one of the challenges, I think,  
23 about social media and is now living at length to regret  
24 it.

25 In IBCA, we are absolutely, you know, driven by  
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1 My husband has a twin brother who was infected at the  
2 same time and in the same situation. When we asked if  
3 they could process his claim given they had all the  
4 information, just had to change the first name, we were  
5 told he had to wait to be randomly selected and would  
6 probably have a different claim manager who would start  
7 the process again! This seems a waste of time and  
8 resources.

9 "While our claim manager was very nice in our  
10 interactions -- she was only managing seven cases and  
11 said how busy she was! I struggle to see how IBCA are  
12 going to process 30,000-plus affected people by any  
13 deadline."

14 Then there are observations about the -- and  
15 concerns in particular about affected claims going to  
16 the back of the queue.

17 Now, before even seeing that, one of the questions  
18 I have been asked to ask you is: what about linking  
19 family members and, indeed, linking infected and  
20 affected claims, given that the affected claim is  
21 contingent, effectively, upon the Authority being  
22 satisfied about matters in relation to the infected  
23 claim. But here we have two what could have been  
24 obviously linked infected claims.

25 Is that something that IBCA can go away and look  
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1 at and think about this? It seems an obvious way of  
 2 possibly speeding up at least some claims.  
 3 **MR FOLEY:** So we certainly can think about it. I think  
 4 I should point out there are some obvious implications  
 5 of that. So if you link cases, then obviously that does  
 6 mean that some affected people will be paid before some  
 7 infected people, maybe considerably before them. The  
 8 cases clearly do need to be linked in any event because  
 9 for an affected case to proceed, it does need to have an  
 10 infected case to which it relates.  
 11 And then just on the point about twins, I would  
 12 definitely be not fulfilling my duties if we assumed  
 13 that two twins were identical in terms of compensation  
 14 to be paid.  
 15 **MS RICHARDS:** Absolutely, but if someone is telling you that  
 16 that's the position, a flexible system trying to work as  
 17 quickly as possible might think, well, here is a way of  
 18 dealing with two claims in a way that will be quicker  
 19 than dealing with one now and dealing with the other in  
 20 a year's time.  
 21 **MR FOLEY:** We will certainly go away and look at what the  
 22 opportunities there are. But just to point out, this  
 23 makes a very compelling case, but it is not as  
 24 straightforward as that. There are always implications  
 25 about every choice you make about how you proceed with

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1 The second point is that every claim we would take  
 2 in relation to an affected person (which, by the way,  
 3 the regulations only came out three weeks ago and no-one  
 4 is suggesting they are anything other than complicated),  
 5 every affected person we join into a claim for an  
 6 infected person means that's probably one less infected  
 7 person we are processing at the same time. We, as a  
 8 board, felt it right -- and obviously there were  
 9 different views about this -- but we thought it right to  
 10 give the priority at this stage -- this stage, the  
 11 development stage -- to the living infected and that's  
 12 what we are doing.  
 13 So, as David says, for every apparently simple  
 14 solution of joining everybody together would presuppose  
 15 that we knew everything now about how to process a claim  
 16 for all affected people as well as the infected, and we  
 17 don't. We have to, I'm afraid, deal with this in stages  
 18 because if we don't it's going to take an awful lot  
 19 longer than people's worse nightmares to get through the  
 20 compensation for everybody.  
 21 That is our view.  
 22 **MS RICHARDS:** Sir, I note the time and I'm conscious we also  
 23 need to be back in here before the 12.00 silence, so  
 24 perhaps we could take our break now.  
 25 **SIR BRIAN LANGSTAFF:** Yes. Let's come back then at -- let's

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1 cases. In particular, linking them, from an operational  
 2 perspective, we have thought it is quite attractive to  
 3 do that, but then there are complications then about  
 4 what does that mean in terms of the order in which cases  
 5 will proceed at.  
 6 **SIR ROBERT FRANCIS:** Could I just add to that because this  
 7 is the sort of matter that we discuss at the board.  
 8 The dilemma we have is obviously we want, if  
 9 possible, to pay everyone as soon as possible, ideally  
 10 at once, but there are implications. David and his team  
 11 are building a system from end to end which has to cater  
 12 within its digital systems for any number of different,  
 13 sometimes very complicated combinations, of circumstance  
 14 and fact.  
 15 The way in which it is doing is, first of all, we  
 16 are designing the system which works for the infected,  
 17 the people. We've started with those who we know most  
 18 about, namely, the registered infected. If we don't get  
 19 that right first, if we don't get that right, then  
 20 whatever we bolt on to that in relation to other types  
 21 of claims is likely to fail. The bit we're dealing with  
 22 at the moment is absolutely essential to everything that  
 23 follows; namely, how do you deal with the eligible  
 24 infected applicants for compensation? That's the first  
 25 point I make.

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1 make it 11.45. 11.45.  
 2 **(11.25 am)**  
 3 **(A short break)**  
 4 **(11.51 am)**  
 5 **MS RICHARDS:** I have asked about the position, in terms of  
 6 the proposed or anticipated timescales for the living  
 7 infected registered. You have explained the position in  
 8 relation to those currently outside any of the schemes.  
 9 We discussed the affected.  
 10 Can I just turn briefly to the deceased infected.  
 11 Is there any timescale -- assuming you are going to do  
 12 the same and have a Test and Learn approach, is there  
 13 any timescale for when that may start?  
 14 **MR FOLEY:** As with the previous answer, there is not a  
 15 timescale at the moment. It is our ambition to open all  
 16 of those parts of the scheme as quickly as possible and,  
 17 as before, I'd be very happy to, as soon as we know when  
 18 they are ready to open, that we will tell people that  
 19 they are ready to open.  
 20 **MS RICHARDS:** Is the intention to do them one after the  
 21 other sequentially, or is the plan to open the Test and  
 22 Learn phases for all the remaining, or at least some of  
 23 the remaining cohorts simultaneously so that you are  
 24 running them in parallel?  
 25 **MR FOLEY:** I think some of them will have to go singularly,

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1 but I think there is the opportunity to do some of them  
2 in parallel as well. And, again, we will explain that  
3 as we know what the right answer is.

4 What we're balancing is the amount of development  
5 effort, in particular digital development effort, in  
6 each of those cohorts, and as each of them builds, we  
7 have more of the common infrastructure that sits  
8 underneath it which means that more of them can go in  
9 parallel. As we know, we will explain that to people.

10 **MS RICHARDS:** But the regulations, in terms of the process  
11 of application specify -- and I'm not currently  
12 proposing to put the regulations on the screen, but I  
13 will if it assists.

14 So regulation 14 talks about:

15 "An application for an infected core payment must  
16 be made by ..."

17 And then there's certain time periods:

18 "An application for infected core payment must be  
19 accompanied by evidence ..."

20 And then that's set out.

21 And Regulation 65 says:

22 "An application must be made in writing to IBCA by  
23 the relevant person in a form approved by IBCA and  
24 signed by the relevant person."

25 Now, there isn't currently any application form

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1 **MS RICHARDS:** Is there any reason why, as both individuals  
2 and recognised legal representatives have suggested to  
3 us, IBCA cannot simply accept pre-prepared applications  
4 with an evidence pack, with everything that's required,  
5 from those who -- at least those who were legally  
6 represented through the Inquiry and whose legal  
7 representatives almost certainly already have all the  
8 information that's likely to be required or available?

9 **MR FOLEY:** So the first thing is, when a person begins their  
10 claim, they absolutely can send anything and everything  
11 that they would like to send to us. So that is accepted  
12 and would be well received.

13 Obviously, what we do have to do is, we have to  
14 build a service that is capable of providing for  
15 everybody. So we know a lot of people are represented,  
16 a lot of people aren't represented as well, and we have  
17 to make sure that our service is capable of providing  
18 for everybody.

19 We do as -- you know, as Sir Robert recommended  
20 and the Government accepted, we do offer everybody, when  
21 they start a claim, the opportunity to have independent  
22 legal advice, and that is reiterated through the process  
23 of doing it as well. But because not everybody is  
24 represented, our service needs to be designed for  
25 everybody.

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1 that is accessible by anybody. There are only the  
2 invitations, and then the various documents that are  
3 filled in.

4 When will IBCA be making available an application  
5 form that people can complete?

6 **MR FOLEY:** So we've taken the approach of, as I described  
7 earlier, of supporting people to get the compensation  
8 that they are due. And we've also -- when we did early  
9 engagement from user research, one of the things that  
10 came through quite clearly was being able to do as much  
11 of the heavy lifting for people as possible would be  
12 helpful and advantageous.

13 So instead of sending out an application form,  
14 what we've instead done is said: we will start the claim  
15 for you, we will gather as much information as we can to  
16 avoid you having to do it, we will accept anything that  
17 you provide and want to add or change in there, and that  
18 allows us to have a smoother, faster and less burdensome  
19 journey. So it's the -- it ends up being the equivalent  
20 of an application form, but it isn't an application form  
21 that we are issuing or sending out to people.

22 **MS RICHARDS:** Is there an intention to change that so that  
23 there is an application form that people can complete?

24 **MR FOLEY:** We haven't -- that is not in our plans at the  
25 moment, no.

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1 **MS RICHARDS:** I'm not suggesting there shouldn't be a  
2 service that works for people who are not legally  
3 represented, but -- and I've been given some real-life  
4 times tables, timescales by RLRs about the speed with  
5 which they have been able to give a package that means  
6 the claims manager wouldn't even need to have spent time  
7 going through the support scheme documentation to see  
8 what is or isn't there.

9 Wouldn't it be sensible for IBCA not just to say:  
10 well, yes, you can send what you want when we invite  
11 you, but to open up the scheme to say that anyone who,  
12 within the cohort, whichever cohort you are currently  
13 looking at, anyone who is in a position to do that, yes,  
14 send us your completed application form, send us your  
15 evidence pack.

16 One of the examples I've been given was absolutely  
17 within days because everything was already there, and  
18 then it just needs checking by the claims manager,  
19 rather than the claims manager doing an enormous amount  
20 of legwork and their own calculations, and, of course,  
21 it has to be checked.

22 Could you not do that whilst simultaneously  
23 obviously ensuring that you're not closing the service  
24 to those who don't want legal representation?

25 **MR FOLEY:** So, as I said, when the claims journey starts,

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1 everybody is welcome to send that, and we do accept it.

2 If we did it the way you were describing, we would  
3 undoubtedly be prioritising the claims of those who are  
4 represented and de-prioritising the claims of those who  
5 aren't represented. And that, I think, would pose a  
6 difficulty, in terms of being open to everybody.

7 But everybody who does have that pack, when their  
8 claim starts, is entirely accepted and very welcome for  
9 them to present that.

10 **MS RICHARDS:** Why would it involve de-prioritising the  
11 claims of those who are not legally represented? You  
12 could have -- you could continue with an element of  
13 random generation, and those who are not legally  
14 represented will go through exactly same process as is  
15 currently underway for those who don't want legal  
16 support.

17 I'm not suggesting something where you only look  
18 at those applications that I've described and don't look  
19 at anything else.

20 **SIR ROBERT FRANCIS:** Forgive me, but we're talking at the  
21 moment, and probably for some time, about it doesn't  
22 matter how many hundreds of claims managers you have,  
23 there's a limit to how many they can deal with at once.  
24 And what you are suggesting, if I may say so, is that we  
25 would give priority to those who came forward with a

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1 **MS RICHARDS:** Sir Robert, my apologies.

2 **SIR ROBERT FRANCIS:** Not at all. Mine for going on for too  
3 long.

4 At a stage when we have, as it were, our full  
5 cohort of claims managers, the point you make, if I may  
6 say so, might appeal more strongly than I suspect it  
7 does at the moment when we're in a beta testing stage.

8 **MS RICHARDS:** Can I come to question of how people are  
9 selected to apply and I should just say we've heard  
10 expressions of distaste for the use of the word  
11 "invitation". Someone said to me "it's not a party", so  
12 I'm going to try and avoid --

13 **SIR ROBERT FRANCIS:** Can we apologise for the use of the  
14 expression because we've taken that on board and we no  
15 longer use that ourselves and I hope that's going to  
16 begin to percolate through to the correspondence.

17 **MS RICHARDS:** So we're told that the process is one of  
18 random selection. How does that actually work?

19 **MR FOLEY:** So we have a list of those who are registered  
20 with the existing Infected Support Schemes. They are  
21 put into a spreadsheet and then a random allocation is  
22 generated which produces the individual cases that we  
23 then use to proceed to start the claim.

24 **MS RICHARDS:** Now, you have recently introduced a system of  
25 giving a form of prioritisation to those within that

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1 legally prepared pack. That would inevitably mean that  
2 someone who didn't have that would be dealt with later.

3 There may come a time when there's so many people  
4 available that what you say could work, but I'm not sure  
5 it would at the moment, or that my board would consider  
6 that to be a fair way in which to bring people forward  
7 to make a claim.

8 **MS RICHARDS:** You could perhaps have two cohorts -- again,  
9 two teams of claims managers, one who deals with claims  
10 provided on that basis, another who deals with claims  
11 being -- operating on the invitation basis.

12 **SIR ROBERT FRANCIS:** Well, you could do that, but it would  
13 still mean that those who didn't have the advantage of  
14 legal representation of the type you describe would be  
15 disadvantaged. And, at the moment, people are brought  
16 forward on the basis, random basis, that you have  
17 described. Obviously, the more --

18 **MS RICHARDS:** I'm so sorry. I've just realised it is 12.00.  
19 The fault is entirely mine.

20 **SIR BRIAN LANGSTAFF:** We will take two minutes' silence.  
21 Thank you.

22 *(Two minutes' silence observed)*

23 **SIR BRIAN LANGSTAFF:** Thank you. I am told the bells will  
24 not be heard easily within this building because the  
25 soundproofing is too good.

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1 cohort who are I think within the last 12 months of life  
2 as anticipated. There will be people in that situation  
3 who are not in the current cohort, who are either  
4 affected (elderly widows, widowers, parents come to mind  
5 immediately) or indeed those who have never been  
6 registered with any scheme, never received anything, may  
7 have been given such a diagnosis.

8 Has consideration been given to what could or  
9 should have been done in relation to people who fall  
10 within those description?

11 **MR FOLEY:** Yes and we introduced the end of life pathway  
12 because we heard that very clearly from the community  
13 about its importance. The design of that pathway is  
14 applicable to all of the future cohort. So as soon as  
15 each cohort is available and able to take claims, we  
16 will introduce the end of life prioritisation route as  
17 well. So it isn't in existence at moment for those  
18 cohorts because those cohorts aren't available but as  
19 soon as they are, that will be available to them too.

20 **MS RICHARDS:** That will of course in all probability be too  
21 late for somebody who is currently in a terminal stage  
22 and so I absolutely understand why when you open the  
23 cohort -- say, you were opening a cohort in 2026, why  
24 you would look at that point to see those who, at that  
25 point in time, fall within that description but you are

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1 going to have lost literally those who will have died in  
 2 the intervening period. Is that something which the  
 3 Authority can go away and think further about?  
 4 **SIR ROBERT FRANCIS:** Can I say when I became aware that this  
 5 was the policy choice, I drew to the Government's  
 6 attention the operational consequences of that, which in  
 7 my view were disturbing and they are the ones you have  
 8 mentioned. I'm afraid it is the -- I mean, can I just  
 9 say at this point, without wishing to express too much  
 10 emotion, I live every day, not as these people do, but  
 11 with the awareness that every day we are not paying  
 12 someone, the chances of someone dying are there and  
 13 everyone in our organisation from the board down to the  
 14 claims managers is fully aware of that.

15 Having said that, we have difficult and almost  
 16 impossible choices to make and I have to say this  
 17 particular choice is one that I hoped we could have  
 18 avoided but we haven't because that's what the policy  
 19 is.

20 **MS RICHARDS:** When you say that's what the policy is, that's  
 21 what IBCA's policy is.

22 **SIR ROBERT FRANCIS:** No, the fact that the claim dies with  
 23 the individual and at the point, particularly if I may  
 24 say so, at the point where -- up to the point rather  
 25 where an offer has been made and accepted, in other

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1 it out.

2 **MS RICHARDS:** In terms of prioritisation, a number of people  
 3 have suggested to us, and I'm sure have suggested to  
 4 you, the Authority, that one aspect of prioritisation  
 5 rather than random selection could be in addition to end  
 6 of life prioritisation you have introduced but  
 7 prioritisation that builds on factors such as age or  
 8 state of health short of being in an end of life phase  
 9 or co-infection. Those are examples. Age is perhaps  
 10 one of the most obvious and was easily identifiable and  
 11 applicable.

12 Has consideration been given to that and, if so,  
 13 what's the outcome?

14 **MR FOLEY:** So we have considered those points and, of  
 15 course, each element you put in there then requires a:  
 16 how do you judge where people fit in the cohort? We  
 17 heard very clearly from the community about the  
 18 importance of end of life and we have invested in that  
 19 development to make sure that happens.

20 We're then on a pathway where we're thinking  
 21 commit as much resource as we can to process as many  
 22 cases as quickly as we can and in doing that, you know,  
 23 we've come up with our commitment to with the registered  
 24 living infected to start 100 on average per week and  
 25 that then allows us to progress and that's why we've

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1 words, the whole process has to be gone through and  
 2 I have to declare an interest in that obviously my  
 3 initial recommendation, which was not accepted by the  
 4 Inquiry, was that estates of affected people should be  
 5 allowed to make a claim but that was not the  
 6 recommendation, that's not what the Government decided  
 7 but even within that context, there perhaps would have  
 8 been easier points from my point of view at which this  
 9 could have been placed and I think it's only right to  
 10 put that on the record.

11 **MR FOLEY:** Do you mind if I come in? Yes, we will go away  
 12 and have a look at it. I should point out, though, that  
 13 there are -- you know, I wish we could open it up to  
 14 everybody all at the same time. From a standing start  
 15 in May we have had to build and we have had to  
 16 understand where to put our development effort to build  
 17 it. There are possible alternatives about perhaps, you  
 18 know, just manually working some cases. Obviously, that  
 19 requires us to be able to understand and interpret the  
 20 regulations that have been in place and to be able to  
 21 put effort on to those.

22 So the point I'd just seek to make is there are no  
 23 decisions about trade-offs, about how fast we can go,  
 24 about which elements we do in which order and those are  
 25 complicated and difficult decision, but we will figure

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1 been able to say we think we will be able to start all  
 2 the claims of the registered living infected this  
 3 calendar year.

4 If you then start to introduce different layers in  
 5 there, you have got to commit resource to assessing  
 6 whether somebody is in that cohort or not and then you  
 7 have got a trade-off between: is it best just to go as  
 8 fast as you can through this cohort or should you start  
 9 to put in different tiers and layers within there which  
 10 you have to assess whether somebody sits in there?

11 Our view at the moment is that we should go as  
 12 fast as we can, commit all resources we've got to this,  
 13 to taking claims, to supporting people to get their  
 14 compensation through and then getting them paid and we  
 15 think that's probably the fastest route through this.

16 But, you know, there is an alternative that says  
 17 you could stop and think about how you might brigade it  
 18 in different ways.

19 **MS RICHARDS:** I just wanted to come back to the question,  
 20 not now in terms of how you receive claims, but the  
 21 broader question about availability of legal support.

22 Some of the statements that we have received hint  
 23 at least at there having been a degree of reluctance on  
 24 the part of IBCA to engage with recognised legal  
 25 representatives and less than open arms towards their

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1 involvement.

2 What would you say in relation to that and in any  
3 event what is your current position?

4 **SIR ROBERT FRANCIS:** I don't think there's ever been a  
5 reluctance on our part to engage with lawyers. I think  
6 it is fair to say that we have always been very keen to  
7 interact directly with the victims, the community of  
8 victims, and it may be in retrospect we should have  
9 spent more time with the lawyers as well.

10 There's certainly on our part, certainly on my  
11 part, been no reluctance to engage with the lawyers and  
12 they have certainly had no reluctance in engaging with  
13 us. I think that resource put into correspondence and  
14 replying to letters may sometimes have been demanding in  
15 terms of the pressures on what we have to do and if  
16 that's been the case, I apologise. There have been some  
17 quite tense commercial negotiations with regard to  
18 procurement. That I would understand, but that's not of  
19 course because of a reluctance to engage with the  
20 lawyers or to appreciate the value that they bring to  
21 this situation.

22 **MS RICHARDS:** In terms of the stage at which applicants are  
23 advised of their entitlement to legal support, I've  
24 certainly been told that the initial approaches --  
25 because I'm going to avoid "invitation" -- seen by

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1 something which says that: the Cabinet Office has agreed  
2 to recommendations to provide legal support at certain  
3 points, exactly how this will work is still being  
4 finalised and we'll let you have more details.

5 I make it not in a critical sense but we've seen  
6 examples of lawyers with no relationship historically  
7 with the infected blood community, no relationship with  
8 the Inquiry, offering "no win no fee" assistance on  
9 solicitors' websites and it's obviously vitally  
10 important that anyone, particularly those who may be  
11 less familiar with the history than others, going to  
12 your website, knows that they can have free legal  
13 support and that they are told the critical stages.

14 Would you accept that?

15 **MR FOLEY:** Thank you. Yes, we will do that.

16 **MS RICHARDS:** I just want to turn to a question about  
17 accuracy and errors. You will have seen from the  
18 witness statements from the recognised legal  
19 representatives that the Inquiry has obtained that there  
20 have been some concerns about mistakes being made and  
21 either they've come to the attention of the recognised  
22 legal representatives precisely because they have then  
23 checked and seen that there are errors. Those who don't  
24 have legal representation won't have had anyone  
25 necessarily identifying that.

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1 recognised legal representatives in January of this year  
2 didn't identify the entitlement to legal support and the  
3 more recent ones do identify the entitlement to legal  
4 support.

5 Are claims managers now trained to ensure that at  
6 the very first interaction that they have with the  
7 individual that they spell out that entitlement?

8 **MR FOLEY:** Yes, they are and we're very clear that that is,  
9 you know, an important offer. We've heard that from the  
10 community, you know, in terms of our view, this is an  
11 important thing. It started with, Sir Robert, your  
12 recommendation that it should be provided, which the  
13 Government accepted and we repeated(?).

14 Yes, claims managers from the very beginning of  
15 their interactions make sure that everybody is aware  
16 that that offer is there. Some people come represented.  
17 Some people come unrepresented and then choose to have a  
18 lawyer. Some people have a lawyer and then decide that  
19 they don't want to be represented any more and some  
20 people aren't represented.

21 **MS RICHARDS:** Can I respectfully suggest that your website  
22 be updated to reflect the position because I looked  
23 almost in vain to identify anything about legal support  
24 on there and then if you click a button at the bottom of  
25 the page that says "Help and support" you get through to

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1 What is the system for oversight of claims  
2 managers to try and ensure that no such errors occur?

3 **MR FOLEY:** Yes. So I think there's a few things to explore  
4 here. The first is that in a Test and Learn  
5 environment, which right at the beginning we were in,  
6 the idea is to find out what makes it difficult and to  
7 discover that and then to put in place things that allow  
8 a case to flow. So our earlier cases were involved in  
9 that environment and that's why you have to start small  
10 because you have to put the safety wrap around it to  
11 make sure that that is covered and supported by all of  
12 the different disciplines within the organisation.

13 Secondly, of all the cases that we have paid, all  
14 the claims that we have paid, you will know that we have  
15 an internal review that can be asked for and an appeal  
16 that can be applied for if people dispute it. To date,  
17 we have had no internal reviews and no appeals.

18 The third point is the regulations as Sir Robert  
19 alluded to are undoubtedly simpler than an individual  
20 assessment of every situation but are still complicated  
21 and need interpreting and one of the great values that  
22 I think legal firms give is they allow us to have that  
23 conversation about: well, how are you interpreting those  
24 regulations? And in the correspondence we've had we've  
25 been very grateful to legal firms sometimes saying:

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1 I think you can interpret it in this way, and we've  
2 changed as a result of it. But we've also had  
3 situations where legal firms say to us: we think the  
4 interpretation is this and we have actually realised  
5 that our interpretation of it was the right  
6 interpretation and we have stuck with it.

7 I think that's a really important part of the  
8 dialogue and the value that they bring, but just to  
9 re-emphasise there have been no requests for internal  
10 review, nor of appeal which suggests to me that in that  
11 informal and corrected way, we are getting the right  
12 answers.

13 **MS RICHARDS:** The problem may be, and I am thinking  
14 particularly of those individuals who don't opt for  
15 legal support, which is absolutely their prerogative,  
16 but they may not identify the mistakes and therefore may  
17 not ever think of going to an internal review because  
18 they don't know. They don't notice that the wrong date  
19 of birth has been given, for example, which is one of  
20 the examples pointed out to us. Or that the dates have  
21 been flipped, so it should be 1975 and it's down as  
22 something else.

23 So is there a quality assurance process, is what  
24 I'm saying, for the claims managers?

25 **MR FOLEY:** Sorry, yes, there is. So claims manager. Each  
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1 change in the regulations about the -- one year in the  
2 calculation was in the forward rather than the backward,  
3 and it had to be reverted. So we used the internal  
4 review to process that.

5 What happens is somebody else who hasn't been  
6 involved in the claim at all is asked to assess the  
7 claim, and they come to a view as to what is the right  
8 decision as well, and then we see if there's a  
9 discrepancy.

10 **MS RICHARDS:** What you are describing there I think sounds  
11 like a paper-based exercise. It's not one in which the  
12 individual can come, as it were, before you and say:  
13 I think you have got it wrong for the following reasons.

14 **MR FOLEY:** It is a paper-based exercise, yes.

15 **MS RICHARDS:** Is there anything about that process that is  
16 accessible and can be published on the website so that,  
17 again, people understand what the process entails?

18 **MR FOLEY:** I'm sure we could publish that process, yes.

19 **MS RICHARDS:** I've got just two main topics left, and then  
20 obviously there will be a break so that core  
21 participants can put forward suggestions of questions.

22 The first is the issue of engagement and  
23 involvement. You will have seen from the statements,  
24 you will have gleaned from yesterday morning's evidence  
25 session, you will no doubt have picked up from all the  
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1 of them has a supervisor who supports them. Each of  
2 them, especially when they've come out of training, has  
3 a buddy who is an experienced claims manager who  
4 supports them. And, as I said, at the point of where we  
5 get to making a payment, there is a four-handed check on  
6 making sure that it is the right assessment.

7 So at each of those stages of decision-making,  
8 there is somebody who is supporting them, making sure  
9 that they are making the right decision, and then at the  
10 end, there is a four-handed check about it being the  
11 right decision.

12 **MS RICHARDS:** Just in terms of the internal review process,  
13 and appreciating as I do that you haven't yet had to use  
14 that process, what is it, as in what is the process?  
15 Does it involve an opportunity to make some form of case  
16 in person or orally to somebody? Who is the reviewer?

17 **MR FOLEY:** So the internal review is done internally, and  
18 it's done by a different person than assessed the  
19 original thing.

20 We have done the internal reviews ourselves. So  
21 we have simulated internal reviews on the basis of the  
22 change in the regulations between the first set and the  
23 second set. So that allowed us to review all of those  
24 cases and go back on it.

25 I think you're familiar with the -- there was a  
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1 things that will have been voiced to you that there are  
2 many who don't feel they are being heard. They feel --  
3 and I'm trying to focus here on IBCA because, obviously,  
4 there's a whole bigger question there about the Cabinet  
5 Office and engagement with Government. But there are  
6 still concerns being voiced in relation to IBCA, some  
7 perhaps less intense than in relation to the Cabinet  
8 Office, but then -- but some of the meetings are  
9 tick-box exercises rather than people actually being  
10 heard and having a response.

11 I'm not going to ask about any individual detailed  
12 meetings, but given that you know those concerns have  
13 been voiced, what is your response or observations?

14 **SIR ROBERT FRANCIS:** Well, perhaps I could start by saying  
15 that it has always been my personal commitment and the  
16 organisation's commitment to involve the community in  
17 everything that we do. I'm afraid "engagement" is a  
18 word we do tend to use, and I actually don't like it  
19 very much because I don't think -- "engagement" suggests  
20 potentially a one-way process, when clearly what we are  
21 after is a two-way conversation about what we do.

22 How to go about that is a challenging issue  
23 because, to take an example, in terms of our email  
24 communication, which I appreciate is only one strand of  
25 many things we do, we have been -- some people will say  
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1 we do too much of it, other people say we don't do  
2 enough, and so we have to make judgments about that.  
3 The meetings we have ranged from -- the ones  
4 I prefer are in-person meetings in rooms like this where  
5 people can talk, where you can actually meet people  
6 informally as well, which is useful, to the ones I don't  
7 like very much, perhaps showing my age, tend to be  
8 webinars online where everything is done via written  
9 question and an answer being given.

10 I'm sure -- we continually review how we go about  
11 these things, and I understand and regret the feeling  
12 clearly some people have, that these are tick-box  
13 exercises because they are, in fact, far from that.

14 I absolutely get that the meetings we have -- we  
15 are perhaps a little bit less now than right at the  
16 beginning -- we were asked a lot of questions. A lot of  
17 points were being made to us about the nature of the  
18 policy and what was going to end up in the regulations  
19 which perforce, for reasons I will explain, we will have  
20 to say: well, we are referring to the Cabinet Office.  
21 And I can assure you that we did that religiously, in  
22 terms of the points that were being made to us both  
23 collectively.

24 In relation to matters within our jurisdiction, if  
25 you will, I would like to think we have always listened

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1 arguments in favour of this or that so the board could  
2 make an informed decision of its own about the way  
3 forward.

4 Clearly there will be issues, and we may have  
5 discussed some of them today, where having listened to  
6 people, we come to a decision that some people don't  
7 agree with. That's not because we haven't listened,  
8 it's because we have reasons. Now, whether we  
9 communicate our reasons, that's another issue and maybe  
10 we could do better there.

11 What I would respectfully -- well, firstly regret  
12 the impression, if it be one, that we think of this as  
13 a tick-box exercise, but secondly I would like to assure  
14 people that is not how I see it and I don't think that  
15 anyone in the leadership team thinks so either.

16 **MS RICHARDS:** Just almost as an observation rather than  
17 a direct question, one of the other themes that has  
18 emerged from the evidence to us is sometimes about the  
19 quality of communication. One example is people feeling  
20 that there was a self-congratulatory note to the I think  
21 announcement a few months ago about the stage which had  
22 been reached in terms of the first few claims.

23 In relation to listening to people, again it's  
24 been suggested to me that I put this suggestion to you  
25 that it may be helpful to have a clear communication

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1 and taken into account what has happened.

2 I can give some examples. You might want to come  
3 to it anyway. One of our other initiatives, in relation  
4 to involving the community, was the appointment of user  
5 consultants which was, I freely confess, my idea. It  
6 wasn't greeted with universal enthusiasm, but also --  
7 and there were concerns, and one of the concerns was:  
8 how can one person represent the community? To which  
9 the answer was: they're not meant to represent the  
10 community. But we did take on board the fact that this  
11 was a bit of a burden for one person, and actually, were  
12 we getting a spread of views? So, for that reason,  
13 we -- instead of having one, we have had three.

14 We do listen to issues around -- I mean, you have  
15 just cited an example. We also have been told that  
16 invitations as an expression was offensive, and  
17 obviously it wasn't intended to be, and so we now  
18 changed our language.

19 We asked and we were criticised for it -- I've  
20 seen the evidence before this hearing -- for asking  
21 people for their views on sequencing within the beta  
22 testing stage because it was said it was inevitable we  
23 were going to get lots of conflicting views. Well, that  
24 is true, but personally, I felt it was much better that  
25 we have those views available to us with people's

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1 when issues have been raised, a clear communication  
2 through whatever means, your website, your community  
3 updates: this is an issue that's been raised, this is  
4 our response to it, we are accepting that. I think you  
5 are now, for example, going to be sending out your  
6 emails on the same day of each week, and that was one of  
7 the things that people have raised. Or: this has been  
8 raised with us saying clearly, so everybody understands,  
9 because this is such a difficult scheme to understand:  
10 this is not something we can change, these are the rules  
11 we're the bound by, we have forwarded this to the  
12 Cabinet Office or: we've listened, we understand, but we  
13 are not going to do it for these reasons.

14 I've been asked to suggest to you that that would  
15 be helpful in rebuilding trust.

16 **SIR ROBERT FRANCIS:** The principle of what you say of course  
17 is absolutely right and I would like to think that's  
18 what we're endeavouring to do. We have now, triumph of  
19 triumphs, actually got our own website which is  
20 something we didn't have until quite recently and which  
21 we are populating. So some of this may be a technical  
22 issue.

23 The other thing is that for reasons I think that  
24 have come over in our evidence so far, people  
25 understandably want uncertainty about matters where

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1 unfortunately, for reasons I hope we have explained,  
2 we're not able to give it. So sometimes our  
3 communications may be clear but they may be vague, to be  
4 honest, and that's something clearly we would try to  
5 remedy as and when we can. But of course our  
6 communication should be clear, they should be  
7 understandable and they should be up to date.

8 You have mentioned it already, we have had the  
9 point that we communicated too much in an irregular way.  
10 So, for instance, we have started in relation to  
11 announcements about opening up to the next group of  
12 people to tell people, which we've done, we're going to  
13 do this on a particular day each week or fortnight and  
14 that was in response to what we were hearing.

15 So I think we do respond to all this, but there is  
16 never a point at which we will be satisfied ourselves at  
17 the quality of communications we make and we must always  
18 try to improve.

19 I don't know if David would like to add to that as  
20 he's the Chief Executive, not me?

21 **MR FOLEY:** It's a very important thing for us to do, to do  
22 well and we welcome all suggestions about how we can do  
23 it better. We have had over 175 meetings, either in  
24 person or online, with either open invitations for  
25 everyone or groups of specific people and those meetings

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1 Does the Cabinet Office tell IBCA or seek to tell  
2 IBCA or steer IBCA as to how to construe the  
3 regulations?

4 **MR FOLEY:** Where there is an interpretation about the  
5 regulations, we are always interested in being able to  
6 interpret it properly and understanding what the  
7 Government's intent in the regulation were and that does  
8 mean that we work in a multidisciplinary team on those  
9 issues. There's usually somebody from the Cabinet  
10 Office, if they feel they need legal advice they will  
11 get from the Government legal department advice. There  
12 will be IBCA policy officials and there will be IBCA  
13 operational officials and where we have something that  
14 defines how they should be interpreted or is the key  
15 part about interpreting them, we will convey that as an  
16 explanation for why that has been the decision.

17 **MS RICHARDS:** I mean, this has come to light precisely  
18 because the claims manager did share it with the  
19 individual or with an individual and their recognised  
20 legal representative. Would you agree that if there are  
21 particular issues that are arising on the regulations in  
22 respect of which IBCA thinks it needs assistance, it  
23 doesn't feel it can absolutely answer it for itself or  
24 that it's not straightforward, but there might be  
25 something to be said for not just going to the Cabinet

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1 mean so much to us because they -- you know, they give  
2 us very direct feedback and very clear indication of how  
3 people think about things.

4 Our ethos is to be open and transparent and that  
5 is -- that's a very important part of what we do. It is  
6 also a very difficult thing to do because often we are  
7 communicating about things that we don't yet know or  
8 things that are not, you know, are not what people would  
9 like to hear.

10 But we think it's really important and we will  
11 carry on doing that. We welcome all suggestions about  
12 how we can do it better.

13 **MS RICHARDS:** I want to ask you now to look at a document we  
14 used at it yesterday with the minister but I am going to  
15 ask you to look at it for a rather different reason.  
16 Lawrence, it's DHOL0000003. It's an email about the  
17 significance of a date of 1 January 1982 for HIV claims.

18 Now, I'm not asking you about the legal or logical  
19 merits, or lack of them, frankly, of the position set  
20 out in that email. What I want to understand is what it  
21 tells us about the relationship between the Cabinet  
22 Office and IBCA, if anything, because this is an email  
23 from a claims manager setting out effectively what is  
24 the Cabinet Office's legal advice or some aspect of the  
25 Cabinet Office's legal advice.

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1 Office, but also publishing something in your updates or  
2 communicating something to the pool of legal firms who  
3 are now on your list of people that you will refer to,  
4 so there can be, as it were, a three-way debate, a  
5 debate between IBCA, the Cabinet Office and lawyers for  
6 the infected and affected, not just a two-way debate  
7 between IBCA and the Cabinet Office?

8 **SIR ROBERT FRANCIS:** If I may say so, I confess that until  
9 it was drawn to my attention, I hadn't seen this email  
10 before now, before yesterday. I mean, it strikes me  
11 reading this, this was an attempt by the claims manager  
12 or through the claims manager to explain the reasonable  
13 for a Government policy.

14 Now, it seems to me that's a matter we are -- we  
15 should be able to relay if that's what we've been told.  
16 I have to say I -- in my recommendations I made after  
17 the engagement in June and July, a lot of them were  
18 about encouraging the Government to explain the reasons  
19 for lying behind the various contentious policies and  
20 this would strike me as being potentially an aspect of  
21 that.

22 Now, the extent to which that should end up on our  
23 website or someone else's I think is possibly a matter  
24 for discussion but I agree with you that the need to  
25 distinguish between what is, as it were, a relayed,

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1 reported Government view and explanation about a policy  
2 and something that IBCA for itself is thinking about in  
3 legal terms about an interpretation as to how we're  
4 going to apply those regulations because they can and  
5 probably usually are two different things.

6 **MS RICHARDS:** Can we move then -- and thank you for that.  
7 Can we move then to what is precisely an example of the  
8 latter which is an issue in the regulations. It's  
9 RLIT0002944, page 88, and it's schedule 1 to the  
10 regulations.

11 RLIT0002944. I'll see if I've type that out  
12 wrongly. Page 88, it should be. If we can zoom in on  
13 level 3. So these are the severity levels for  
14 hepatitis B and C. It's item number 1:  
15 "Cirrhosis characterised by serious scarring  
16 (fibrosis) of the caused by long-term liver damage  
17 caused by infection."

18 Now, it has been flagged up to me by recognised  
19 legal representatives that there may be an inconsistent  
20 approach that they are experiencing from different  
21 claims managers about how to apply that definition. And  
22 certainly, in terms of my own reading of it, I read this  
23 as being the statutory definition of level 3 is serious  
24 scarring, fibrosis of the liver, caused by long-term  
25 liver damage. In other words, you don't need to look

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1 different opinions about where on those scales they  
2 should be drawn within the medical profession as well.

3 **MS RICHARDS:** It may be said that the bracketed -- and  
4 I don't want to get into, obviously too much by way of  
5 what is ultimately I suppose a matter of law, but it may  
6 be said the bracketed word "fibrosis" is your statutory  
7 definition of serious scarring.

8 Whatever the accurate position, if there are  
9 discussions going on within IBCA involving the claims  
10 manager, or involving any external sources of clinical  
11 or other input, looking at different levels or  
12 indicators, would you agree that that is absolutely  
13 something that must involve discussions at the very  
14 least with the recognised legal representatives on the  
15 panels of lawyers that have been contracted by the  
16 Cabinet Office to assist individuals, and that that must  
17 be something that's made publicly available because it  
18 would be wholly unacceptable for IBCA to go away and  
19 say: well, we're only going to accept level X, and there  
20 may be a respectable view that level X is not the right  
21 place to draw the line. And people need to be able to  
22 contribute to that debate openly and transparently,  
23 because level 2, that makes a huge difference to the  
24 value of somebody's claim. A huge difference.

25 **MR FOLEY:** I would welcome a discussion with the

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1 for something that says "cirrhosis" in the medical  
2 records because you are told that what you are looking  
3 for is serious scarring fibrosis.

4 I've been told there's a -- there may have been  
5 either a change or difference of approach between  
6 different claims managers in relation to that.

7 Is that something you can throw any light on,  
8 Mr Foley?

9 **MR FOLEY:** So I'd be very interested in understanding those  
10 differences of interpretation between claims managers.  
11 I'm not sure I've seen that. But this is -- you are  
12 right. This is the statutory definition, and then it's:  
13 how do you interpret what serious scarring is?

14 There was a recommendation from the expert panel  
15 about what levels would constitute serious scarring, and  
16 there are two medical indices, I'm afraid their names  
17 escape me at the moment, which also give indications  
18 about the scarring. This is where the advice of a  
19 clinical assessor is so important.

20 This is not something that a claims manager will  
21 be easily able to interpret or decide on, and this is  
22 where they would seek the advice of a clinical assessor  
23 to say where on those scales is an appropriate place to  
24 draw the definition.

25 And I believe there is some -- you know, there are

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1 representatives of people so that they can provide input  
2 to that, yes.

3 **SIR BRIAN LANGSTAFF:** Let me just ask. You say in your  
4 evidence in answer to the questions you have just been  
5 asked that this would be not a matter for a claims  
6 manager but to a clinical assessor. But what we're  
7 talking about is the meaning of a statute. And a  
8 clinical assessor is not a lawyer, he's not a drafter,  
9 he's not a judge deciding what the statute means; he's  
10 just a clinical assessor. How is a clinical assessor to  
11 know whether he's looking for cirrhosis or fibrosis or  
12 serious scarring? What approach is he to take without  
13 himself or herself interpreting the regulations? And is  
14 that appropriate that a clinical assessor, particularly  
15 if, as you tell us earlier -- I think you haven't -- you  
16 didn't answer the question whether the clinical assessor  
17 was a hepatologist. I think you rather indicated your  
18 current clinical assessor isn't. But how are they going  
19 to be able to interpret?

20 **MR FOLEY:** So if it's cirrhosis, I don't think there's any  
21 interpretation needed. I think that would automatically  
22 be there.

23 **SIR BRIAN LANGSTAFF:** Sorry, you are a bit far away from the  
24 mic.

25 **MR FOLEY:** So if it's cirrhosis, I don't think there is

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1 interpretation needed. I think that would be deemed as  
2 in this level.

3 If it's fibrosis, then I think it's for a clinical  
4 assessor to advise as to whether they think that  
5 constitutes serious scarring.

6 **SIR BRIAN LANGSTAFF:** So you start with what the definition  
7 means, which is plainly the starting point, and if that  
8 involves a judgment, then the question is, whose  
9 judgment it is.

10 **MR FOLEY:** And it's the -- in terms of does it constitute  
11 serious scarring, the claims manager would rely on the  
12 clinician to advise on that point.

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

14 **MS RICHARDS:** I've got one further discrete question I want  
15 to ask and then, conscious as I am of the time, I want  
16 to then take the break so that people can suggest  
17 questions to me before we come back for the final  
18 session.

19 So it's a discrete question about the cohort of  
20 infected who are unregistered and have never been  
21 registered with a scheme, and it's the question of  
22 interim payments to them.

23 I know it's something that's been raised directly  
24 with the Authority, and I'm not going to -- again, I'm  
25 not going to go into the detail of some of the

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1 we come back to be longer than probably about ten  
2 minutes. Famous last words, perhaps, but I hope I've  
3 covered the majority of the broad areas that people have  
4 asked me to consider, and I'm very conscious I have an  
5 awful lot to cover with Mr Quinault this afternoon.

6 **SIR BRIAN LANGSTAFF:** We'll take a break until 1.05. That  
7 time plainly may be put back, should more time be  
8 needed. But, otherwise, 1.05.

9 **MS RICHARDS:** Thank you.

10 (12.47 pm)

(A short break)

12 (1.16 pm)

13 **MS RICHARDS:** Just to say, as evident by my appalling time  
14 estimate, I have a lot more questions than anticipated.  
15 Some of them, whilst being very pertinent questions, may  
16 be questions for the Cabinet Office rather than IBCA.  
17 Some of them are ones which I think are going to be  
18 easier to follow up by way of the Inquiry writing to  
19 Mr Foley with some further questions and asking for a  
20 further statement. So I am going to be asking some of  
21 the questions, but all of them will be considered with a  
22 little more time than available currently.

23 First question. In terms of the cohort that you  
24 are currently progressing, so the infected already  
25 registered on an existing support scheme, we heard an

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1 interactions or meetings or communications I understand  
2 that you had. What I do want to understand is: does  
3 IBCA consider that it has the power within the  
4 regulations to make interim payments to individuals  
5 within that cohort who obviously it was satisfied were  
6 eligible or not? Is that something in IBCA's control?

7 **MR FOLEY:** I don't know. That's what we're exploring at the  
8 moment, just to see if that is feasible and possible.

9 **MS RICHARDS:** So, again, is that something that you can  
10 endeavour to give an update, when you can, of the time  
11 when you will be able to give that answer?

12 **MR FOLEY:** Yes, we can. Yes.

13 **MS RICHARDS:** Sir, as I say, that broadly covers the topics  
14 I was proposing to raise with these witnesses. We could  
15 go on probably all day, but we've got an important  
16 witness to be heard this afternoon. So if we could take  
17 a break now for core participants to suggest further  
18 questions that they want me to consider putting to the  
19 witnesses.

20 **SIR BRIAN LANGSTAFF:** And you would like to take the break  
21 now before lunch, would you?

22 **MS RICHARDS:** I think so. If it's not too much of an  
23 inconvenience for everyone, I'm hoping that -- and  
24 I know my time estimate yesterday was completely off,  
25 but I'm hoping 20 minutes, and then I don't expect when

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1 estimate yesterday of the number of the size of that  
2 cohort. Do you know what the exact size is?

3 **MR FOLEY:** We understand it to be 3,500 and a few more than  
4 that, yes.

5 **MS RICHARDS:** Thank you. And, again, we may ask you just to  
6 confirm that in writing, thank you.

7 Leaving aside the question of when you are going  
8 to start processing affected claims, which I have  
9 already asked you about, is IBCA considering the utility  
10 of at least opening a register now so people who are  
11 affected can register, send their details in, not yet  
12 ready for you to process it, so that IBCA has all that  
13 information available when it is then ready to start  
14 actually asking people to submit their claims?

15 **MR FOLEY:** We are considering that. There are pros and  
16 cons. Would you like me to run through the pros and  
17 cons? We haven't made a decision yet, and there are  
18 things that we are weighing up.

19 **MS RICHARDS:** I have also been reminded that there are, of  
20 course, people affected who are already with registered  
21 schemes, some because they are receiving support  
22 payments some, because they are receiving psychological  
23 support.

24 **MR FOLEY:** Indeed.

25 **MS RICHARDS:** Will IBCA be doing a calculator for the

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1 supplementary route?

2 **MR FOLEY:** We are working on a calculator for the  
3 supplementary route. It is, as you can imagine, much  
4 more complicated in terms of doing that, but we are  
5 working on that.

6 **MS RICHARDS:** I have been asked to ask you why you need  
7 evidence of the date of diagnosis, to which I understand  
8 the answer is because the regulations tell you. That's  
9 a mandatory matter in the regulations and a matter I am  
10 going to ask Mr Quinault about.

11 But I am asked to ask you this: with reference to,  
12 in particular, issues about missing or incomplete  
13 records, would IBCA be able to do its work more quickly  
14 and effectively if, instead of date of diagnosis, IBCA  
15 was required to look for date of exposure? In other  
16 words, would you support perhaps a change in the  
17 regulations -- not in your gift clearly -- but would it  
18 be something that you would favour?

19 **MR FOLEY:** Can I take that away and consider it and write  
20 back?

21 **MS RICHARDS:** Yes.

22 **MR FOLEY:** Thank you.

23 **MS RICHARDS:** What is the specialism of the current one  
24 clinical assessor?

25 **MR FOLEY:** I would need to find out. I'll write to you.

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1 Do questions of the likelihood -- and this is  
2 probably for you, Mr Foley -- of a transfusion having  
3 taken place at a particular time or in connection with  
4 a particular intervention get referred to clinical  
5 assessors in helping establish eligibility, for example?

6 **MR FOLEY:** Yes, they can do.

7 **MS RICHARDS:** Sorry, I am just reading through these.  
8 In relation to the internal review that you have  
9 described being -- or the internal checks, sorry, that  
10 you describe being carried out to check that the claims  
11 managers' process and calculation, is that on the whole  
12 file or just the final sum? I'm going to read to you  
13 what has been put to me, which is:

14 "Evidence of a claims manager advising an  
15 applicant and their spouse regarding what would be paid  
16 to the spouse in the event of the infected applicant's  
17 death, which was very significantly wrong, that is  
18 an error that would not come to light in considering the  
19 final figure which would only emerge on the death of the  
20 applicant."

21 So it's a slightly complicated way of putting it,  
22 but what is the nature of the check? Do you just look  
23 at what the sum is or do you look more broadly at what  
24 is being said to the applicant?

25 **MR FOLEY:** Could I confirm: my understanding is it is a

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1 **MS RICHARDS:** Thank you. I am afraid, will add that to my  
2 ever-growing list of questions I am going to be drafting  
3 for you tomorrow, Mr Foley, for further Rule 9.

4 Sir Robert, as you have already mentioned, your  
5 view was that affected claims should pass to the estate,  
6 and the Inquiry, as you rightly pointed out, took a  
7 different view. There is now, obviously, the question  
8 of how long it may take for claims to be processed, and  
9 a number of people have asked that this issue be looked  
10 at again by the Cabinet Office because it's not in  
11 IBCA's gift.

12 But would you support, given in particular now  
13 what you know as chair of IBCA about how long it's going  
14 to take for claims to be processed, would you personally  
15 support a change in those regulations?

16 **SIR ROBERT FRANCIS:** Well, I think all I can safely say is  
17 that my view as expressed when I initially reported on  
18 that has not changed. I think it would also be fair to  
19 say, having seen Sir Brian's report, that there are  
20 clearly argument both ways and that's exactly where of  
21 course there is a matter of policy to be decided and  
22 priority and I think, therefore, for my present position  
23 that's as far as I think I can go.

24 **MS RICHARDS:** I think your first point sufficiently answers  
25 the question that I was asked to ask.

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1 re-look at the entirety of the claim it's not a just:  
2 was the final calculation correct? But if it's okay  
3 I'll confirm that --

4 **MS RICHARDS:** Absolutely.

5 Is there any data about whether particular claims  
6 take longer than others and if so, why?

7 **MR FOLEY:** I don't think we yet have that data that would be  
8 statistically significant. We do know from the cases  
9 that we have processed so far the sort of the  
10 characteristics that make for longer cases. In  
11 particular, the component part that elongates it is when  
12 we need to go somewhere else for information and that is  
13 usually the longest part.

14 **SIR ROBERT FRANCIS:** Could I just add to that because it's  
15 not only in this field that I come across it. We as an  
16 organisation have a statutory power to require  
17 information. I think our experience has been that as  
18 things stand practitioners, busy practitioners, in  
19 the National Health Service, or busy administrators  
20 don't necessarily give this the priority that we would  
21 like and we are seeking -- and that's no criticism of  
22 them because we all know what pressure the NHS is under.  
23 But we are engaging with the Department of Health to see  
24 whether some more clear guidance can be given to  
25 practitioners to assist us in the way that we've asked.

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1 **MS RICHARDS:** This is now a completely separate topic.  
 2 The Inquiry heard yesterday evidence about the  
 3 Department of Health making an offer of funding a few  
 4 days ago to three of the charities involved in advocacy  
 5 work. We know there are a number of other organisations  
 6 and groups and charities that provide assistance in this  
 7 area, some of whom have limited, if any, funding. Does  
 8 IBCA have any role in funding such organisations?

9 **SIR ROBERT FRANCIS:** Not that I'm aware of, no. This was  
 10 not, as it were, part of the budget I mentioned.

11 Could I say, however, because it's a good  
 12 opportunity to say it, that we value very much the  
 13 assistance we get from a wide range of organisations.  
 14 And we certainly engage regularly with over 30 of them,  
 15 and these are people who really go the extra mile to  
 16 assist those they represent, and we appreciate that very  
 17 much.

18 **MS RICHARDS:** This is an issue that's been raised in  
 19 relation to approaches to haemophilia centres for  
 20 information. If I might just read the question out:

21 "It's understood that claims managers make  
 22 attempts to obtain the relevant evidence before they  
 23 approach the infected person about their claim which  
 24 means that they are spending time seeking information  
 25 that the infected person, whether or not represented,

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1 that those are requests being formulated in the mind of  
 2 the claims manager who isn't a clinician, and whether  
 3 there's any process whereby the claims manager perhaps  
 4 should be checking with the clinical assessor: is this a  
 5 sensible piece of information to seek from a haemophilia  
 6 centre before sending an unnecessary request to the  
 7 haemophilia centre.

8 **MR FOLEY:** Yes. Well, I will check in if that is indeed the  
 9 case. Certainly we've got, you know, a very clear --  
 10 it's not our claims managers, it's our data team and the  
 11 centre of haemophilia to see what is the best way to  
 12 request and accept information and we would only want to  
 13 do it where necessary, but I'll check in to see if  
 14 that's the case.

15 **MS RICHARDS:** Has creation been given to in very the first  
 16 instance asking the individual if they are aware whether  
 17 the required information is available because it may be  
 18 they are able to say very clearly: I know that  
 19 information doesn't exist, I've spent the last 15 years  
 20 trying to get it and I've been told my records were  
 21 destroyed in 1999, because there's a concern that some  
 22 time may be being spent trying to get something which  
 23 the individual themselves will know doesn't exist.

24 **MR FOLEY:** I will check. I don't think claims managers  
 25 spend a long time without the individual's guidance

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1 may have at their fingertips. As part of this process,  
 2 it appears that, in some cases, they are contacting  
 3 haemophilia centres for information."

4 That may be unnecessary if the individual has that  
 5 information at their fingertips. Is that something that  
 6 you are aware of or can cast any light on?

7 **MR FOLEY:** We have an ongoing organisational relationship  
 8 with the haemophilia centres, and we're working about  
 9 what is the best approach for transferring information.

10 The starting point for the claims manager is the  
 11 information that is held on the infected blood support  
 12 schemes, and then we will work with the individual who  
 13 is making the claim as to whether there's other  
 14 information that we should gather.

15 So we know the haemophilia centres are important.  
 16 We are working with them at an organisational level, not  
 17 a claims manager level, about how we transfer  
 18 information. But the starting point for the claim is  
 19 what is held on the infected blood support schemes.

20 **MS RICHARDS:** And a follow-up, which is from the same  
 21 source, is an understanding that there may be requests  
 22 going to haemophilia centres which are unnecessary or  
 23 inappropriate in the sense that they are requests for  
 24 things which either won't exist or won't assist in  
 25 answering the statutory questions. And the concern is

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1 looking at haemophilia centre records. As I say, it  
 2 starts with the data that's held from the Infected Blood  
 3 Support Schemes but I'll go away and check if that's the  
 4 case.

5 **MS RICHARDS:** Then this is another question which you may  
 6 need to go away and check. It's about the clinical  
 7 assessor. Does the clinical assessor or will the  
 8 clinical assessor have in mind when considering issues  
 9 such as the likely sequence of events in terms of the  
 10 progression of disease, will they bear in mind practices  
 11 including record-keeping practices in place at the time  
 12 rather than making a judgment based upon current  
 13 clinical and record-keeping practices?

14 **MR FOLEY:** Yes, they should do. That's certainly the way we  
 15 have organised ourselves. That's the ethos on which we  
 16 have built it. So they should be taking that into  
 17 account, yes.

18 **MS RICHARDS:** Given the current Test and Learn phase, is  
 19 consideration being given to setting up a regular  
 20 opportunity for IBCA to engage in discussions with or  
 21 receive feedback from RLRs regarding the process.

22 **MR FOLEY:** Yes, consideration is being given and  
 23 I understand we are preparing what would be the right  
 24 forum for that to be.

25 **MS RICHARDS:** Last question: so I am told that there's been

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1 a change in the way in which or what is being provided  
 2 in terms of EIBSS files, the support schemes files. I'm  
 3 afraid I don't know if this only relates to the English  
 4 Infected Blood Support Scheme or more widely. I am told  
 5 that previously complete files were sent from the claims  
 6 manager to the -- this is the case of an represented  
 7 applicant, the applicant or their recognised legal  
 8 representative, but now claims managers are only sending  
 9 selected documents and claimants have to make a Subject  
 10 Access Request for the complete file, which obviously  
 11 then takes time.

12 Is that your understanding and, if so, why has  
 13 that policy changed?

14 **MR FOLEY:** I would be surprised if they had to, but I will  
 15 check if that's the case.

16 **MS RICHARDS:** Those are the questions I am proposing to ask.  
 17 Quite a few are ones I do want to take away, think about  
 18 and see whether we ask Mr Foley to address in writing.

19 **Questions by SIR BRIAN LANGSTAFF**

20 **SIR BRIAN LANGSTAFF:** Thank you. Well, I have just two  
 21 questions to ask you, Mr Foley. The first is this: you  
 22 told us that your recruitment rate was 40 every  
 23 fortnight.

24 **MR FOLEY:** It is going forward, yes.

25 **SIR BRIAN LANGSTAFF:** How many people who you have recruited  
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1 and she described that as shockingly low.

2 Now, there was more to the question, but you  
 3 didn't come back and say: no, I don't agree. Do I take  
 4 it that you do agree that that rate, given the timescale  
 5 that she mentioned, was indeed shockingly low?

6 **MR FOLEY:** It's shockingly low in the context of the  
 7 question which was three and a half years since  
 8 Sir Robert reported --

9 **SIR BRIAN LANGSTAFF:** So the answer is yes.

10 **MR FOLEY:** In terms of the work we have done since May,  
 11 I think that is a substantial achievement. And it's the  
 12 result of a lot of hard work from a lot of dedicated  
 13 people.

14 It is not enough. We know we have to go faster,  
 15 we know we have to do more. But from a standing start  
 16 in May, when there was literally just the two of us, you  
 17 know, I had a laptop and I had a mobile phone and that  
 18 was it, we have had to build an independent body, we've  
 19 had to build a system, we've had to interpret the  
 20 regulations when they've come in, the first set of  
 21 regulations came in in August. In less than two months  
 22 from there, we started the first claims. In less than  
 23 four months we paid the first people. We said we would  
 24 start 250 claims by the end of March. We have started  
 25 250 claims by end of March.

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1 are no longer with you? In other words, what's the rate  
 2 at which you are losing staff?

3 **MR FOLEY:** So, in terms of claims managers, of those we have  
 4 recruited, we've only had an attrition from those that  
 5 were in the first cohort. And in that first cohort, we  
 6 had an expedited process, and then we had to then  
 7 subsequently do a full competition, a full interview for  
 8 them to get through. And in there, we did -- I'm afraid  
 9 I can't remember exactly how many, but we did lose less  
 10 than ten. I can't remember the exact number. The  
 11 others have stayed with us so far.

12 **SIR BRIAN LANGSTAFF:** And what do you anticipate your loss  
 13 rate will be going forward?

14 **MR FOLEY:** So, many organisations work on the basis of  
 15 turnover being about 7.5 per cent. I suspect for us it  
 16 will be a lot lower than 7.5 per cent at the beginning  
 17 because, obviously, your front end, your people who are  
 18 joining, you don't expect people to leave immediately.  
 19 So I would anticipate it will be something more than  
 20 zero and something less than 7.5 per cent.

21 **SIR BRIAN LANGSTAFF:** The second question is this: counsel  
 22 in one of her questions to you pointed out the length of  
 23 time there had been since Sir Robert was invited to make  
 24 his report on compensation and did so and the current  
 25 position, which is that there had been 106 claims paid,  
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1 We've now written to 677 people to begin their  
 2 claims. It is not enough and it will not be enough  
 3 until every single person is paid compensation. But  
 4 from a standing start in May, the people who work for  
 5 IBCA and work for you have strained every sinew and  
 6 pulled every muscle to try and get to this and that is  
 7 a significant development from there.

8 **SIR BRIAN LANGSTAFF:** Thank you. I have no further  
 9 questions. I don't know if anything arises out of  
 10 those?

11 **MS RICHARDS:** There isn't, save to offer both witnesses the  
 12 opportunity to say anything further they want to.  
 13 I think Sir Robert certainly wanted to say something.  
 14 I don't know if Mr Foley does as well.

15 **MR FOLEY:** I've got a few words to say, if that's okay.

16 So I think I will start with where I finished on  
 17 that last point is we absolutely know, understand and  
 18 respect that you are all due compensation and you, you  
 19 know, you have fought for the recognition that  
 20 compensation gives for such a long time and it cannot  
 21 be -- it's got to be done faster and we're trying to do  
 22 it as fast as we can.

23 I would like to pay tribute to everybody who has  
 24 helped us to get to where we have. We've had, as  
 25 I said, nearly 200 meetings with a vast array of people,

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people from the Haemophilia Society, from hepatitis groups, from the Scottish Infected Blood Forum, from those who went to Treloar's. You know, the list is extraordinary and those who were misdiagnosed, we went to Northern Ireland.

But I want to give one example of the reason of those meetings were important is the type of moment which makes us realise how important it is to do this and I remember one meeting with a group of people who represented carers and I remember one of you telling us in very matter of fact terms about the pain and the guilt that this scandal has caused you and what I wanted to say is that that has really stayed with us. Every person in IBCA, I and everybody whose works in IBCA and I want to pay tribute and thanks to those people who help us to train and induct everybody who comes to work for IBCA, that is what matters to us and that is what we care about.

So I know it's not fast enough and I know it needs to go faster but because of that, we are doing everything we can to go as fast and as far as we can.

Thank you for listening to us.

**SIR ROBERT FRANCIS:** Sir, members of the community, I am acutely aware that any time taken to receive and process claims and to pay awards is too long for those who have

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**SIR BRIAN LANGSTAFF:** Can I thank you both for your evidence this morning. It will I think have resulted in people having in this short space of time become much better informed about the way in which IBCA has worked and some of it has been quite revealing.

Thank you very much for that. You are of course -- since you spent yesterday watching or listening to what was happening here -- and circulate if you wish and listen to this afternoon's events as they happen but we will take our break now and we will take the hour for lunch but can we just make it an hour and no longer because you have a lot of material to cover I think with Mr Quinault.

**MS RICHARDS:** I do. It will be a long afternoon, so apologies in advance.

(1.40 pm)

(Luncheon Adjournment)

(2.40 pm)

**SIR BRIAN LANGSTAFF:** Can I apologise to you for starting your session a little bit later than we had anticipated. It does mean we will finish a little bit later than we had anticipated, but that is as it is. So thank you very much.

Mary will swear you first.

**JAMES QUINAULT (affirmed)**

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waited decades for justice and, in far too many cases, have died before receiving it.

I have listened yesterday, as I have at so many meetings with members of the community, to their descriptions of the terrible impact, the waiting and the uncertainty has had and continues to have on their lives. My heart goes out to them.

Throughout, we have been open with the community and conducted continuous dialogue with them about how we are processing claims. We do listen to the concerns, and what we do is always informed by them. We cannot always satisfy those concerns, but we will be honest about what we're doing and will avoid the risk of raising expectations we cannot fulfil.

We do not expect the community to be satisfied with our work until we have made full awards to all those entitled to them, and I can assure you IBCA will not rest until that is achieved. We will continue to review our work, all the time asking ourselves how we can go faster while maintaining accuracy, compassion and fairness. All our staff are committed to this task.

We are committed to keeping you, the community, up to date on our plans and will always listen to your concerns about anything we propose and, of course, sir, to any recommendations you may make to us. Thank you.

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**Examined by MS RICHARDS**

**MS RICHARDS:** Mr Quinault, you are the Director General in the Cabinet Office responsible to the minister for work on the Government's response to the Infected Blood Inquiry, including work on designing and drafting legislation for the compensation scheme. I think that's a correct description for your role?

**A.** That is correct, yes.

**Q.** Does this mean that you're the most senior civil servant in the Cabinet Office with oversight and responsibility from the Civil Service perspective for the compensation scheme?

**A.** Yes, that's correct.

**Q.** Do you report to the minister directly or to the Cabinet Secretary?

**A.** I report to the Permanent Secretary of the Cabinet Office, Cat Little, and through her to the minister for the Cabinet Office. But in practice and for day-to-day work on this, I report directly to the minister.

**Q.** And you took up that position in June 2023?

**A.** Yes.

**Q.** So you were in post, albeit pretty new in post, when the Inquiry held its July 2023 hearings and heard from the then Prime Minister, then Chancellor and then Paymaster General?

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1 A. Yes, in post.  
 2 Q. What's the precise size role of you and your team in the  
 3 design and drafting of the regulations for the scheme?  
 4 A. So my team does not directly draft the regulations.  
 5 That is a job done by professional legal draftsman and  
 6 women; it's a complicated business and needs to be done  
 7 by professionals. But my team will instruct them, will  
 8 tell them what the policy intent is as decided by the  
 9 minister and help them to translate that into good law.  
 10 Q. I'm going to start with questions which relate to the  
 11 period from June 2023 to July 2024 when the new  
 12 Government came in. So I'm going to start with that  
 13 period. I'm not going to ask you about earlier when you  
 14 were not in post, but that period under the previous  
 15 Government.  
 16 You will know that this Inquiry recommended in  
 17 April 2023 a scheme that is completely independent of  
 18 Government and, as I think has been universally  
 19 acknowledged in the hearings so far, the scheme which we  
 20 have is not completely or even remotely independent of  
 21 Government because the scheme has been designed and the  
 22 tariff set by Government; that's right, isn't it?  
 23 A. That is true that the scheme is as set out in  
 24 regulations which are passed by Government.  
 25 Q. And the scheme draws heavily on the advice of the expert

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1 a body wholly independent reporting directly to  
 2 Parliament and not through ministers. That had I think  
 3 been decided in principle by that point.  
 4 Q. Do you know, conscious as I am that you told us, you  
 5 were therefore not directly involved in that in  
 6 principle decision, but do you know why that decision  
 7 was taken?  
 8 A. Yes, I think I can say from what was subsequently  
 9 discussed, ministers felt that for a scheme of this size  
 10 with the stewardship of this amount of public money it  
 11 would be completely unprecedented to have that run by a  
 12 body reporting directly to Parliament rather than  
 13 through ministers and subject to the principles of  
 14 Managing Public Money. There are bodies that report  
 15 directly to Parliament but they tend to be small ones  
 16 and mostly associated with Parliamentary affairs.  
 17 There's never been, as far as I'm aware, any kind of  
 18 body or scheme run in that way of this size before.  
 19 Q. Now, in terms of panels, if one leaves aside the  
 20 question of who the panel or panels would report to,  
 21 because it would logically follow from the decision you  
 22 described perhaps that they would report to Government  
 23 which is what happened, rather than to the new body,  
 24 what we didn't have is a legal panel and a clinical  
 25 panel. We had a single expert group.

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1 group and that was again not as recommended by this  
 2 Inquiry?  
 3 A. No, this Inquiry recommended that the body administering  
 4 the scheme itself should set the terms of the scheme.  
 5 Q. Now, who is it who made the decision to have a scheme in  
 6 which the design and structure of that scheme, the  
 7 criteria for eligibility and the tariffs, everything we  
 8 now see set out in the regulations, was solely  
 9 determined by Government?  
 10 A. That decision had already been taken by the time I took  
 11 up my post and was a decision taken by the Government at  
 12 the time and ministers -- taken in principle at least,  
 13 and ministers in their statements to Parliament  
 14 thereafter made clear that they were going to be  
 15 unlikely to accept the Inquiry's recommendation on that  
 16 point.  
 17 Q. So by June 2023, the internal position within  
 18 Government -- and I'm not going to try and check what  
 19 the position was -- what was being said externally,  
 20 I can do that separately, but the internal position was  
 21 that ministers, and it's a ministerial decision, had  
 22 decided that it was going to be, as it were, a  
 23 Government-created scheme?  
 24 A. I don't know if they had gone as far as that but they  
 25 had decided that the scheme would not be administered by

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1 Who took the decision to establish an expert group  
 2 in that format and approximately when?  
 3 A. So I think that decision was taken round about October  
 4 of 2023. But it's worth saying that I don't think the  
 5 Government saw that expert group playing exactly the  
 6 role that the panels will have done in an independent  
 7 scheme. I think what the Government wanted from the  
 8 expert group at that point was advice to it about what a  
 9 scheme might look like, how you might set tariff bands,  
 10 what eligibility criteria might be reasonable to set for  
 11 them and so on, so it could then make decisions about  
 12 what the scheme should look like and could consult on  
 13 those once it had done so.  
 14 Q. How was the membership of that expert group arrived at,  
 15 do you know?  
 16 A. So having decided that the Government needed expert  
 17 advice in order to make proposals about the tariff  
 18 bands, eligibility criteria and the like, it sought  
 19 advice from the Department of Health and others about  
 20 who would be best placed to give that advice. A  
 21 shortlist of people with the right expertise was drawn  
 22 up and then ministers are made appointments from that.  
 23 Q. Now, I know as you described what was envisaged was a  
 24 panel playing a different role from the role that had  
 25 been recommended by this Inquiry but nonetheless it's a

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1 role that would ultimately have a similar outcome  
2 because it would be a role providing the input to enable  
3 the tariffs to be -- and bands to be created.

4 This Inquiry had recommended that it should at  
5 least include someone with psychosocial expertise,  
6 a clinician specialising in the treatment of people with  
7 bleeding disorders, a clinician specialising in  
8 transfusion. We see none of those three specialties  
9 within the expert group as established. Whose decision  
10 was that and why?

11 A. So ministers took the decision about who to appoint to  
12 the group. But it's worth saying that, as I say,  
13 I don't think they saw this expert group playing quite  
14 the same role, as it were, making all of the decisions  
15 for their ratification about how the scheme should work.  
16 Instead, this was supposed to be about giving advice  
17 about what a scheme could look like so that the  
18 Government could then make proposals on that.

19 Q. With the exception of the identity of the chair, the  
20 constitution of the expert group was initially kept  
21 secret for a period of time which, as you will  
22 appreciate, further fuels distrust and concern.

23 Why were their identities kept secret?

24 A. I do understand that that would have fuelled further  
25 concern, looking back. The reason why their identities

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1 A. So I don't think the terms of reference forbade them to  
2 discuss it with anyone, but there was a confidentiality  
3 requirement in there, and as Sir Jonathan Montgomery  
4 said when they tendered their advice, the practical  
5 effect of those terms of reference was to mean that they  
6 couldn't take views from the community properly.

7 The intention, as I say, was not that this advice  
8 determine all of the terms of the scheme. The  
9 Government intended to propose those themselves and then  
10 to consult on them. This was advice to the Government  
11 to help it make decisions in principle about what sort  
12 of scheme it should propose.

13 Q. But wouldn't the advice be better if informed by  
14 engagement with people who have the very lived  
15 experience of being infected for decades?

16 A. So it is clear that the scheme as a whole would have  
17 been better informed of that, but at the time, you know,  
18 the purpose of this was to give Government consideration  
19 of what a scheme might look what, what it would propose,  
20 you know, more expert input than it had had up to that  
21 point.

22 Q. Now, the second panel recommended by this Inquiry had  
23 been a panel of lawyers drawing on lawyers with  
24 expertise in how the courts approach the quantification  
25 of claims where people have suffered injury. It's

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1 were not published straight away is because, as I say,  
2 the Government expected them to give it advice about  
3 what the terms of a scheme might look like. It was not  
4 expecting them to settle those terms or to consult with  
5 others about them and thought that it would be unfair to  
6 expect people to give that advice and, as it were, to  
7 have to justify it in public before they'd even given  
8 it.

9 So the decision was actually in order to help the  
10 members of the committee rather than in order to keep  
11 this a secret from others.

12 Q. Was there an element of the Government distrusting the  
13 infected and affected community with the knowledge of  
14 who was providing that advice, or was it a Government  
15 convention not to identify people?

16 A. The motivation was not to oblige people giving this  
17 advice to have to sort of justify that as they went.  
18 Several of the people on the committee are frontline  
19 clinicians treating people in the community. I think  
20 the Government thought it would be unfair to have to,  
21 you know, account for that advice in public, as I say,  
22 before they'd even given it.

23 Q. Why was the expert group not permitted under their terms  
24 of reference to discuss matters directly with people  
25 infected and affected?

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1 inherent in the suggestion that the expectation was you  
2 would have more than one, and perhaps a strong  
3 exhortation to invite or make available the opportunity  
4 to participate to the lawyers who know those infected  
5 and affected better than any other legal firm will.

6 That wasn't done. What was done was the  
7 appointment to the expert group of a single firm of  
8 lawyers, and I think it's right to say -- and this is  
9 not intended as a criticism in any respect whatsoever --  
10 but lawyers whose work predominantly in this field is  
11 advising and defending NHS organisations and entities.

12 And so, as I said, that's not a criticism of them  
13 but a note of surprise, perhaps, that that's what the  
14 Government saw as the most appropriate route.

15 A. So the reason why that firm was chosen was actually a  
16 much more straightforward thing which is that the  
17 Government wanted to act quickly, needed this -- needed  
18 this advice quickly to move on. For contractual  
19 reasons, it was far quicker to hire one of the firms  
20 already on the framework for the provision of this sort  
21 of advice. Doing so would have meant that they could be  
22 in position in six weeks rather than much longer if a  
23 new contract had to be let, and that is why Browne  
24 Jacobson were selected. The Government was confident  
25 that they had, you know, the right expertise to be able

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1 to provide advice on this and also, importantly, could  
 2 draw on knowledge of all four jurisdictions, which is  
 3 important.  
 4 **Q.** The process -- whatever the reasons for it, the process  
 5 that was adopted by the Government was the opposite of  
 6 transparent, wasn't it?  
 7 **A.** It was not the process that the Inquiry had recommended.  
 8 **Q.** It was not transparent, was it?  
 9 **A.** It was -- had this been a sort of public consultation,  
 10 no, it wouldn't have been transparent. That is correct.  
 11 **Q.** And it wasn't inclusive, and it had the -- it did the  
 12 opposite of putting infected and affected people at the  
 13 heart of the scheme.  
 14 **A.** So I must acknowledge that last point. It is clear from  
 15 how people have felt about it that they didn't feel that  
 16 this was engendering trust or putting them at the heart  
 17 of things.  
 18 **SIR BRIAN LANGSTAFF:** May I just ask a question. Your  
 19 answer that "had this been a sort of public  
 20 consultation, it would not have been transparent". When  
 21 the current Government talks about openness and  
 22 transparency, is it talking just about public  
 23 consultations?  
 24 **MR FOLEY:** No, of course not, and I'm sorry if I said the  
 25 wrong thing.

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1 scheme.  
 2 What independent thought did the Cabinet Office  
 3 bring to bear? Did it reject anything that the expert  
 4 group had recommended?  
 5 **A.** I can't remember anything that the -- that ministers  
 6 rejected that the expert group recommended, but their  
 7 role was to provide expert advice, to inform what things  
 8 the Government then, you know, proposed to the -- to  
 9 people.  
 10 **Q.** You say that it was the intention to consult on the  
 11 scheme. We know that what actually happened was a very  
 12 compressed period in June 2024 when Sir Robert Francis  
 13 no doubt did his best within a very limited time-frame  
 14 and made clear in his report the constraints at that  
 15 time-frame. That in part was dictated by the decision  
 16 to call the General Election.  
 17 When the Government prior to May of 2024 was  
 18 planning what to do, what kind of consultation exercise  
 19 did it have in mind?  
 20 **A.** So it's hard to say now how things would have been  
 21 different but I think -- originally I think the  
 22 intention would have been to bring forward proposals  
 23 after the Inquiry had published its Final Report, which  
 24 back in October the Government assumed would be March,  
 25 then to consult on those proposals and then to put them

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1 What I was trying to say was that this was not --  
 2 this is not intended by the Government to stand in place  
 3 of the process recommended by the Inquiry. It was a  
 4 different thing which was about getting it some advice  
 5 about what -- to inform decisions in principle about  
 6 what scheme -- what kind of scheme to propose.  
 7 **MS RICHARDS:** But it's the very opposite of what was  
 8 recommended by the Inquiry, in terms of the idea of  
 9 placing the people damaged for decades, in part by the  
 10 actions of Government, at the heart of the process. It  
 11 excluded them from the process.  
 12 **A.** It wasn't intended to exclude them. It was -- the  
 13 Government intended to consult on its proposals, but  
 14 certainly, it in no way could stand in place of what the  
 15 Inquiry recommended.  
 16 **Q.** You have said the role of the expert group, as envisaged  
 17 by Government, was to advise the Government, and it  
 18 would then be for the Government to decide what to do.  
 19 What were the respective roles and  
 20 responsibilities of the expert group and the Cabinet  
 21 Office of Government in that process because -- and we  
 22 will perhaps see this when we come back to the -- will  
 23 come to the issue of the Special Category Mechanism and  
 24 its equivalents. But quite a lot of what the expert  
 25 group advises we do then seem to see translated into the

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1 into legislation in a Bill to come forward in the next  
 2 session.  
 3 **Q.** Now --  
 4 **A.** But of course, as things turned out, all of that  
 5 timescale was truncated first by the amendment to the  
 6 Victims and Prisoners Bill setting a deadline for the  
 7 bringing forward, the setting up of the authority, and  
 8 then by the decision to call the General Election.  
 9 **Q.** Just picking up on something you said a moment or two  
 10 ago, what you said reflects what we understood the  
 11 Government's position to be certainly when we had our  
 12 hearings in July 2023 that it was necessary to await the  
 13 outcome of the Final Report.  
 14 What actually was obviously happening during that  
 15 period of time was the work that we now know was being  
 16 undertaken by the expert group by Government such that  
 17 there was this ready-made proposal on 21 May. Now, I'm  
 18 sure that people within the Cabinet Office have looked  
 19 at the full Inquiry report but it would stretch anyone's  
 20 credulity to believe that on 20 May or even in the few  
 21 days before that in terms of the advance provision of  
 22 the report to the ministers as required under the Act  
 23 someone had sat down, read through all seven volumes and  
 24 said right now we know we need to put this scheme into  
 25 effect.

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1 Why was the Government's position -- and I accept  
 2 it's not your decision, it's a ministerial decision, let  
 3 me make that clear -- why was it the Government's  
 4 position that they needed to wait for the outcome of the  
 5 Final Report?  
 6 **A.** So the Government's position as set out by the ministers  
 7 of the day to this Inquiry was that it needed to wait  
 8 for that Final Report to give it the context of -- into  
 9 which would be proposing a scheme even though as if the  
 10 Inquiry have made plain you have already made all the  
 11 recommendations you intended to make on compensation in  
 12 the second interim report in April.

13 I think when the Government expected the Inquiry  
 14 to report in March I think, though, it is now hard to  
 15 say that there would have been a longer period before it  
 16 had brought forward its response, but by May I think  
 17 ministers felt at that point that although they now had  
 18 to wait for the Final Report because there was too legal  
 19 time left to do anything else, that thereafter they  
 20 needed to act as quickly as possible because not to do  
 21 so would leave even less time for people to consider the  
 22 Government's proposals before they had to be written  
 23 into the law by the deadline that was now in the Act.

24 **Q.** Many have expressed the view to the Inquiry that they  
 25 feel that they were misled by the Government when it

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1 **A.** So the intention is that those tariff bands do cover the  
 2 commoner manifestations of those things. Obviously, for  
 3 rarer, more serious conditions, there is the severe  
 4 health conditions supplementary route, but the intent is  
 5 that those bands should compensate people for the  
 6 commoner extra-hepatic manifestations of hepatitis.  
 7 That was what the Government intended that they should  
 8 do and an example of that, if it helps, is that that is  
 9 one of the reasons why the assumption for financial loss  
 10 built into the chronic band, that assumption of  
 11 financial loss begins from the moment of infection. It  
 12 assumes that even before people see serious liver damage  
 13 that there will be an impact on them, you know, through  
 14 their ability, for example, to work. So it's certainly  
 15 the intent that not all of this started at the point at  
 16 which serious liver damage develops.

17 **Q.** If we, as an Inquiry, or those infected and affected who  
 18 obviously have the absolute and primary entitlement to  
 19 understand the scheme, if we want to satisfy ourselves  
 20 of whether, and if so how, those consequences and  
 21 effects have been considered and are built in, is there  
 22 anything beyond the expert group's report that assists  
 23 in our understanding or do we have to look to those  
 24 expert group reports?

25 **A.** So the expert group reports are the place where

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1 said it needed to wait for the Final Report. Is that  
 2 something you will have any observations you would like  
 3 to make on?

4 **A.** I think that is something you would need to put to  
 5 ministers of the day, but what I can say is that I don't  
 6 think it would be fair to say the Government said that  
 7 in order to temporise or put off the moment at which it  
 8 would need to respond. Ministers were instructing us at  
 9 the time to get on with work to prepare proposals.

10 **Q.** I'm going to turn now to some aspects of the scheme as  
 11 it now is. I'm not going to ask you about some of the  
 12 detailed events from the new Government taking over  
 13 because we've heard from the minister yesterday  
 14 afternoon but, given your close involvement with the  
 15 development of the scheme, I'm hoping you can assist  
 16 with a number of matters relating to it.

17 The first question I want to ask is about the  
 18 severity bandings for hepatitis C, which you know has  
 19 caused considerable concern and arguably may make the  
 20 process of paying compensation slower because of their  
 21 complexity and what has to be evidenced at every stage.

22 What account does the Cabinet Office say those  
 23 tariffs and bandings take of the multiple effects of  
 24 hepatitis C that are not related to liver damage, the  
 25 extra hepatic manifestations?

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1 understanding has assisted.

2 **Q.** I want to ask about how the recognition of treatment  
 3 with interferon factors into that.

4 This Inquiry heard comprehensive expert evidence,  
 5 it heard comprehensive and, frankly, haunting testimony  
 6 from individuals about the consequences, not for  
 7 everybody but for many, some life-changing consequences  
 8 of treatment with interferon or interferon ribavirin.

9 You say in your statement that the impacts of  
 10 treatment are either covered by the core awards or  
 11 eligible for the severe health condition supplementary  
 12 route. Now, interferon clearly isn't eligible for the  
 13 supplementary health route unless you are in the severe  
 14 mental health psychiatric condition route. I just want  
 15 to --

16 **A.** Sorry, just on that. I believe there can be, rarely but  
 17 unfortunately, some other impacts of interferon beyond  
 18 severe psychiatric impacts. I believe there can be  
 19 impacts on -- permanent impacts on the immune system in  
 20 some cases, so at least I understand from the expert  
 21 advice we had and from reading papers submitted to the  
 22 Inquiry. So I think that is picked up in the Severe  
 23 Health Condition Award as well.

24 **Q.** Forgive me. It was slightly clumsily expressed by me.

25 The Severe Health Condition Award identifies a

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1 small number of very rare health conditions, and then in  
2 the case of mental health damage, it identifies a  
3 category which is an identifiable psychiatric condition  
4 which has to be diagnosed by a psychiatrist and result  
5 in either in-patient treatment or six months at least of  
6 consulted-led treatment.

7 But that will not capture -- I can tell you, as a  
8 matter of fact, that will not capture much of what we  
9 heard about the impact of interferon, and so the only  
10 place we could then look is the core award to see if  
11 that's captured. But the problem -- and if I have  
12 misunderstood the regulations, please tell me, but  
13 people who were treated with interferon and had those  
14 appalling consequences will receive the same core awards  
15 as people who didn't receive interferon at all, or were  
16 in that very -- that minority who received it and it was  
17 effective. So I don't see how it can be accommodated  
18 within the core award at present.

19 **A.** So the core awards are intended to cover the broad  
20 range, both people who had those impacts and those who  
21 were lucky enough not to, and it's intended to be set at  
22 a level which covers both.

23 I referred earlier to the fact that the assumption  
24 in that chronic band is that people's -- the impact on  
25 people's ability to work, for example, starts right from  
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1 **A.** The Government did accept, as the minister said, that  
2 there should be a route for people with severe impacts  
3 to get that recognised in the scheme.

4 **Q.** But importantly the Government accepted that those as  
5 well as listing a number of rare and absolutely severe  
6 conditions, the Government accepted, and we can see it  
7 in the annexes to what the Government published on  
8 23 August 2024, it includes the criteria drawn from the  
9 national schemes?

10 **A.** That is true. The advice of the expert group on this  
11 was ambiguous, as it turns out. That report both says  
12 that this band should cover all of the impacts reflected  
13 in the SCM, but also it says elsewhere that some of  
14 those impacts are already reflected in the core route.  
15 So that advice was ambiguous.

16 **Q.** We may need to ask you, Mr Quinault, and I'm not going  
17 to ask you to do it now, to identify for us in a further  
18 statement how and why it's said that those ambiguities  
19 arise because I certainly haven't read it as anything  
20 other than clear advice?

21 **SIR BRIAN LANGSTAFF:** May I just ask this question. You say  
22 that the advice from the expert group was ambiguous.  
23 There was, as I understand it, no ambiguity at the time  
24 about the Government's acceptance of the need for  
25 something in between?  
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1 infection. It doesn't occur later. And the intent  
2 there is, without asking people to bring forward  
3 evidence for how badly they were affected by interferon,  
4 to see that they are broadly compensated for it. And  
5 then for those even more unlucky to be, you know,  
6 severely and permanently -- you know, get a severe,  
7 permanent condition because of this, there is the severe  
8 health impacts route to pick that up, so that's the  
9 intention.

10 **Q.** This Inquiry will obviously need to consider whether  
11 that intention has actually been carried through.

12 We looked yesterday with the minister at matters  
13 relating to the Special Category Mechanism and its  
14 equivalence in the other schemes, so I'm just going to  
15 say "SCM" to make the process quicker.

16 So the position, as I understand it both from the  
17 documents and the evidence yesterday, is that as at  
18 August of last year, the Government accepted the advice  
19 of Sir Robert Francis and the advice of the expert group  
20 which, in this respect at least, was squarely based upon  
21 feedback from infected and affected people through the  
22 June process, to include within the scheme health  
23 impacts which reflected for both hepatitis C and B those  
24 that were hitherto covered by the SCM. That's correct  
25 as a statement of fact, isn't it?  
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1 **A.** What -- the recommendation of Sir Robert Francis was  
2 that the Government should accept the advice of the  
3 expert group, was that the advice of the expert group  
4 should be followed and the Government accepted that. As  
5 it turned out, that advice on this point turned out to  
6 be ambiguous. But in answer to your general point,  
7 I acknowledge completely that anyone reading the section  
8 of that -- of that section of the expert group's report,  
9 together with what the Government and Sir Robert had  
10 said, would have assumed that this meant that everything  
11 in the current SCM would count.

12 **MS RICHARDS:** They have assumed that because that's what it  
13 said in terms in the Government's 23 August publication.

14 **A.** So what that said was that there would be a severe  
15 health impacts route, yes.

16 **Q.** I'm not going to debate the wording of documents with  
17 you now, Mr Quinault, but we will be carefully  
18 scrutinising those line by line.

19 When the minister stood up in Parliament on  
20 2 September -- and I should add I am not seeking to  
21 trespass upon Parliamentary privilege here, when he  
22 stood up in Parliament and said: I have accepted 69 of  
23 the 74 recommendations, one of those 69 was the  
24 recommendation that the SCM and its equivalent criteria  
25 would be part of the scheme, was it not? Sorry we don't  
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1 pick up nods.  
2 **A.** Sorry, I beg your pardon. The Government was accepting  
3 Sir Robert's recommendation that the advice of the  
4 expert group be followed.

5 **Q.** On this specific issue.

6 Now, we know the position has changed and I want  
7 to try and understand how that happened and here I do  
8 need to look at a document with you. It's WITN7762015  
9 and this is the further report of the expert group  
10 from -- I think published on 12 February this year. Can  
11 we go, and I'm hoping I'm going to get the right pages  
12 this time, Lawrence, bottom of page 4. "Introduction",  
13 excellent. Good start.

14 Next page, please. First paragraph on the next  
15 page. So it says here, this is the group speaking:  
16 "We revised our initial advice in a number of  
17 respects based on the feedback from the engagement  
18 events convened by Sir Robert Francis ... This revised  
19 advice was set out in our final report. Following their  
20 acceptance of the recommendations made by Sir Robert  
21 Francis, we were invited by the Government to provide  
22 further detailed advice on three issues in order to  
23 assist with the drawing up of the Scheme ... we have  
24 been pleased to have the opportunity to consider these  
25 issues further, which we have done in light of the

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1 something definite and clear.

2 **Q.** Could we just go back to the first main paragraph again,  
3 please, Lawrence, and if we look at the penultimate  
4 sentence that's on the screen, where the group says:

5 "We have been pleased to have the opportunity to  
6 consider these issues further which we've done in light  
7 of the engagement meetings held by Sir Robert."

8 Now, I was struck reading that at the curiosity of  
9 the group saying that they'd reconsidered this or  
10 considered it further in light of the engagement  
11 meetings.

12 What you have is a group that had said -- and I am  
13 going to give this a kind of crude summary -- yes, we  
14 can have the SCM in light of the engagement meetings  
15 that have been held in June. How that group can say  
16 now: let's not have the SCM and still say it's in light  
17 of the engagement meetings, having consulted not one jot  
18 further. Is that something that struck you at the time?

19 **A.** I must say, that's not how it struck me at the time or  
20 reading it now.

21 **Q.** Well, let's go to page 15, please, where we see what's  
22 being said. And under that bold heading, it's the  
23 second paragraph, please, Lawrence. Thank you.

24 I'm going to pick it up in the third line:

25 "As the compensation scheme is based on clinical

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1 engagement meetings held by Sir Robert."

2 Then we can see the three issues then set out if  
3 we just go back. So we can see the first is  
4 supplementary Severe Health Condition Awards.

5 So it would appear that by the time of this  
6 further instruction to the expert group, the Government  
7 had decided it wanted further advice on this issue.  
8 Having accepted its previous recommendation, having  
9 drawn up the scheme that was published on 23 August, why  
10 did the Government go back and ask for further advice on  
11 this issue?

12 **A.** I don't think this is a subsequent decision. The  
13 Government said in that 23 August document that further  
14 work will be done on the severe health condition route.  
15 This was the further work. So I don't think --

16 There wasn't a change of mind in terms of  
17 commissioning further work. It was said on the 23rd  
18 that that would happen and would need to in order to  
19 draw up what the route would look like.

20 **Q.** One inference might be that the Government didn't like  
21 the advice the expert group had given previously and was  
22 looking for a way out.

23 **A.** No, I don't think that's right or fair. I think the  
24 expert group themselves saw that their previous advice  
25 was ambiguous and were seeking to draw that out into

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1 markers that will be accessible, assessable and  
2 verifiable, the Group does not think it is appropriate  
3 or proportionate to require applicants to make personal  
4 life impact statements."

5 Did it not occur to the Government to subject that  
6 thinking by this group to some critical analysis? This  
7 was the opinion of HIV and hepatitis clinicians and a  
8 professor of healthcare law, not even psychosocial  
9 impact. Didn't it occur to the Cabinet Office that the  
10 right people to ask whether it's appropriate or  
11 proportionate to make personal life impact statements  
12 were the individuals who might be very happy to do so if  
13 it means they would actually get recognition financially  
14 for their condition?

15 **A.** So my reading of this was not -- I heard the questions  
16 that you put to the minister about this yesterday, and  
17 my reading of this is it was not the intent of the group  
18 to disparage that. As the minister said, that wasn't  
19 the intent at all, I don't think, and IBCA, as you  
20 pointed out, do ask people to tell their story, and  
21 rightly so.

22 I think what the group was trying to say was that  
23 the process of people qualifying for this route should  
24 not depend on some kind of further assessment, but  
25 instead should be based on information that people could

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1 provide without having to be assessed by IBCA or someone  
2 on its behalf. I think that was the intent rather than  
3 something different.

4 **Q.** Yes, and I don't suggest it's disparaging. To my mind,  
5 it's somewhat bemusing that a group suggests and the  
6 Government accepts something which is about: let's spare  
7 applicants this, without asking applicants what they  
8 actually think.

9 **A.** It's poorly worded, certainly, but don't think --  
10 I think its intent, as I say, is to try to explain that  
11 they have attempted to construct this route, to build it  
12 in such a way that it does not require people to go  
13 through a further assessment to qualify, that they  
14 should be able to do so on the basis of records that  
15 they've already got. That is how I read it.

16 But I acknowledge that it could be read another  
17 way and in a way which, you know, I'm sure the group  
18 would not have intended.

19 **Q.** Mr Quinault, you in your witness statement, and it's  
20 your second statement -- I don't at the moment think  
21 I need to put it on screen. It is paragraphs 127 to 147  
22 where you deal with this issue.

23 I haven't detected in your statement anything  
24 which acknowledges that there has been a change of  
25 position and, indeed, an about-turn by the expert group.

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1 mental health condition, you have to, as I alluded to  
2 earlier, have a -- have evidence from a psychiatrist of  
3 a diagnosable psychiatric condition falling within  
4 certain categories, and you have to have evidence either  
5 of in-patient treatment or of consultant-led secondary  
6 mental health treatment for a period of six months or  
7 more.

8 Now, I don't -- I think you have seen this letter?

9 **A.** I saw it yesterday.

10 **Q.** Yes. I don't propose to read it out, but just to tell  
11 people this is a recent statement, 29 April of this  
12 year, from the Infected Blood Psychology Service, and  
13 they raise concerns in this about how that can operate  
14 because they say many people will never have seen a  
15 psychiatrist, and it's ignoring the historical and  
16 factual context within which people suffered appalling  
17 consequences.

18 I'm not asking you to communicate any formulated  
19 position on the basis of this, but is this statement  
20 from the Infected Blood Psychology Service something  
21 that the Cabinet Office can go away and look at because,  
22 amongst other things, they say at the very least, if you  
23 are going to have this as your scheme, don't make it  
24 limited to the input of psychiatrists because most  
25 people will never have seen a psychiatrist.

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1 If it would assist you to look at your statement,  
2 we can --

3 **A.** No, that's fine.

4 **Q.** Have I correctly understood? Your statement doesn't  
5 explain that there had been a change of position, does  
6 it?

7 **A.** So as I said, I don't think it was an about-turn by the  
8 expert group. I think their original advice was  
9 ambiguous, and I think they cleared it up in this  
10 direction rather than the other. I think that is --  
11 I think it's unfortunate. I acknowledge that the impact  
12 of that, having heard your conversation with the  
13 minister yesterday, might have been that people would --  
14 would have felt -- would have been expecting one thing  
15 and then got another, but that was not the -- that was  
16 not the intention.

17 **Q.** As I understand it, it's one of the issues the minister  
18 is going to look at again.

19 **A.** Indeed. Indeed.

20 **Q.** So I will just ask one specific further question in  
21 relation to the SCM issue and then leave it.

22 NTH0000059, please, Lawrence. This is now  
23 dealing with the specific point about the severe mental  
24 health condition part of the severe health awards.

25 You will recall, Mr Quinault, that for the severe

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1 **A.** So the minister said yesterday that he would go away and  
2 look again at where the boundary between this severe  
3 health impact route and the core award is set and  
4 whether we've taken proper account of that. Certainly  
5 look at this part of it.

6 As I read the letter, it welcomes the fact that  
7 mental health impacts are recognised in the scheme, but  
8 it questions whether the boundary has been set in the  
9 right place.

10 **Q.** It does.

11 **A.** And the intention is absolutely not to set the boundary  
12 in a place that -- where no-one could meet the test  
13 because of conditions at the time, and if it's wrong, as  
14 the minister said, we will look at it.

15 **Q.** Thank you. We can take that down. Thank you, Lawrence.

16 I just want to ask a couple of questions about --  
17 to try and help us understand if the scheme captures  
18 elements of suffering, and this is about affected people  
19 now. And the minister, again, as I understand it, has  
20 taken away the suggestion of opening up a supplementary  
21 route for the affected, so I'm not going to ask you  
22 about that.

23 But does the scheme, on your understanding of it  
24 as it currently stands, account for or quantify the kind  
25 of suffering that some affected people underwent,

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1 including complex childhood grief, interrupted  
2 development and education, long-term mental health  
3 impacts for bereaved siblings and children, by way of  
4 example? Is that something which, based on your  
5 knowledge of the scheme, was captured in the expert  
6 group's advice or is outside what the expert group  
7 considered?

8 **A.** The scheme is intended to compensate affected people for  
9 their own suffering as a consequence of this scandal.  
10 I think one of Sir Robert Francis' recommendations was  
11 that what was originally proposed for social impact was  
12 too low for the affected and the Government increased  
13 the proposed tariff in light of that.

14 Does the tariff cover every individual  
15 circumstance? No, it does not. It is necessarily kind  
16 of broad-brush and that is why the minister said he  
17 would look at whether there was some way of reflecting,  
18 you know, the full range of experience in a scheme. The  
19 difficulty with -- the issue with a supplementary route  
20 for the affected and this was the reason why it was not  
21 part of the Government's original proposals is that that  
22 would have to cover a very wide group of things. It's  
23 difficult to see a way of setting tariffs for all of  
24 those eventualities, the alternative is something with a  
25 great deal of discretion in it and although discretion

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1 significantly reduces. Have I broadly understood it  
2 correctly?

3 **A.** Yes, with one small adjustment, that the Government  
4 acknowledges that not everyone would have been able to  
5 get access to that treatment as soon as it became  
6 available and that is why the assumption is that, as it  
7 were, the year of effective treatment for the -- in  
8 terms of the scheme is a year later than the date it  
9 first became available.

10 **Q.** Yes and --

11 **A.** And one other small thing to mention which is that the  
12 scheme also assumes that the reason why it's 1961 is  
13 because it assumes that for people who were over 55 at  
14 the time this became available that it was effectively  
15 already too late for them to return to work even if the  
16 treatment was successful and helped them and so the  
17 scheme doesn't assume that their financial loss reduces  
18 from that point.

19 **Q.** But what the scheme does assume, other than that age  
20 cut-off, which you rightly point out is effectively that  
21 those who were infected with hepatitis C have, once they  
22 have undergone that treatment and the virus has cleared,  
23 it makes assumptions about their ability to work. Now,  
24 the treatment may clear the virus, but it doesn't  
25 reverse liver damage, it doesn't treat symptoms such as

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1 would allow IBCA to consider the circumstances in front  
2 of it, it does have downside in terms of possible delay  
3 and so that is why the Government originally considered  
4 whether a supplementary was appropriate for affected,  
5 but decided not.

6 **Q.** Again, if we want to try and understand and work out for  
7 ourselves what has been encompassed in the tariffs that  
8 have been set, we looked to the expert group's reports  
9 primarily and then to the August publications from the  
10 Government?

11 **A.** Yes.

12 **Q.** Those are our sources, are they?

13 **A.** Yes and in the particular instance I mentioned also  
14 Sir Robert's original recommendations where he explains  
15 the reasoning he went through to suggest that the social  
16 impact award for the affected was too low.

17 **Q.** Now, I am going to turn again to a number of aspects in  
18 the regulations, if I may, starting with the effective  
19 date of treatment for those born after 1961 and infected  
20 with hepatitis C. I don't think we need it on screen  
21 but if we do, do please let me know. It's Regulation 20  
22 of the 2025 regulations. So this builds in, as  
23 I understand it, an assumption that people were  
24 effectively treated for hepatitis C in 2016 and at that  
25 point then the amount of compensation for financial loss

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1 chronic fatigue or brain fog, it doesn't treat the  
2 accumulated physical tolls of decades. So what is  
3 effectively halving, I think, the amount of compensation  
4 for financial loss is based on a false premise, isn't  
5 it, that people will be able to go back to work when  
6 they probably won't?

7 **A.** So it doesn't assume that after treatment a person's  
8 ability to work, you know, goes back to where it would  
9 have been but for what happened to them. There is still  
10 a reduction but the reduction is smaller than before  
11 they had the treatment.

12 In terms of liver damage, of course for the  
13 more -- this is only the case if you are talking about  
14 the chronic band for people at the upper end it doesn't  
15 assume that, you know, for the people with cirrhosis or  
16 de-compensated cirrhosis, the assumption is basically  
17 that they can't work any more.

18 **Q.** Can I turn to another aspect --

19 **A.** Sorry, I should say as I did before, I mean -- I think  
20 the Government would acknowledge that that won't -- this  
21 will not be fully reflective of everybody's  
22 circumstances but it's a broad-based tariff scheme. It  
23 needs to set some kind of assumption about what in broad  
24 -- the experience would have been, in other words, to  
25 move forward.

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1 Q. I can turn to a completely different aspect of the  
2 regulations now. The regulations require, and again for  
3 anyone who wants to know, it is Regulation 14(2)(c),  
4 that the application must be accompanied by evidence  
5 which establishes the date on which the diagnosis of the  
6 infection was made.

7 Now as I understand the scheme, that does have  
8 some relevance for some of the HIV calculations. But  
9 the position of those infected with hepatitis C and this  
10 is the case whether it's transfusion or blood products,  
11 many were not informed of their diagnosis for years,  
12 some were tested without their knowledge and not  
13 informed of their diagnosis.

14 What's the relevance of asking for evidence of  
15 date of the diagnosis, particularly as it may well slow  
16 down that the process of assessment of their claims  
17 because it's a search for a chimera which won't exist in  
18 the records?

19 A. It's not relevant to the determination of a lot of the  
20 claim. It doesn't affect what happens to the injury or  
21 social impact or autonomy award or the award for care.  
22 Those are the same. They just depend on severity band  
23 under the same whenever you were diagnosed.

24 Where it does make a difference under the scheme  
25 is for financial loss. So as we've just discussed, the

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1 would have been in the top band for four years before  
2 that, and in the band below for six years before that.

3 Q. We'll come on to the deeming provisions --

4 A. In brief that is the role that diagnosis is supposed to  
5 play in the scheme but you're absolutely right that not  
6 everyone will be able to point to that which is why the  
7 scheme has got ways of dealing with it.

8 Q. It's not just the question of whether people can prove  
9 it. At the moment -- and it may be my fault -- I don't  
10 understand why the date of diagnosis as opposed to the  
11 date of infection is the relevant date for any  
12 calculation of financial loss. If you have someone who  
13 was infected with hepatitis C in 1985 through a blood  
14 transfusion, we know many of them suffered the ill  
15 effects of hepatitis, they suffered them both in terms  
16 of brain fog, chronic fatigue, not knowing what was  
17 wrong with them, being brushed aside by clinicians  
18 often, they suffered the impacts in terms of their  
19 liver. Some of them were not diagnosed for 20 years.  
20 They must be entitled to be compensated for that 20-year  
21 period?

22 A. And they are by the scheme in that as I say from the  
23 date of infection, the financial loss is counted. The  
24 scheme assumes that right from infection, your ability  
25 to work, because that's what we're talking about here

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1 scheme pays higher rates of financial loss for people in  
2 the higher severity bands for hepatitis and obviously  
3 you want that financial -- that higher financial loss  
4 paid, you know, from when it's probably reflective of  
5 people's circumstances that's to say, you know, as far  
6 back as they were suffering those extra impacts and  
7 diagnosis is the attempt to capture a kind of marker for  
8 that.

9 Now, I acknowledge that there will be many people  
10 who don't have that information. If they do have it,  
11 great, and the scheme can work on that. If they do not,  
12 this is where IBCA's ability to look at the balance of  
13 probabilities and other evidence comes in. There might  
14 be something in medical records that on the balance of  
15 probabilities makes it likely that that was the moment,  
16 or if there's nothing at a station, that that was the  
17 moment that someone, you know, started to feel so  
18 particular impacts would do.

19 Where this is particularly relevant I think is in  
20 claims from people, from estates where it could well be  
21 there is just no records of any kind at all, only a  
22 death certificate, sadly, and that is where the deeming  
23 provisions come in. If no other evidence exists for  
24 those estate claims the scheme will assume that they  
25 would have -- if they died of their infection that they

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1 will have been reduced to 60 per cent. That is where  
2 the scheme attempts to capture those effects. But it's  
3 true I think that as people get sicker, their ability to  
4 work -- they won't -- you know, they will be much less  
5 than that and, you know, some may not be able to work at  
6 all and that is why the scheme is attempting to capture  
7 that and to give more financial loss for people in  
8 a higher severity band, but to do so and to do that  
9 fairly and to take it back to the earliest point that it  
10 should be being paid, it needs some kind of marker and  
11 the marker is diagnosis or where evidence of that can't  
12 be proved, something that can stand in place of that.

13 So that's what it's for. It's attempting to make  
14 sure that people get paid for the financial loss they  
15 actually suffered as far as the tariff scheme can do  
16 that, as far back they should.

17 Q. It may be, I think, we will need to come back to you on  
18 that in writing --

19 A. Happily. I'm sorry if I haven't explained it clearly  
20 today.

21 Q. Not a matter we previously asked you to address in  
22 writing, and I think it may be helpful.

23 I want to ask one specific question about the  
24 cut-off date of 31 March, insofar as it means that  
25 people whose husbands, wives, partners die after

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1 31 March will no longer receive support payments. It's  
 2 one question because the minister, again, dealt with  
 3 that and has agreed to take that away and look at it.  
 4 I think I do need your statement on screen for  
 5 this. It's your second statement. It's WITN7755003,  
 6 please, Lawrence, and it should be page 34,  
 7 paragraph 213. Thank you.  
 8 I've been asked to ask you what you meant here.  
 9 You say:  
 10 "Infected persons who pass away after  
 11 31 March 2025 can, through their estate, make provision  
 12 for a partner from their own compensation if they wish."  
 13 That assumes that the infected person has received  
 14 compensation, does it not, which many will not have  
 15 done?  
 16 A. That is true.  
 17 Q. So what exactly was the point you were seeking to make  
 18 here?  
 19 A. May I read the rest of the --  
 20 Q. Of course. Lawrence, could Mr Quinault be shown --  
 21 A. -- the previous page, if I may.  
 22 Q. Yes. Bottom of the previous page, just to see  
 23 it context.  
 24 So you were asked the question why people will not  
 25 receive support payments after 31 March.

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1 A. Yes.  
 2 Q. I don't think there is any further compensation or  
 3 recognition for those who are triple infected, so they  
 4 are infected with hepatitis C, hepatitis B and HIV; is  
 5 that right?  
 6 A. That is true.  
 7 Q. And why is that the case? Is that just not something  
 8 that was thought of?  
 9 A. I would need to check back whether we did cover that,  
 10 but I believe it would have been because, at that point,  
 11 compensation is already at the highest level offered  
 12 under the scheme.  
 13 Q. Well, I'm going to, if I may, again, leave that with you  
 14 to go away and invite consideration of within the  
 15 Cabinet Office, with ministers as appropriate because,  
 16 although the numbers who are infected with all three may  
 17 not be great, there are certainly some.  
 18 A. Yes.  
 19 Q. You will have seen, and I don't know if I need put it on  
 20 screen again. I won't at the moment unless I need to.  
 21 You will have seen an email from a claims manager at the  
 22 Authority which deals with what's called an HIV  
 23 liability window in the position prior to  
 24 1 January 1982.  
 25 A. I saw the email yesterday when it was --

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1 A. Yes, so --  
 2 Q. And then if we go over to the top of the next page  
 3 again, Lawrence. Thank you.  
 4 A. I think the point I am making is to try to explain why  
 5 the Government thought it was acceptable to end that  
 6 entitlement, and the point is that there is now a  
 7 compensation scheme which pays compensation to estates  
 8 but also to bereaved partners in their own right.  
 9 Q. You will have heard the questions to the minister in  
 10 relation to this yesterday.  
 11 A. I did.  
 12 Q. I'm just going to leave you with the suggestion that  
 13 there's a misplaced assumption there because it doesn't  
 14 address the immediate needs of the person whose support  
 15 payments effectively received by them as a couple are  
 16 cut off. And, of course, it presupposes that the  
 17 person -- the infected person has received their  
 18 compensation and can therefore leave it.  
 19 Separate topic: multiple co-infections. Again, as  
 20 I understand it, the scheme contains provision for  
 21 co-infection with hepatitis B and hepatitis C. It  
 22 contains provision for co-infection with HIV and  
 23 hepatitis, and there's therefore -- I think Sir Robert  
 24 described it in his report last summer -- there's an  
 25 uplift applied, effectively.

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1 Q. And I asked the minister about it. That's another  
 2 matter he's going to go away and look at, and I think he  
 3 understood the reasons and concerns which underpinned my  
 4 questioning.  
 5 So I'm not going to ask you about the substance of  
 6 that, but just to tell us this, not least because it's a  
 7 position that appears to find its way into regulation 3  
 8 of the regulations.  
 9 Is this a position that was identified by the  
 10 Cabinet Office, a significance of the date of  
 11 1 January '82? Did it come from the expert group, or  
 12 from somewhere else?  
 13 A. This -- we are checking back as to where this came from,  
 14 but my understanding is that it came not from the expert  
 15 group but from the Cabinet Office.  
 16 I should say, I had not seen that email before  
 17 yesterday. Again, we are checking, but I know you asked  
 18 David Foley and Sir Robert Francis this morning if this  
 19 was something that, you know, as it were, had been  
 20 handed down to them from the Cabinet Office. As far as  
 21 I'm aware, that text did not come from my team or from  
 22 anyone else who works for me.  
 23 Q. We --  
 24 A. It's not -- it would not be reflective of the  
 25 Government's position on that.

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1 Q. Well, we'll look forward to a further explanation of  
2 that.  
3 Two further matters on the regulations as -- which  
4 have been flagged up in some of the statements from  
5 recognised legal representatives.

6 Now, the first issue is an issue relating to  
7 regulation 7. In the interests of not having to confuse  
8 everyone by the appalling and tortuous wording of the  
9 regulation, I'm not currently going to put regulation up  
10 on screen, but again, if you need to see it, let me  
11 know. But you know the issue that I am referring to.  
12 Mr Harrison and I think Mr Matthews in their statements  
13 have set the issue out.

14 It's about how you calculate past financial loss  
15 and if this were, for example, a court personal injury  
16 assessment, it's a pretty simple sum to do. You work  
17 out the right amount per year, and you multiply it by  
18 the number of years. The scheme requires a calculation  
19 that's applied to the total financial loss figure and  
20 yields a lower figure.

21 Why has the Government introduced, essentially,  
22 this equation in regulation 7 which has the effect of  
23 reducing someone's past financial losses if they elect  
24 to remain with the support scheme?

25 A. So, under the scheme the Government originally proposed,  
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1 But what I would say is, I do not believe that,  
2 overall, this approach is disadvantaging people or is,  
3 you know, not fulfilling the Government's promise to  
4 make sure that people's past compensation is not  
5 affected if they take the support payments route.

6 The care award, which is cut in the same way,  
7 broadly speaking most people's most expensive years of  
8 care are in the future rather than in the past, but this  
9 calculation approaches those both in the same way so  
10 that, arguably, there -- you know, there is a --  
11 compensation is weighted towards the past.

12 And, of course, the calculation of financial loss  
13 begins at 60 as well. It assumes full earning power at  
14 the national average plus 5 per cent from 16 rather than  
15 a later point. So for those reasons, I think it is not  
16 under-compensating people.

17 It would be possible to do as the -- it would have  
18 been possible for the regulations to do as the RLRs  
19 suggest and to take a different approach and to build up  
20 the financial loss award kind of year by year, but  
21 I think while that might have looked more precise,  
22 I don't think it would actually be more accurate.

23 Q. Well, doesn't it mean that those who want to remain  
24 registered with the support schemes are financially  
25 disadvantaged?

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1 the idea was to generate a kind of whole-life figure for  
2 care and for financial loss which broadly compensated  
3 people for the impact on them over a life but did not  
4 try to sort of attribute that year by year. And for  
5 care, in particular, as you know, that doesn't really  
6 make any sense. It's possible to come up with a general  
7 pattern of the care people might require, depending on  
8 the severity of their suffering, but not to say exactly  
9 how that would play pay out year by year. Everyone's  
10 experiences will be different. So intent was a  
11 whole-life calculation of those things.

12 With the support scheme option, in order to make  
13 sure that the support payments, if that's what people  
14 choose, offset the future financial loss and care but  
15 not the past, it is necessary to divide up those  
16 whole-life proposed awards into an element that relates  
17 to the past and an element that relates to the future.

18 I understand the point the recognised legal  
19 representatives are making, which is that if you do as  
20 the calculation does and take an average across the  
21 whole of that period, you are arguably  
22 under-representing the past loss because that average  
23 also includes some years where people will be getting a  
24 pension rather than full earnings, and I think that is a  
25 fair point to make.

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1 A. I don't think they are being under-compensated by this  
2 way of doing it for their past loss, no.

3 Q. Again, that may be an issue that the Inquiry will have  
4 to determine for itself.

5 Then the deeming provisions that you referred, to  
6 and this is Regulation 20 subparagraph (7) of the  
7 regulation and again I don't think we need to have it on  
8 screen but you have explained why it exists and one  
9 understands that, that these are deeming provisions  
10 where one can't establish through medical records or  
11 otherwise progression through the levels of severity.  
12 But the regulation takes effectively as the starting  
13 point as the relevant date the date of the application  
14 to the scheme and so let's say you have got someone who  
15 you know had a liver transplant in 2005 but doesn't know  
16 when they developed cirrhosis, so they can't demonstrate  
17 anything else, shouldn't the deeming period be taken to  
18 be from 2005 applied backwards rather than 2025?

19 A. So where evidence exists, the scheme takes what evidence  
20 there is and the point of the deeming provisions is to  
21 kind of step in if there is no evidence at all.

22 Q. So it's the intention, in the scenario I've outlined,  
23 when it's known that the pun had a liver transplant in  
24 a particular year but it's not known what the  
25 progression of their disease was prior to that, are you

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1 saying that you don't start from the date of application  
 2 then, because that doesn't appear to be what the  
 3 regulations say?  
 4 **A.** So in that case you would start from the date of  
 5 application, yes.  
 6 **Q.** Doesn't that disadvantage people?  
 7 **A.** So I think where they have the evidence it shouldn't do,  
 8 no.  
 9 **Q.** Forgive me, I don't understand the answer. It's not an  
 10 easy provision to understand, but if the only piece of  
 11 evidence is the liver transplant in 2005 --  
 12 **A.** If there's no evidence at all then the deeming  
 13 provisions apply. The sort of anomalous situation is  
 14 where you do have some evidence, you have got evidence  
 15 that people were at the highest -- someone was at the  
 16 highest severity band and you have a definite date of  
 17 infection or a deemed -- an assumed date of infection  
 18 I think then there possibly is an anomaly in that the  
 19 deeming provision can't -- that's the way the  
 20 regulations work, can't provide for the kind of middle  
 21 stage, if you like, as it would in the case of someone  
 22 who -- for an estate claim.  
 23 **Q.** That could potentially make a big difference?  
 24 **A.** It would make a difference but, of course, it only  
 25 applies in the case of the highest awards when people

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1 pretty much reach the end of my questions and then we  
 2 can have the break for core participants. Regulation  
 3 33, and I am going to ask for this one to go up on  
 4 screen. So its RLIT0002944, please, Lawrence, page 31.  
 5 If we go down to the bottom of the page, please. So you  
 6 see the Regulation 33 and just -- that's perfect. So  
 7 this is the supplemental route this is exceptional  
 8 reduced earnings:  
 9 "For the purposes of this Section, an eligible  
 10 infected person ... has suffered exceptional reduced  
 11 PAYE earnings if --  
 12 "As a result of an infection or any associated  
 13 treatment, P has suffered a reduction in PAYE earnings  
 14 because they can no longer --  
 15 "Perform work which is remunerated at the same  
 16 level as the work they were performing before they were  
 17 diagnosed with the infection or  
 18 "Work for the same amount of time that they could  
 19 work for before they were diagnosed with the infection."  
 20 So it's that phrase before they were diagnosed  
 21 with the infection that I have been asked to raise by  
 22 you.

23 If you have someone who is infected as a child  
 24 with HIV, notwithstanding that they manage to establish  
 25 themselves in -- when they get to young adulthood in

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1 are already at the top end of what the scheme can  
 2 provide. So I think there is an issue there but it's  
 3 not -- you know, it's small in the context of those  
 4 larger awards. I think -- I looked at the issue that  
 5 Mr Harrison pointed out, I think in that case what we're  
 6 talking about here is a significant sum of money, but  
 7 it's about 3.5 per cent of the total award.  
 8 **Q.** I think it would be helpful to have probably from you --  
 9 first of all, is that something the Cabinet Office can  
 10 look at again because I think you accepted there might  
 11 be an anomaly in some situations?  
 12 **A.** So I'm conscious I probably haven't given as clear an  
 13 answer as I might. This is a complicated thing. If  
 14 this is somewhere where it would be possible to provide  
 15 a fuller written statement, I would be happy to do so.  
 16 **Q.** I think it would because I think you know that  
 17 Mr Harrison wrote to the Cabinet Office setting out his  
 18 concern about those provisions, and you've got a very  
 19 clear explanation in his statement as well about the  
 20 position, and the letter he's received in response which  
 21 I think you have also seen, with the greatest of respect  
 22 doesn't answer the question at all. So I think a proper  
 23 answer to that question would be of great assistance.

24 Last question on the regulations and if we're able  
 25 to go for a few further minutes, sir, I think I can

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1 well remunerated work that would otherwise be sufficient  
 2 to bring themselves within this supplemental route and  
 3 they then develop AIDS and can no longer work -- and  
 4 I have a real-life case in mind when I ask this question  
 5 so it's not just abstract -- this would appear to  
 6 suggest that they cannot make a claim because they  
 7 cannot point to work they were performing before they  
 8 were diagnosed with the infection.

9 Now, there's some evidence I think that IBCA are  
 10 taking, quite helpfully perhaps, a more liberal approach  
 11 to it, but what is the Cabinet Office's position in  
 12 relation to that, and does the wording of that need a  
 13 little bit of amendment?

14 **A.** So I think that you could read that as saying that a  
 15 person in the situation that you mention is sort of  
 16 de-barred from applying to the supplementary route,  
 17 which is not the intention. What IBCA are doing, in  
 18 practice, is taking the peak of their earnings as the  
 19 starting point for this, whenever that occurred, whether  
 20 that was before the point of diagnosis or after it.  
 21 They and the Cabinet Office have made clear in  
 22 correspondence that that is how this is to be  
 23 interpreted, and I'm very happy to clear that up.

24 **Q.** Well, that's very useful. So, essentially, a purposive  
 25 rather than literal approach to those terms --

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1 A. Yes. Quite so. Quite so.

2 Q. Thank you.

3 My last topic, then, I think, is lack of  
4 engagement and quality of engagement. Can I first just  
5 invite you to look at an extract from Sir Robert  
6 Francis' evidence in 2022. Lawrence, it's INQY1000224,  
7 and if we could go to page 36. It should be -- I'm just  
8 trying to find it. Yes. Very bottom of the page.

9 So if we look at the answer. A question I put to  
10 him, and he was talking here about his proposals in the  
11 compensation framework study, and you'll see a question  
12 I raise. This is bottom right-hand corner of the page,  
13 line 22. I ask him about a role for consultation with  
14 those infected, and he says this:

15 "Definitely, it is absolutely essential, and  
16 indeed you would probably expect me to say this as chair  
17 of Healthwatch and president of the Patients  
18 Association, they should be involved in the creative  
19 process."

20 This perhaps prescient observation:

21 "This is not an area where I would be terribly  
22 happy with two panels going away in private and coming  
23 back six months later with a proposed solution and  
24 having a six-week consultation over the summer holidays  
25 to produce a result. You need some real involvement.

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1 I think what the -- certainly not what had been thought  
2 of when planning for this was done.

3 I said in my statement that I regret that and, you  
4 know, it is certainly not what I thought would happen  
5 when I was first involved in this. It was worse even  
6 than Sir Robert says here, I must acknowledge, because  
7 not only was it happening over the summer in a very  
8 truncated period but was also happening over an election  
9 campaign, which meant that there were things that we as  
10 civil servants could not do to support this exercise.

11 Normally, you would expect the Government doing  
12 something like this to publish a much fuller account of  
13 its intentions than it did on 21 May in order that  
14 people could see and answer for themselves the sorts of  
15 questions that you were putting to me earlier about what  
16 are in these tariffs, and so on; what account does it  
17 take of my circumstances. But instead of publishing  
18 something for everybody, what we had to do, because of  
19 the election campaign, was to produce an unpublished  
20 document shared with people attending meetings with  
21 Sir Robert which they would be able to circulate widely  
22 to others who needed to see it, but, you know, we were  
23 not in a position to do that directly ourselves.

24 So I just wanted to say I think it was even  
25 more -- even less satisfactory than the description you

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1 As with everything else, but this scheme in particular,  
2 it needs to carry the trust of the people who are most  
3 deeply affected by it."

4 Now, that's exactly what did happen, except it  
5 wasn't two panels, it was one, and it wasn't a six-week  
6 consultation, it was a three-week consultation.

7 Was the Cabinet Office, in the thinking it was  
8 doing in 2023 -- was the Cabinet Office aware of the  
9 view that had been expressed by Sir Robert?

10 A. Yes.

11 Q. But it decided to ignore it --

12 A. As I say --

13 Q. -- and to ask him to do, and this is absolutely no  
14 criticism of him, I should make clear -- to do the very  
15 thing which he said shouldn't happen.

16 A. So I tried to explain in my evidence earlier how the  
17 Government ended up in that position, I think. But  
18 I can't be certain that its intention was not to do that  
19 but to consult on this over a longer period and more  
20 fully. But, in the meantime, the date of the Inquiry's  
21 Final Report, which the Government has said it wanted to  
22 wait for, had gone back and a deadline set in by  
23 Parliament in legislation to have a scheme established  
24 in law had come forward, and that is why the time  
25 available for doing this was very truncated and not

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1 give, if I may.

2 Q. You can take that down. Thank you, Lawrence.

3 You have said in your statement that the infected  
4 and affected communities have had a major influence on  
5 the design of the scheme. I'm not going to ask you to  
6 go into specifics now unless I get follow-up questions.  
7 But I just want to understand, when you say they have  
8 had a major influence on the design of the scheme, are  
9 you talking there essentially about the June 2024  
10 exercise and the 69 recommendations?

11 A. That is part of it. I say this notwithstanding  
12 everything I've just said about the unsatisfactoriness  
13 of that consultation. That's part of it.

14 I think there have been changes to the scheme  
15 since in light of engagement, and I set out what some of  
16 those are in my statement.

17 I think the other point I was trying to make was  
18 that the Government does think that the scheme as  
19 proposed, you know, is grounded on and based in  
20 Sir Robert's original compensation framework study.  
21 That was what the expert group were instructed to take  
22 as their starting point for their recommendations to  
23 Government, and that, of course, you know, did get some  
24 proper engagement and consultation with the community at  
25 the time.

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1 **Q.** I think it must be very clear to the Government that the  
2 way in which the scheme has been designed and set up  
3 does not command trust and confidence, but there is a  
4 lot that would need to be repaired if repaired it can  
5 ever be.

6 What does or how does the Cabinet Office propose  
7 to try and address that?

8 **A.** So we must consider further, and whatever the Inquiry  
9 may have to say about this will be vital to that. But  
10 I think, you know, we already know, no-one hearing the  
11 evidence of yesterday morning could not know that this  
12 has not won trust and confidence of the community.

13 I think there are a number of things we can do,  
14 but I think the most important thing is to look again at  
15 the points that people are making about the scheme and  
16 on which they don't feel heard and to see whether, as  
17 the minister said, something can be done about those  
18 that doesn't fall into the other trap of leading to  
19 further undue delay when people have waited so long.

20 **MS RICHARDS:** Thank you.

21 Sir, I think that's probably the right point, in  
22 terms of my questions, to end. So if we take our  
23 afternoon break, but that is also now the break for core  
24 participants to suggest further questions for  
25 Mr Quinault.

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1 back to the Inquiry on on a handful of matters. The  
2 Inquiry likewise is probably going to be asking  
3 Mr Quinault to help us on a number of matters in  
4 writing, so some of what the questions will probably --  
5 we'll put in a written form to Mr Quinault. But there  
6 are some I am now going to ask orally where I think it  
7 is probably useful to do so.

8 The first is just about the expert group meetings.  
9 Did civil servants attend the meetings of the expert  
10 group?

11 **A.** Yes, in order to support them, secretariat them, record  
12 their decisions and so on.

13 **Q.** So would it be right to understand from that that there  
14 are minutes of those meetings?

15 **A.** Yes.

16 **Q.** So if the Inquiry asks to see them, those should be able  
17 to be provided?

18 **A.** I think it is planned to release those minutes anyway  
19 but if the Inquiry asks for them, of course they will be  
20 released.

21 **Q.** Secondly, a topic I didn't cover and I had meant to in  
22 my questions so I am very grateful for the suggestion,  
23 the Act provides for appeal to the First Tier Tribunal  
24 and as I understand, the decision has been taken that it  
25 will be the Social Entitlement Chamber which deals with

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1 **SIR BRIAN LANGSTAFF:** I suspect you will probably need at  
2 least half an hour, will you?

3 **MS RICHARDS:** I am fairly confident I will need the half an  
4 hour.

5 **SIR BRIAN LANGSTAFF:** Shall we say no earlier than -- it may  
6 be later -- no earlier than 4.40 pm.

7 (4.08 pm)

(A short break)

9 (4.50 pm)

10 **MS RICHARDS:** Just to say before I ask Mr Quinault the  
11 remaining questions, two things about some of the  
12 questions that have been suggested to me. Firstly,  
13 there's some very powerful observations that have been  
14 made in those questions and I just wanted to take the  
15 opportunity to remind core participants that we have  
16 invited submissions by 23 May and through recognised  
17 legal representatives where people are represented and  
18 I am anticipating that a number of the points that have  
19 been made will find their way into those submissions.

20 So although I may not be asking the question, the  
21 power of the submission and of the point is not lost on  
22 the Inquiry.

23 Secondly, some of the questions are points which  
24 I think in light of some of the matters Mr Quinault has  
25 already indicated that he may need to go away and come

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1 essentially welfare benefits. So what we don't have is  
2 the bespoke appeal route that had been recommended by  
3 the Inquiry.

4 Now, I recognise that the Act itself says First  
5 Tier Tribunal, but was consideration given by the  
6 Government to alternatives to the First Tier Tribunal,  
7 and why the Social Entitlement Chamber?

8 **A.** Yes, consideration was given to alternatives, including  
9 the original recommendation of the Inquiry that there be  
10 a bespoke appeal mechanism. The decision was taken that  
11 it was right to go for the existing First Tier Tribunal  
12 because there you had an already existing mechanism  
13 already set up that with some training and some  
14 background in this would be able to do this quickly as  
15 opposed to a new body which would necessarily take time  
16 to set up and therefore wouldn't be ready to hear any  
17 appeals until that was done.

18 I'm not sure how big a role this played in the  
19 decision but I think there was also a consideration that  
20 the scheme will not be in being forever. Today is  
21 partly about trying to make sure that it completes its  
22 job as quickly as possible. Had you set up a bespoke  
23 body you would therefore have had something that needed  
24 to close, whereas the First Tier Tribunal is already in  
25 existence. That's my best understanding of the

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1 reasoning behind the decision.

2 **Q.** Thank you.

3 The second question or probably couple of  
4 questions really derives from the very limited scope  
5 within the supplementary route for people to claim  
6 financial loss and so the first point I'm asked to  
7 explore with you is this: there will be people whose  
8 education or whose qualifications were interrupted and  
9 essentially a permanent end put to them by their  
10 infection or their treatment for the infection, and I've  
11 been given again a concrete example of someone who was  
12 studying to be a doctor, who will never be able to  
13 qualify for anything through the supplementary route  
14 because they will not have the five years' worth of  
15 earnings that are required in order to go through that  
16 route.

17 The question is: does the Government consider that  
18 the scheme adequately and properly reflects people in  
19 that kind of situation?

20 **A.** So I'm also aware of a case of someone in a cut-off in  
21 exactly that sort of way, got all the way to, you know,  
22 passing the Bar but couldn't because -- couldn't  
23 practice because of their illness. They too are in the  
24 same situation.

25 I'm afraid the scheme doesn't provide for

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1 with hepatitis C or an infection with both. They don't  
2 feel with I would suggest some justification that the  
3 scheme captures that loss because they can never  
4 demonstrate what's required for the supplementary route.

5 Do you accept that it doesn't capture that and is  
6 the reason for it the reason you have just given?

7 **A.** I think, you know, among many tragic cases these are  
8 some of the most tragic of all, but as you said we are  
9 at the limits of what a scheme like this can provide for  
10 while being straightforward, as simple as possible to  
11 access and as quick as it can be.

12 **Q.** I've been reminded of evidence, I think it's in one of  
13 the statements from one of the recognised legal  
14 representatives, but it's certainly in the evidence the  
15 Inquiry has, that it's said by participants in the  
16 meeting that was held by John Glen, the then Paymaster  
17 General, in I think early May of 2024, he said little or  
18 nothing had been done in developing a compensation  
19 scheme when he took up his post in November 2023.

20 Now, that may be a question we need to pose to  
21 others, but as you were in post at the time, do you have  
22 any comment or observation to make in relation to that?

23 **A.** So I think the best answer I can give is that work had  
24 been done prior to Mr Glen's arrival, but it is true to  
25 say that that was nowhere near being a set of proposals

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1 additional financial loss to be recognised in those  
2 cases because you're at the limits of what even the  
3 supplementary route can do in order to form a judgment  
4 about what someone might have gone on to do but for the  
5 being struck down by the illness. In the absence of any  
6 evidence at all you would have to employ employment  
7 experts, reach a kind of a matter of judgment about what  
8 that person would have gone on to do. That is beyond  
9 what a scheme of this sort can provide for.

10 **Q.** I anticipate that may be your answer to the next  
11 question, but this is a point which affects a number of  
12 people, many people feel very strongly about it for what  
13 I think will be very obvious reasons and it emerged in  
14 our panel session yesterday morning.

15 There were a number of people, many people  
16 infected as children often infected because they  
17 received treatment that they should never have received  
18 or in quantities that they should have never have  
19 received and some the subject of experimentation and  
20 unethical research, unethical treatment.

21 They never got to live -- as has been very  
22 powerfully put to me today by somebody who gave evidence  
23 to the Inquiry a number of years ago, they never got to  
24 live the life they should have lived. Their education  
25 was disrupted during infection with HIV or an infection

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1 that could be put to people that, you know, went beyond  
2 what the Inquiry recommended or that Sir Robert Francis  
3 has already consulted on. In November, the Government  
4 was absolutely not in a position to put a proper scheme  
5 to people that they could see and comment on.

6 **Q.** One point in your witness statement, and we don't  
7 I think need it on screen, but you have said in one of  
8 your statements, and it's at paragraph 169 of whichever  
9 one it was, that it would be unlawful for IBCA to be  
10 granted I think a wide measure of discretion by the  
11 regulations. Now, I'm not going to debate the law with  
12 you, you will be glad to know I imagine, and we see that  
13 reflected in the Cabinet Office fact sheet in January of  
14 this year.

15 I just want to ask one question: is that based  
16 upon a reading of the provisions in the Victims and  
17 Prisoners Act, and if so, is it section 50, do you know,  
18 or if you don't know, then feel free to say so.

19 **A.** So I'm not going to debate the law with you, but what  
20 I can do is try and give an explanation of what I meant  
21 for everyone.

22 So it's not based on any particular provision in  
23 the Victims and Prisoners Act. Instead, it's making a  
24 more general point that in the law, where ministers are  
25 given a power by an Act to regulate, they are not

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1 allowed to sub-delegate that power to make rules to  
2 somebody else unless they are explicitly given that  
3 power by the original Act and they weren't given that  
4 power by the Victims and Prisoners Act.

5 And so what that means is they can delegate to  
6 IBCA the business of administering the scheme, but  
7 they're not allowed under the Act to delegate to IBCA  
8 decisions about what the rules ought to be. That's what  
9 I meant. It's legislative sub-delegation it's called.

10 And so, to be clear, that doesn't mean that --  
11 I mean, you mentioned with the minister yesterday the  
12 possibility of IBCA making decisions on individual cases  
13 to do with unethical research. You know, could the  
14 regulations properly have allowed IBCA to make decisions  
15 about whether this or that individual should qualify for  
16 the award? Well, yes, they could. That sort of thing  
17 is permitted.

18 What it couldn't do is -- a minister couldn't do  
19 is say: IBCA, you decide what the rules on eligibility  
20 should be on a particular area. That would be unlawful,  
21 as I understand it.

22 Q. That's helpful, and I think the minister had already  
23 indicated that if there was documentation in relation to  
24 the Cabinet Office's legal understanding, subject to  
25 ordinary rules and conventions, they may be able to

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1 autonomy; it's a ministerial decision ultimately. But  
2 would you acknowledge that that might go a little way to  
3 addressing some people's concerns about the very rigid  
4 nature of the scheme?

5 A. So I think, as I've said earlier, discretion has one  
6 great advantage which is that it allows the  
7 decision-maker to, you know, reflect the circumstances  
8 in front of them, and, as you said, that might help  
9 people to feel that this broad-based scheme was at least  
10 able to take that into account to some degree. But it  
11 does have one big disadvantage which is that other  
12 things equal. It does mean that things will take longer  
13 to decide. Because more factors not on the evidence  
14 have been taken into account. You may get inconsistency  
15 in decisions. People will expect -- you know, there  
16 will be more reviews, I would expect, because there is  
17 more to be reviewed and people will rightly want a  
18 second opinion where a judgment is being made. And if  
19 you don't get it right, I think that does lead to a  
20 scheme which takes much longer to arrive at the final  
21 answer, even if that final answer in a particular case  
22 might be more reflective of those circumstances.

23 And, as I explained earlier, that is why the  
24 Government did decide originally that a supplementary  
25 route for the affected would be a step too far and would

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1 provide that, but that is helpful.

2 That helps then I think with my next question  
3 which is, and I think this is probably explicit from the  
4 Act itself: there would be nothing unlawful, would  
5 there, about the regulations giving a bracket to IBCA  
6 for a tariff saying it can be between X and X times 5  
7 for this category of injury or this category of loss.

8 That would be something that, in principle, could be  
9 done. It's not the route you have gone down.

10 A. So I'd better not give, you know, an unqualified answer  
11 now because that's something on which it would be right  
12 to take advice. But my understanding is that the act  
13 does allow regulations to -- it does allow to set  
14 regulations to the directive to make payments in  
15 accordance with the regulations. And if the regulations  
16 say there's a band, and according to these criteria you  
17 can award within that band, that would be lawful.

18 Q. Thank you. A broad-based tariff scheme is inevitably,  
19 as I think you very fairly acknowledge, something of a  
20 blunt instrument.

21 Would you accept that something which gave a  
22 measure of discretion to IBCA so that there was a range  
23 within which it could then perhaps reflect individual  
24 circumstances in a little more nuanced way -- I'm not  
25 asking you to agree to that because you don't have that

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1 lead to that undue delay that the minister referred to.

2 Q. The next question I have is one I think you may have  
3 answered already but I have been asked to ask it and it  
4 may be there was a lack of clarity in either my question  
5 or your earlier answer.

6 Membership of the expert group: who provided the  
7 advice to ministers as to membership of the expert  
8 group, was it Cabinet Office civil servants or  
9 Department of Health civil servants?

10 A. It was Cabinet Office civil servants but on the basis of  
11 help from the Department of Health in identifying people  
12 in the relevant specialties.

13 Q. I'm asked then to ask you this: given that, as  
14 I understand it, the Government has always recognised  
15 the importance of the evidence which this Inquiry  
16 received and was able to examine and examined in  
17 enormous detail, including expert evidence from a number  
18 of clinical groups whose names and identities were known  
19 to everyone here and who were questioned in a public  
20 forum just like this when questions could be asked,  
21 given that, why couldn't the Cabinet Office have sought  
22 to base its thinking on the advice which this and  
23 evidence which this Inquiry had received from experts or  
24 to seek further advice from those expert groups?

25 A. So the intention was that they should all be grounded in

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1 evidence collected by this Inquiry. That was the  
2 starting point for the expert group and it was in their  
3 terms of reference that they should take that as their  
4 starting point. Some members of that group were also on  
5 the expert group on the Inquiry and gave evidence to it  
6 in their own right, as you know.

7 **Q.** Is it the case and again I'm asked -- I'm going to put  
8 this to you in exactly way it's addressed to me because  
9 I think it's powerful.

10 Is it the case that the Government was keen to  
11 procure its own advice in the hope that it would not be  
12 as damning as the evidence upon which the Inquiry had  
13 relied in reaching its conclusions?

14 **A.** No, I don't think that is so. The Inquiry made  
15 recommendations about a scheme, but it left some things  
16 still to be determined in terms of what the bands should  
17 be, how they should be defined, the eligibility criteria  
18 and so on. The Government wanted advice on that at  
19 least, you know, to a first stage before proposing a  
20 scheme and that is what it looked to the expert group to  
21 provide for it.

22 **Q.** You may have heard if you were following the evidence  
23 from Sir Robert and Mr Foley, I asked a question about  
24 whether IBCA considers it can make interim payments and  
25 the question I'd asked was specifically in relation to

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1 it might still be worth doing but there's also -- you  
2 know, there's also a consideration is that actually  
3 going to be -- is that the sensible thing to do or is it  
4 better to press on and get that group of people paid  
5 outright?

6 That would be for IBCA to advise on, you know,  
7 would be the cost to the overall objective of getting  
8 this done, of making an interim payment? It would  
9 strictly be for -- you know, the Treasury would need to  
10 approve doing that but I do not believe that ministers  
11 would stand in its way if IBCA advised it could be done.

12 **Q.** Could I just ask why would it required Treasury approval  
13 because it would ultimately come out of the  
14 11.8 billion; it's not on top of that?

15 **A.** No, that's right and there is no cap of money, each year  
16 whatever needs to be paid can be paid in that year in  
17 compensation will be. But if this were a significant  
18 amount of money, it would be a change to the kind of  
19 expected profile, the Treasury would need to approve  
20 that, but I do not believe that there would be any  
21 difficulty in getting such approval if IBCA could  
22 guarantee it could be done, you know, as practical or  
23 sensible against the overall objective.

24 **Q.** That's helpful to know. Thank you.

25 **A.** It's a technicality but I just wanted to be clear that

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1 those who'd never received anything but it's been  
2 pointed out to me that there may be other cohorts in  
3 respect of whom may have, as it were, a case for interim  
4 payments.

5 Does the Cabinet Office have a view on whether  
6 that is something IBCA can do or whether it can only be  
7 done by the Cabinet Office?

8 **A.** So there would need to be a ministerial decision and  
9 there would need to be Treasury approval to make an  
10 interim payment because that would be money brought  
11 forward. But I think, though, it's not -- it wouldn't  
12 be my decision, I think the minister's view would be if  
13 it's possible for IBCA to make an interim payment to a  
14 group, then that would be clearly a very desirable thing  
15 to do since it means that some group, one group of  
16 people at least are not waiting right to the end this  
17 process to get some of the compensation that they are  
18 due.

19 I think the sort of contrary consideration for  
20 IBCA is about the kind of practicality of that and  
21 whether what you would need to do to make it happen is  
22 at the expense of the overall goal which is to pay  
23 everyone the full compensation they are due as quickly  
24 as possible and I think the point there is if it takes  
25 you 80 per cent of the work to make an interim payment,

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1 they couldn't just decide to do this without cover and  
2 that is because ultimately responsibility to Parliament  
3 for the conduct of public money.

4 **Q.** In terms of the Severe Health Conditions Supplementary  
5 Award, has the Cabinet Office undertaken any analysis,  
6 projections, modelling or have any expectation as to how  
7 many people are anticipated might be eligible for that?

8 **A.** I think we did make an assumption in modelling the sort  
9 of overall possible costs of the scheme and from  
10 recollection, that was that perhaps 20 per cent of the  
11 cohort would be eligible for this. But that was not  
12 based on a kind of detailed assessment or any sort of  
13 particular evidence; it was an assumption, nothing more.

14 **Q.** Then final question, and it's about involving people and  
15 then the process of consultation. So you will know, and  
16 we looked back at Sir Robert Francis' evidence that what  
17 he anticipated, what the chair anticipated in his  
18 report, was the involvement of people infected and  
19 affected essentially in the creative process, in the  
20 thinking development process, rather than Government  
21 goes away, comes up with its ideas and then has  
22 a consultation on that, and we know not in that happened  
23 ultimately and you have accepted that.

24 Does the Cabinet Office ever involve groups,  
25 people, victims in that policy development process or is

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1 it always working out a proposal and then consulting,  
 2 I have in mind here the duty of candour, in particular  
 3 what's happened with that?  
 4 **A.** So yes, it does. It's trying to do so in the case of  
 5 the Duty of Candour Bill. And I think I can say, though  
 6 I wasn't the decision-maker, that if -- I think if  
 7 people had known that it would play out like this and  
 8 that things would happen as they had, that they would  
 9 have wanted to involve people at an earlier stage, even  
 10 if at that stage that could only have been about broad  
 11 principles rather than, you know, presenting sort of  
 12 detail that people could grapple with. I think that  
 13 would have been better and I think would have helped us  
 14 avoid the situation that we are now in.  
 15 Again, I would say that I think if the Government  
 16 had done that in, let's say, the autumn of 2023, I think  
 17 there would have been a very understandable reaction of:  
 18 well, why are you consulting us about sort of basic  
 19 principles again? This surely being sufficiently  
 20 established by the Inquiry and before that by Sir Robert  
 21 Francis' compensation study. You know, what we want to  
 22 hear now is kind of brass tacks, what is the Government  
 23 actually proposing, and what would a scheme mean? And,  
 24 certainly, when John Glen talked to community groups in  
 25 May, they were kind of strongly saying to him, you know,

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1 Mr Quinault?  
 2 **A.** No thank you.  
 3 **MS RICHARDS:** That concludes our hearings.  
 4 **SIR BRIAN LANGSTAFF:** Well, can I first thank you for coming  
 5 to give your evidence. You have come at the end of our  
 6 two days of hearing and you have answered a number of  
 7 challenging questions, we have been very grateful for  
 8 the answers, some of which are detailed, and we shall  
 9 have to give our due consideration to them with the help  
 10 of the submissions which I will mention in a moment or  
 11 two from those who have been listening and it appears  
 12 there are various observations which counsel hasn't put  
 13 to you but which have been made to her which no doubt  
 14 will be reflected in those submissions which I shall  
 15 have to consider.  
 16 I hope that in due course you will have realised,  
 17 if you hadn't realised before, I imagine you probably  
 18 did, simply by the number of people here I can add to  
 19 that that I've been told that the quite apart from the  
 20 number watching on livestream of one form or another on  
 21 the internet, there were about double the number -- at  
 22 least double the number here, probably more -- than were  
 23 following live BBC feed on what was happening at the  
 24 Inquiry. So there are an awful lot of people who want  
 25 to hear the answers because they are concerned about

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1 enough time was wasted. You need to get on. You need  
 2 to get on with it now and tell us what you mean.  
 3 So I think that would have been better, and if one  
 4 had known how this has played out, that would have been  
 5 a much, much better thing to do, but I speculate that it  
 6 would also have had that sort of reaction.  
 7 **Q.** I'm going to finish just with an observation, and it's a  
 8 matter for you whether you want to comment on it, but it  
 9 arises out of your answer and to suggest it should have  
 10 been pretty obvious that it would go wrong if people  
 11 weren't involved from an early stage.  
 12 **A.** I think that is a fair observation, and what I'm saying  
 13 is that the Government of the time did not intend that  
 14 it should happen in this way. That was not its original  
 15 plan. But for the reasons we have discussed, the  
 16 combination of the Act provision, setting a deadline and  
 17 the election meant things were very, very different.  
 18 **MS RICHARDS:** Sir, those are the questions I am going to  
 19 ask. Nothing from Mr Maxwell-Scott. Do you have any  
 20 questions for Mr Quinault?  
 21 **SIR BRIAN LANGSTAFF:** I think they've largely been asked.  
 22 Those that haven't been answered are awaiting further  
 23 documents and elucidation from you, so I have nothing  
 24 more to ask.  
 25 **MS RICHARDS:** Is there anything you wanted to add,

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1 where we are and that's why we've held these hearings,  
 2 as you will know.  
 3 So I hope you will take away what has been said to  
 4 you and in due course assist the minister in considering  
 5 what, if any, changes he might make in order to do the  
 6 best to restore some trust in the process. But thank  
 7 you.  
 8 You can stay where you are for the moment if you  
 9 wouldn't mind, otherwise it's distracting.  
 10 If I can just say that you will be concerned with  
 11 what are the next steps. I could say we're going to be  
 12 as quick as possible but that wouldn't tell you much  
 13 about what has to happen before we can produce the  
 14 report which will come really as soon as it reasonably  
 15 can. But there are processes which we have to go  
 16 through. First of all, there are further bits of  
 17 evidence which have been referred to during the course  
 18 of the hearing which have to be obtained and they have  
 19 to be considered and, if necessary, sent to the legal  
 20 representatives and core participants for any comments.  
 21 Submissions on what has been heard need to be in  
 22 by 23 May, close of business on 23 May; no later,  
 23 please. Those who are core participants who are  
 24 represented will have those made by their  
 25 representatives. Those who are core participants are

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entitled to make their own submissions in writing.

After that, those submissions will have to be considered and then the process of formulating the report will have to be perfected. That may involve the making of warning letters -- I don't know -- it might do. If it does, they have to be sent and a reasonable time given for a response to them and that response has itself to be considered.

So it's not an easy process, but it is one which as quickly as we can do we will do but you are entitled to know that those are the steps and so if it seems that you have heard nothing from Inquiry for a little while, you can be -- I hope will be -- assured that we are going through those steps as quickly as we reasonably can.

Then, of course, the report has to be printed. That doesn't take very long but it does take some time because it has to be laid before Parliament and then you will see what is being said. I can't and won't give a date because of all the uncertainties that there are in that but, as I say, we will do our best not to waste time. The whole point in one sense of these two days has been to accelerate the process and not delay it. It's why we've tried to compress as much as we have into two days rather than a longer period.

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But thank you for being here, thank you for listening with the courtesy that you have to all the witnesses. I see Mr Quinault is nodding at that. So thank you for that and I wish you a good return to wherever it is you have come from.

Thank you.

(5.23 pm)

(The hearing concluded)

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