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

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

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

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.

SIR ROBERT FRANCIS: I hope that helps a little bit.
MS RICHARDS: Yes, thank you. Mr Foley, could you outline your role?
MR FOLEY: Good morning. I am the Interim Chief Executive officer, as you said. That means I lead the executive team. It's a full-time role and in this context involves the building of an independent arm's length body, the development of the compensation scheme and it spans all of the functions that you would expect in such an organisation including digital data, operations, communications, HR and finance.

As well as being the chief executive officer, I'm also the accounting officer for the Authority and that means I am responsible to Parliament for the proper use of public money in the Authority.
MS RICHARDS: I want to start by a short examination of the respective roles and responsibilities of on the one hand the Cabinet Office and Government and on the other hand IBCA so that there is a clear public understanding of the position and then come back to the idea of arm's length body and try and place that in context.

The scheme, by which I mean the compensation scheme, was designed and structured by the Cabinet Office and the Government; that's right, isn't it?
SIR ROBERT FRANCIS: Yes and, as it were, is a scheme which

was and still is in effect, or was until 31 March at least, being delivered to us by the Government via in ministerial terms the minister to the Cabinet Office through regulations which the Government put before Parliament. That is and always has been the Government's role in this and as a postscript I should say, as I think was clear from yesterday, that was not what was initially recommended, but that's what the then Government decided to do.

So that's I think an answer to your question.
MS RICHARDS: And the tariffs and bands, those were devised and set by Government and we now see them in the regulations.
SIR ROBERT FRANCIS: Absolutely.
MS RICHARDS: So IBCA has no say over those matters?
SIR ROBERT FRANCIS: No, and I should say that I, because of my previous role, have found it necessary to be extremely careful and precise about what my responsibilities now are and I have throughout thought it our responsibility to focus on putting that scheme into operation in terms of its roles and to pass on the many concerns that we have heard from many of the people we know well sitting in this room, and others, to the Government, but that it was not our role to express a view except in one respect. If matters in that scheme

had operational implications, I have on occasion felt it appropriate to raise those implications with the Government.
MS RICHARDS: And so IBCA's role, and I'm not suggesting it's not an important one -- it's a very important one -- but IBCA's role is to apply the rules set out in the regulations to the individual claims and then, having done the necessary assessment and calculations of the individual claims, to make the payments; is that right?
SIR ROBERT FRANCIS: Yes.
MS RICHARDS: Now you described IBCA as an arm's length body. You will know that many people don't see it that way. Is it right to understand the position in this way: IBCA is an arm's length body in the sense that that which IBCA is empowered to do under the regulations, you do that autonomously. You are not the arm's length scheme that was envisaged in the Inquiry's recommendations and that may be where some of the concern and confusion has arisen.
SIR ROBERT FRANCIS: Yes, you are obviously correct in both those suggestions. It is an arm's length body because that's what the act says it is. If no -- it is in structural terms in a process of transition. If I can put it this way, Parliament passed an Act setting up a

legal entity called IBCA and set a very basic framework within which it would work. Clearly the Parliamentary intention and our understanding is that in relation to delivering the scheme in terms of paying money to people who are entitled under the scheme is concerned we would have operational independence and accountability in relation to how we went about doing that and, of course, in relation to individual decisions.

Those are the matters that the board I chair have focused on from the outset.

What being an arm's length body doesn't mean, however, is that we are entirely free in relation to the taxpayers' money that we spend; in other words, all arm's length bodies, so far as I am aware, are subject to the rules that are set by the Treasury in particular, but also Parliament, in relation to the proper stewardship of public money.

That means there are processes which are in place which involve us as an organisation, for instance, having to seek via the Cabinet Office to the Treasury a budget every year for our administrative expenses. The £11.8 billion you have heard allocated in relation to compensation is that; it's the compensation, the money, funding required to run the infrastructure of the arm's length body is a separate budget which we have to

negotiate in the same way as I would believe any other arm's length body.

That has certain consequences. It does mean, and has meant, that there are steps that have to be gone through in the normal course of events as to how you acquire money in order to do something. If I give you an example. The Government agreed with my recommendation that legal support should be funded. It is a matter that has to go as far as the Treasury to get the funding in order to do that. Unfortunately, in my view, that is something which take time. At the normal pace of Government working, I won't say it's leisurely but it goes at a pace. So a matter has to go through a number of different committees, both at the Cabinet Office and then to the Treasury, before authority comes back to spend money on legal support.

The same applies to mundane matters such as buying computer software or hiring consultants to do whatever it is. So we have operational freedom but within a structure that requires us to justify in terms of value for money, budgetary controls and so on what we do.

I'm happy to say that we have now negotiated, for instance, in relation to procurement of stuff we have to buy that we would be able to set up our own in-house governance systems which means that we can bypass quite

a lot of these procedures and get on with things quicker, if I can put it in the vernacular.

So I believe over a period of time we are developing more independence in relation to that. That's a very long answer and it's covered a wide field but I thought it important to say that the reality of a public body, even as an arm's length body, as one would expect is that there are rules around the stewardship of taxpayers' money that we have to follow like all other bodies.

MS RICHARDS: If we put to one side those matters over which IBCA has no say, because that's the way the Government has chosen to set it up, so how much each tariff or band is worth, what the criteria are, the very complicated equations that we see in the regulations, that's all set by Government and you have no power to change that; that's right?

SIR ROBERT FRANCIS: Correct.

MS RICHARDS: So the things that are within IBCA's autonomy then I will include some of the topics that we'll come to but will include, for example, the order in which you invite will come back to the term invite, but the order in which you invite applications, that's for IBCA to set, not the Government?

SIR ROBERT FRANCIS: Yes.

MS RICHARDS: And so the process of having claims managers, you may have to get funding for that from the Government but the decision to organise the workings of the scheme in that way, that's IBCA's decision, not Government's?

SIR ROBERT FRANCIS: Yes.

MS RICHARDS: Anything in relation to how you then go about the process of assessing individual claims against the rules set by Government, that "how" question, how you organise your own processes, that's for IBCA, not Government?

SIR ROBERT FRANCIS: Yes.

MS RICHARDS: Is that a broad understanding of the respective roles?

SIR ROBERT FRANCIS: Yes. I would add one qualification I think to that which is that we do not live in a vacuum and I'm sure we'll come to this. We seek to involve the community, the users of our scheme, if you like, in this might there's and we will no doubt discuss something about that, but also as I think you heard yesterday, the minister has views and he's free to express them to us and does.

So it is our decision and our responsibility and our accountability as to how we use that material and make decisions.

MS RICHARDS: Now, I want to turn just to examine a bit

about some of the roles within IBCA in terms of the processing of the scheme. We know that I think many of the staff of IBCA are or have been civil servants whilst IBCA transitioned, as I understand it, to being in a position to have its own employees. What's the state of affairs in relation to that? Perhaps I can ask Mr Foley that.

MR FOLEY: Yes. I think when you think about this, it's worth remembering where we started from. So when this Inquiry reported, our appointments were announced the day after, and at that point, the two of us were IBCA. That was it.

Our relationship with our sponsoring department, the Cabinet Office, has been a strong one, and they have been very helpful, as have other Government departments as well, in terms of helping us to move very rapidly from being just two people to being an organisation that can start delivery. And, as part of that, we did loan and second civil servants into our organisation in order to be able to start rapidly.

At the moment, all of our employment is still under the aegis of the Cabinet Office. So everybody who is employed to work on IBCA is employed by the Cabinet Office as a civil servant. We have lots of people who are contracted to work with us who aren't employees as

well, and once we're in a position to employ people ourselves, then all of those people who are in those roles will transfer into the employment of the authority, and from that point on, everybody we recruit will be employees of the authority, not the Cabinet Office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

important job in favour of the people who they serve, and they do regard themselves as serving the community. And, difficult though this may be to believe, every time a payment goes out, they rejoice and celebrate that. This is not -- they help each other help people in a human and compassionate way. This is what they do.

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

MS RICHARDS: Mr Foley.

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

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

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

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

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

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

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

MS RICHARDS: And the next board meeting is?

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

look up the exact date.

SIR ROBERT FRANCIS: It's later this month.

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

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

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

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

a medical practitioner?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So I think it's a similar approach to you were talking about the training materials. I think we would be very happy to talk about the and to publicise the themes that are on there and what we have considered. What we don't have is a single manual that we could publish which will have and forever more have all of the policy interpretations for the regulations.
MS RICHARDS: Is there an intention to get to the stage where you have, effectively, a manual and, if so, will

you commit to that being published?
MR FOLEY: It's a -- I sort of hesitate on the word "manual" because there's no --
MS RICHARDS: A set of -- a suite of policies, or guidance notes, or whatever they might be. I understand Test and Learn. I understand that this is an iterative process. I understand that these documents may change -- may sometimes change quite rapidly, but the question really is this: whatever is operating at any particular time, can those be published so everybody sees, understands?
Again, you will know from the Inquiry report, Sir Robert will know from all of his involvement of everything that went wrong with the Alliance House organisations, and one of those things that went wrong was a lack of clarity and a lack of transparency about how they were operating.
MR FOLEY: We would certainly be keen to, you know, make available to people what is understood and how we are using it. I would urge everybody to read that in the context of: things are constantly iterating.
MS RICHARDS: Yes. Now, the decision-making process, then, in relation to a claim -- so we take a hypothetical claim. I'm going to take what I think will be, for obvious reasons, a hypothetical hepatitis C claim. And I am going to come back to ask about documents and

burden of proof and so on, but let's assume you get -- the claims manager has got to a point in the life of that claim where they think they have the material they need. And a decision has to be taken, first of all, as to which band, which severity banding for the hepatitis C claim the individual's claim falls in, and then there will be a whole range of calculations that will follow.
Who takes that decision? I think you have described the case managers, the claims managers, Mr Foley, in your statement, I think, as autonomous decision-makers in that regard. Is that their decision?
MR FOLEY: Sorry, would you mind just repeating which decision you're talking about --
MS RICHARDS: So the key decisions that are taken in the life of this fictional claim, which in a hepatitis C case, by way of example, will include not just a series of important mathematical calculations, but will include an exercise of judgment as to which level the individual falls within.
MR FOLEY: Yes. So it's probably helpful if I walk through the process so you can see who does what at which stage.
So it obviously starts with starting the claim and, at that point, the claims manager will write to the individual. We are -- you know, we work on the basis

that there is a dedicated claims manager for each claim. So throughout this, the person making the claim will deal with the same person which means there's no repetition, no having to repeat themself, no trying to find the right place in the case. It's the -- that dedicated case manager stays with the case all the way through.
The first stage, then, is preparing the right information in order to calculate the claim. Now, we -- our ethos is that we are supporting people to get the right compensation. And the first thing that we do, and we do this prior to starting them, is gather the right sets of information for them and say: with the information that we already hold, this is the information that we think is -- do you think this is the right information? Is there anything you would like to change? Is there anything that you would like to add? Do you have anything -- indeed, you may have a representative who has something as well. Is there anything that you would like to provide?
MS RICHARDS: Sorry, Mr Foley, can I just stop you there because I have question arising from what you described.
You talk about essentially before the claims manager, in a sense, even starts any meaningful interaction with the individual that there will be some

information that the claims manager will already have obtained. Is that information from the support schemes that you are talking?
MR FOLEY: Exactly. So the support -- under the Victims and Prisoners Act, we have the authority to take information from those organisations. We take them. We gather them together for the individual, and then when we start the case, we say to the individual: are you happy for us to use this? And if we are, here is the information that we have.
MS RICHARDS: So, again, I just want to be very clear I understand the process. I'm going to come back to the question of prioritisation, but at the moment, as I understand it, there's an random exercise. So Mr X's name comes up in the randomly generated exercise. Is this right, then: Mr X's case is assigned to claims manager A, and before claims manager A even -- is this before the invitation even goes out, claims manager A will have accessed and obtained the information from the support scheme for Mr X?
MR FOLEY: So the information from the support schemes are transferred to us.
MS RICHARDS: So you have that within you can digital system?
MR FOLEY: Exactly, yes. They are put together into a

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

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

MR FOLEY: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

experience or not?
MR FOLEY: So people who are already registered with the existing schemes are automatically eligible under the Act. So it's not a question of proving eligibility but there is a question then about evidencing the point of infection.
Now, we do look for evidence but where evidence is not forthcoming or can't be provided then we move to the balance of probability in terms of determining those.
So those are the sort of things -- we're not looking for proof of eligibility in these cases but we are looking for evidence that will allow us to make the appropriate calculation.
MS RICHARDS: One of the requirements -- and this is a requirement in the regulations, so I'm not suggesting that it is something that IBCA have dreamed up and it is something I will be asking Mr Quinault about -- but there is a requirement to prove date of diagnosis, I think. Is that something you have detected so far whether that's causing problems, because we know from thousands of accounts that particularly when it comes to hepatitis C, many people were not diagnosed for years, many people were diagnosed by their clinicians but not told for years, many people have no records which record date of diagnosis, an accurate date of diagnosis until

something comes up much, much later, which isn't the actual date of diagnosis but this first proper record of it in medical records. So is that causing problems, do you know at the moment?
MR FOLEY: I don't have the statistics in front of me as to which data points are proving more or less problematic but we certainly have seen cases where that has been the case, yes.
MS RICHARDS: Now, when it comes to individuals whose medical records, relevant medical records are either sparse or non-existent, for reasons that you will know well, what is IBCA's approach to satisfying the burden of proof and is there any guidance that's been given to claims managers in that regard or any training that's been given to them?
MR FOLEY: So we do see if there's evidence and whether we can help find evidence. Obviously, for all of the reasons that the Inquiry found, in many cases records are patchy or are non-existent and that is the point at which we move to the balance of proof.
The balance of proof, then, is looking at: is it more likely rather than less likely and that sometimes requires clinical input as to: do those look like the likely sequence of clinical events? I don't think we have a document that says this is how you should apply

balance of evidence because we are still in that phase where we are iterating the learning. So each case tells us something more about how to do that and also because we have in many cases been able to build a suitable evidence base that has allowed us to proceed. It might be helpful if we write to you with the number of times we have had to invoke that balance --
MS RICHARDS: That would be extremely helpful, thank you. Again, you will probably know from the Inquiry report that in relation, in particular, to the Skipton Fund and the way it operated, one problem was a seeming inability to understand that what a person says is itself evidence.
Does IBCA understand, do the claims managers understand, that a person's own account of what they understand to have happened to them is evidence?
SIR ROBERT FRANCIS: Perhaps I could intervene there. You might imagine the balance of probabilities is something I've dealt with for quite a few years and I do emphasise every time I see claims managers that obviously what a person says is evidence and must be assessed in the same fair way that you assess any other evidence.
When it comes to guidance about the balance of probabilities, I was always taught when sitting as a judge that your direction of that should be very

simple because you have got to take into account any number of different circumstances. But I would say that I personally have always encouraged IBCA to, for instance, look for evidence from the statements that this Inquiry itself has had and the evidence that it has because -- and I'm happy to say, as you might expect, the Inquiry's been very co-operative in giving us material. So we are fully aware of the fact it's not just about medical records or a signed piece of paper, it's about people's recollections and so on.
Obviously it is -- and I should say behind that is also our philosophy which is to be supportive towards people, rather than to make negative presumptions.
MS RICHARDS: Now, I am going to come on to in due course some questions about timescales and cohorts and opening up the claim and so on, and I will come back to the particular cohort I am going to ask you about now in that regard. But whilst we're still looking at evidentiary requirements, documentation, there are people who have never been registered with the scheme either because they have hepatitis B or because their claims were rejected on an evidentiary basis, or because -- and I'm going to take the hepatitis C example again -- they were infected not long after but after 1 September 1991 cut-off date that bound the

Skipton Fund and binds the support schemes.

Is there -- what thought has IBCA currently given to how it's going to assess those claims that have never previously been assessed before and what kind of material is it likely to need or want to see?

MR FOLEY: Yes. So we've heard very clearly about the circumstances from the representatives of those groups. We are working with those representatives now to work out what is the best approach that we can take to those circumstances. So as we're working through that, we would be very happy once we've got, you know, an idea about what those will require to publish them. At the moment we don't have it.

MS RICHARDS: Thank you. That anticipates my next question.

Can I come on then --or what was going to be my next question. Can I come on then to the question of progress. Now, before we look at the most recent update of figures which I think was published the day before yesterday on your website, in your first statement, Mr Foley, you described the Test and Learn approach to those first 250 claims and so can you share with us what's been learnt so far about the process of those first 250 or however many it precisely has been?

MR FOLEY: Yes, certainly. I think I will probably start this with thinking about, you know, the progress that

has been made. So as we described in May last year, this Inquiry reported. Our appointments were announced the following day and then on the Friday of that week the Victims and Prisoners Act received Royal Assent in what is called wash-up in terms of what happens after a General Election is called.

As described, it was just the two of us at that point of time. As Sir Robert has described, we needed the regulations to start to be able to process claims. When the first set of regulations, were they in August less than two months after that we started the first claims and less than four months after that, we made the first payments. So from a standing start in May, that has been rapid progress.

We also said we would do 250 claims by the end of March for the learning process that you are describing and we've managed to do those as well and the latest figures obviously show the acceleration phase that we promised after the learning phase. You can see those numbers come through. We publish those numbers every month. We're going to publish them every fortnight going forward so that people can seem how that acceleration is progressing.

But the learnings are really important. So we have learnt about the importance people place on not

having to continually repeat themselves to reinvent themselves, the fact that the dedicated claims manager gives them that certainty and contact all the way through. We've learned a lot about the way people like to be contacted and that is, as you can imagine, varied. Everybody has an individual choice how they would like to be contacted by IBCA and we can put in place the processes to be able to do that.

We've learnt an awful lot about the amount of information and type of information that is held by the Infected Blood Support Schemes and the gaps that leaves and then how we go about asking other organisations for that when we need to and there's a whole load of technical things that we have learned like, for example, you know, where things become difficult to interpret like the severity of the fibrosis, for example, and how to bring those in.

So all those things, all of them sound, you know, small things but the really important thing is all of those small things add up to a better claims journey than if we had sat in a dark room, developed it ourselves and assumed we knew what would happen when in the real world, real cases were being processed.

MS RICHARDS: Now, in terms of the most recent numbers published on 6 May they are 106 people paid, 160

received offers. Is that including the 106?

MR FOLEY: Exactly.

MS RICHARDS: That's what I thought. So there's 54 effectively who have received offers but not yet been paid, so that's still in that stage, and 432 having started the claims process.

Now, given that it's I think three and a half years since -- or over three years, sorry, since Sir Robert's report was presented to Government, over two years since the chair's second interim report was presented, those figures, looked at in those absolute terms, can I think probably rightly be described as shockingly low. I am not suggesting in my questions that will follow that that is the fault of IBCA because we know, obviously, that effectively action to set up IBCA began only last May, effectively, and so you have been working since then. You are not responsible for the years of delay before that.

But what you have set out in your statement is some broad timescales and that's what I want to come to now. You talked, I think, in your statement, Mr Foley -- and this is the expectations from the Cabinet Office -- of paying the first infected claim by the end of 2024. Obviously, that did happen. Paying the first affected claim by the end of 2025, paying the

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

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?

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?

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

the living affected?

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

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

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

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

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

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

important.

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

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

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

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

trauma and distress that that is visiting upon people.

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

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

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

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

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

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

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

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

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

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

to tolerate it, the quicker you can go.

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

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

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

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

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

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

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

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

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

In IBCA, we are absolutely, you know, driven by

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

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

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

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

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

My husband has a twin brother who was infected at the same time and in the same situation. When we asked if they could process his claim given they had all the information, just had to change the first name, we were told he had to wait to be randomly selected and would probably have a different claim manager who would start the process again! This seems a waste of time and resources.

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

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

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

Is that something that IBCA can go away and look

at and think about this? It seems an obvious way of possibly speeding up at least some claims.

MR FOLEY: So we certainly can think about it. I think I should point out there are some obvious implications of that. So if you link cases, then obviously that does mean that some affected people will be paid before some infected people, maybe considerably before them. The cases clearly do need to be linked in any event because for an affected case to proceed, it does need to have an infected case to which it relates.

And then just on the point about twins, I would definitely be not fulfilling my duties if we assumed that two twins were identical in terms of compensation to be paid.

MS RICHARDS: Absolutely, but if someone is telling you that that's the position, a flexible system trying to work as quickly as possible might think, well, here is a way of dealing with two claims in a way that will be quicker than dealing with one now and dealing with the other in a year's time.

MR FOLEY: We will certainly go away and look at what the opportunities there are. But just to point out, this makes a very compelling case, but it is not as straightforward as that. There are always implications about every choice you make about how you proceed with

cases. In particular, linking them, from an operational perspective, we have thought it is quite attractive to do that, but then there are complications then about what does that mean in terms of the order in which cases will proceed at.

SIR ROBERT FRANCIS: Could I just add to that because this is the sort of matter that we discuss at the board.

The dilemma we have is obviously we want, if possible, to pay everyone as soon as possible, ideally at once, but there are implications. David and his team are building a system from end to end which has to cater within its digital systems for any number of different, sometimes very complicated combinations, of circumstance and fact.

The way in which it is doing is, first of all, we are designing the system which works for the infected, the people. We've started with those who we know most about, namely, the registered infected. If we don't get that right first, if we don't get that right, then whatever we bolt on to that in relation to other types of claims is likely to fail. The bit we're dealing with at the moment is absolutely essential to everything that follows; namely, how do you deal with the eligible infected applicants for compensation? That's the first point I make.

The second point is that every claim we would take in relation to an affected person (which, by the way, the regulations only came out three weeks ago and no-one is suggesting they are anything other than complicated), every affected person we join into a claim for an infected person means that's probably one less infected person we are processing at the same time. We, as a board, felt it right -- and obviously there were different views about this -- but we thought it right to give the priority at this stage -- this stage, the development stage -- to the living infected and that's what we are doing.

So, as David says, for every apparently simple solution of joining everybody together would presuppose that we knew everything now about how to process a claim for all affected people as well as the infected, and we don't. We have to, I'm afraid, deal with this in stages because if we don't it's going to take an awful lot longer than people's worse nightmares to get through the compensation for everybody.

That is our view.

MS RICHARDS: Sir, I note the time and I'm conscious we also need to be back in here before the 12.00 silence, so perhaps we could take our break now.

SIR BRIAN LANGSTAFF: Yes. Let's come back then at -- let's

make it 11.45. 11.45.

(11.25 am)

(A short break)

(11.51 am)

MS RICHARDS: I have asked about the position, in terms of the proposed or anticipated timescales for the living infected registered. You have explained the position in relation to those currently outside any of the schemes. We discussed the affected.

Can I just turn briefly to the deceased infected. Is there any timescale -- assuming you are going to do the same and have a Test and Learn approach, is there any timescale for when that may start?

MR FOLEY: As with the previous answer, there is not a timescale at the moment. It is our ambition to open all of those parts of the scheme as quickly as possible and, as before, I'd be very happy to, as soon as we know when they are ready to open, that we will tell people that they are ready to open.

MS RICHARDS: Is the intention to do them one after the other sequentially, or is the plan to open the Test and Learn phases for all the remaining, or at least some of the remaining cohorts simultaneously so that you are running them in parallel?

MR FOLEY: I think some of them will have to go singularly,

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

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

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

So regulation 14 talks about:

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

And then there's certain time periods:

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

And then that's set out.

And Regulation 65 says:

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

Now, there isn't currently any application form

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Two minutes' silence observed)

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

MS RICHARDS: Sir Robert, my apologies.

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

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

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

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

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

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

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

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

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

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

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

going to have lost literally those who will have died in the intervening period. Is that something which the Authority can go away and think further about?

SIR ROBERT FRANCIS: Can I say when I became aware that this was the policy choice, I drew to the Government's attention the operational consequences of that, which in my view were disturbing and they are the ones you have mentioned. I'm afraid it is the -- I mean, can I just say at this point, without wishing to express too much emotion, I live every day, not as these people do, but with the awareness that every day we are not paying someone, the chances of someone dying are there and everyone in our organisation from the board down to the claims managers is fully aware of that.

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

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

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

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

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

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

it out.

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

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

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

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

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

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

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

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

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

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

involvement.

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

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

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

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

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

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

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

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

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

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

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

Would you accept that?

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

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

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

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

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

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

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

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

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

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

MR FOLEY: Sorry, yes, there is. So claims manager. Each

of them has a supervisor who supports them. Each of them, especially when they've come out of training, has a buddy who is an experienced claims manager who supports them. And, as I said, at the point of where we get to making a payment, there is a four-handed check on making sure that it is the right assessment.

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

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

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

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

I think you're familiar with the -- there was a

change in the regulations about the -- one year in the calculation was in the forward rather than the backward, and it had to be reverted. So we used the internal review to process that.

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

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

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

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

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

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

The first is the issue of engagement and involvement. You will have seen from the statements, you will have gleaned from yesterday morning's evidence session, you will no doubt have picked up from all the

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

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

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

How to go about that is a challenging issue because, to take an example, in terms of our email communication, which I appreciate is only one strand of many things we do, we have been -- some people will say

we do too much of it, other people say we don't do enough, and so we have to make judgments about that.

The meetings we have ranged from -- the ones I prefer are in-person meetings in rooms like this where people can talk, where you can actually meet people informally as well, which is useful, to the ones I don't like very much, perhaps showing my age, tend to be webinars online where everything is done via written question and an answer being given.

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

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

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

and taken into account what has happened.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RLIT0002944. I'll see if I've type that out wrongly. Page 88, it should be. If we can zoom in on level 3. So these are the severity levels for hepatitis B and C. It's item number 1:

"Cirrhosis characterised by serious scarring (fibrosis) of the caused by long-term liver damage caused by infection."

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

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

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

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

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

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

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

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

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

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

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

MR FOLEY: I would welcome a discussion with the

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

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

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

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

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

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

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

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

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

SIR BRIAN LANGSTAFF: Thank you.

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

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

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

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

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

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

MR FOLEY: Yes, we can. Yes.

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

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

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

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

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

MS RICHARDS: Thank you.

(12.47 pm)

(A short break)

(1.16 pm)

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

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

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

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

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

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

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

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

MR FOLEY: Indeed.

MS RICHARDS: Will IBCA be doing a calculator for the

supplementary route?
MR FOLEY: We are working on a calculator for the supplementary route. It is, as you can imagine, much more complicated in terms of doing that, but we are working on that.
MS RICHARDS: I have been asked to ask you why you need evidence of the date of diagnosis, to which I understand the answer is because the regulations tell you. That's a mandatory matter in the regulations and a matter I am going to ask Mr Quinault about.
But I am asked to ask you this: with reference to, in particular, issues about missing or incomplete records, would IBCA be able to do its work more quickly and effectively if, instead of date of diagnosis, IBCA was required to look for date of exposure? In other words, would you support perhaps a change in the regulations -- not in your gift clearly -- but would it be something that you would favour?
MR FOLEY: Can I take that away and consider it and write back?
MS RICHARDS: Yes.
MR FOLEY: Thank you.
MS RICHARDS: What is the specialism of the current one clinical assessor?
MR FOLEY: I would need to find out. I'll write to you.

MS RICHARDS: Thank you. I am afraid, will add that to my ever-growing list of questions I am going to be drafting for you tomorrow, Mr Foley, for further Rule 9.
Sir Robert, as you have already mentioned, your view was that affected claims should pass to the estate, and the Inquiry, as you rightly pointed out, took a different view. There is now, obviously, the question of how long it may take for claims to be processed, and a number of people have asked that this issue be looked at again by the Cabinet Office because it's not in IBCA's gift.
But would you support, given in particular now what you know as chair of IBCA about how long it's going to take for claims to be processed, would you personally support a change in those regulations?
SIR ROBERT FRANCIS: Well, I think all I can safely say is that my view as expressed when I initially reported on that has not changed. I think it would also be fair to say, having seen Sir Brian's report, that there are clearly argument both ways and that's exactly where of course there is a matter of policy to be decided and priority and I think, therefore, for my present position that's as far as I think I can go.
MS RICHARDS: I think your first point sufficiently answers the question that I was asked to ask.

Do questions of the likelihood -- and this is probably for you, Mr Foley -- of a transfusion having taken place at a particular time or in connection with a particular intervention get referred to clinical assessors in helping establish eligibility, for example?
MR FOLEY: Yes, they can do.
MS RICHARDS: Sorry, I am just reading through these.
In relation to the internal review that you have described being -- or the internal checks, sorry, that you describe being carried out to check that the claims managers' process and calculation, is that on the whole file or just the final sum? I'm going to read to you what has been put to me, which is:
"Evidence of a claims manager advising an applicant and their spouse regarding what would be paid to the spouse in the event of the infected applicant's death, which was very significantly wrong, that is an error that would not come to light in considering the final figure which would only emerge on the death of the applicant."
So it's a slightly complicated way of putting it, but what is the nature of the check? Do you just look at what the sum is or do you look more broadly at what is being said to the applicant?
MR FOLEY: Could I confirm: my understanding is it is a

re-look at the entirety of the claim it's not a just: was the final calculation correct? But if it's okay I'll confirm that --
MS RICHARDS: Absolutely.
Is there any data about whether particular claims take longer than others and if so, why?
MR FOLEY: I don't think we yet have that data that would be statistically significant. We do know from the cases that we have processed so far the sort of the characteristics that make for longer cases. In particular, the component part that elongates it is when we need to go somewhere else for information and that is usually the longest part.
SIR ROBERT FRANCIS: Could I just add to that because it's not only in this field that I come across it. We as an organisation have a statutory power to require information. I think our experience has been that as things stand practitioners, busy practitioners, in the National Health Service, or busy administrators don't necessarily give this the priority that we would like and we are seeking -- and that's no criticism of them because we all know what pressure the NHS is under. But we are engaging with the Department of Health to see whether some more clear guidance can be given to practitioners to assist us in the way that we've asked.

MS RICHARDS: This is now a completely separate topic.

The Inquiry heard yesterday evidence about the Department of Health making an offer of funding a few days ago to three of the charities involved in advocacy work. We know there are a number of other organisations and groups and charities that provide assistance in this area, some of whom have limited, if any, funding. Does IBCA have any role in funding such organisations?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Questions by SIR BRIAN LANGSTAFF

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

MR FOLEY: It is going forward, yes.

SIR BRIAN LANGSTAFF: How many people who you have recruited

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

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

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

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

SIR BRIAN LANGSTAFF: The second question is this: counsel in one of her questions to you pointed out the length of time there had been since Sir Robert was invited to make his report on compensation and did so and the current position, which is that there had been 106 claims paid,

and she described that as shockingly low.

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

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

SIR BRIAN LANGSTAFF: So the answer is yes.

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

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

We've now written to 677 people to begin their claims. It is not enough and it will not be enough until every single person is paid compensation. But from a standing start in May, the people who work for IBCA and work for you have strained every sinew and pulled every muscle to try and get to this and that is a significant development from there.

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

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

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

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

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

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

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.

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)

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?

A. Yes, in post.
Q. What's the precise size role of you and your team in the design and drafting of the regulations for the scheme?
A. So my team does not directly draft the regulations. That is a job done by professional legal draftsman and women; it's a complicated business and needs to be done by professionals. But my team will instruct them, will tell them what the policy intent is as decided by the minister and help them to translate that into good law.
Q. I'm going to start with questions which relate to the period from June 2023 to July 2024 when the new Government came in. So I'm going to start with that period. I'm not going to ask you about earlier when you were not in post, but that period under the previous Government.

You will know that this Inquiry recommended in April 2023 a scheme that is completely independent of Government and, as I think has been universally acknowledged in the hearings so far, the scheme which we have is not completely or even remotely independent of Government because the scheme has been designed and the tariff set by Government; that's right, isn't it?
A. That is true that the scheme is as set out in regulations which are passed by Government.
Q. And the scheme draws heavily on the advice of the expert

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

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

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

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

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

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

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

Why were their identities kept secret?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to provide advice on this and also, importantly, could draw on knowledge of all four jurisdictions, which is important.

Q. The process -- whatever the reasons for it, the process that was adopted by the Government was the opposite of transparent, wasn't it?

A. It was not the process that the Inquiry had recommended.

Q. It was not transparent, was it?

A. It was -- had this been a sort of public consultation, no, it wouldn't have been transparent. That is correct.

Q. And it wasn't inclusive, and it had the -- it did the opposite of putting infected and affected people at the heart of the scheme.

A. So I must acknowledge that last point. It is clear from how people have felt about it that they didn't feel that this was engendering trust or putting them at the heart of things.

SIR BRIAN LANGSTAFF: May I just ask a question. Your answer that "had this been a sort of public consultation, it would not have been transparent". When the current Government talks about openness and transparency, is it talking just about public consultations?

MR FOLEY: No, of course not, and I'm sorry if I said the wrong thing.

What I was trying to say was that this was not -- this is not intended by the Government to stand in place of the process recommended by the Inquiry. It was a different thing which was about getting it some advice about what -- to inform decisions in principle about what scheme -- what kind of scheme to propose.

MS RICHARDS: But it's the very opposite of what was recommended by the Inquiry, in terms of the idea of placing the people damaged for decades, in part by the actions of Government, at the heart of the process. It excluded them from the process.

A. It wasn't intended to exclude them. It was -- the Government intended to consult on its proposals, but certainly, it in no way could stand in place of what the Inquiry recommended.

Q. You have said the role of the expert group, as envisaged by Government, was to advise the Government, and it would then be for the Government to decide what to do.

What were the respective roles and responsibilities of the expert group and the Cabinet Office of Government in that process because -- and we will perhaps see this when we come back to the -- will come to the issue of the Special Category Mechanism and its equivalents. But quite a lot of what the expert group advises we do then seem to see translated into the

scheme.

What independent thought did the Cabinet Office bring to bear? Did it reject anything that the expert group had recommended?

A. I can't remember anything that the -- that ministers rejected that the expert group recommended, but their role was to provide expert advice, to inform what things the Government then, you know, proposed to the -- to people.

Q. You say that it was the intention to consult on the scheme. We know that what actually happened was a very compressed period in June 2024 when Sir Robert Francis no doubt did his best within a very limited time-frame and made clear in his report the constraints at that time-frame. That in part was dictated by the decision to call the General Election.

When the Government prior to May of 2024 was planning what to do, what kind of consultation exercise did it have in mind?

A. So it's hard to say now how things would have been different but I think -- originally I think the intention would have been to bring forward proposals after the Inquiry had published its Final Report, which back in October the Government assumed would be March, then to consult on those proposals and then to put them

into legislation in a Bill to come forward in the next session.

Q. Now --

A. But of course, as things turned out, all of that timescale was truncated first by the amendment to the Victims and Prisoners Bill setting a deadline for the bringing forward, the setting up of the authority, and then by the decision to call the General Election.

Q. Just picking up on something you said a moment or two ago, what you said reflects what we understood the Government's position to be certainly when we had our hearings in July 2023 that it was necessary to await the outcome of the Final Report.

What actually was obviously happening during that period of time was the work that we now know was being undertaken by the expert group by Government such that there was this ready-made proposal on 21 May. Now, I'm sure that people within the Cabinet Office have looked at the full Inquiry report but it would stretch anyone's credulity to believe that on 20 May or even in the few days before that in terms of the advance provision of the report to the ministers as required under the Act someone had sat down, read through all seven volumes and said right now we know we need to put this scheme into effect.

Why was the Government's position -- and I accept it's not your decision, it's a ministerial decision, let me make that clear -- why was it the Government's position that they needed to wait for the outcome of the Final Report?

A. So the Government's position as set out by the ministers of the day to this Inquiry was that it needed to wait for that Final Report to give it the context of -- into which would be proposing a scheme even though as if the Inquiry have made plain you have already made all the recommendations you intended to make on compensation in the second interim report in April.

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

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

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

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

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

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

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

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

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

A. So the expert group reports are the place where

understanding has assisted.

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

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

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

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

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

The Severe Health Condition Award identifies a

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

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

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

I referred earlier to the fact that the assumption in that chronic band is that people's -- the impact on people's ability to work, for example, starts right from

infection. It doesn't occur later. And the intent there is, without asking people to bring forward evidence for how badly they were affected by interferon, to see that they are broadly compensated for it. And then for those even more unlucky to be, you know, severely and permanently -- you know, get a severe, permanent condition because of this, there is the severe health impacts route to pick that up, so that's the intention.

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

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

So the position, as I understand it both from the documents and the evidence yesterday, is that as at August of last year, the Government accepted the advice of Sir Robert Francis and the advice of the expert group which, in this respect at least, was squarely based upon feedback from infected and affected people through the June process, to include within the scheme health impacts which reflected for both hepatitis C and B those that were hitherto covered by the SCM. That's correct as a statement of fact, isn't it?

A. The Government did accept, as the minister said, that there should be a route for people with severe impacts to get that recognised in the scheme.

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

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

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

SIR BRIAN LANGSTAFF: May I just ask this question. You say that the advice from the expert group was ambiguous. There was, as I understand it, no ambiguity at the time about the Government's acceptance of the need for something in between?

A. What -- the recommendation of Sir Robert Francis was that the Government should accept the advice of the expert group, was that the advice of the expert group should be followed and the Government accepted that. As it turned out, that advice on this point turned out to be ambiguous. But in answer to your general point, I acknowledge completely that anyone reading the section of that -- of that section of the expert group's report, together with what the Government and Sir Robert had said, would have assumed that this meant that everything in the current SCM would count.

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

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

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

When the minister stood up in Parliament on 2 September -- and I should add I am not seeking to trespass upon Parliamentary privilege here, when he stood up in Parliament and said: I have accepted 69 of the 74 recommendations, one of those 69 was the recommendation that the SCM and its equivalent criteria would be part of the scheme, was it not? Sorry we don't

pick up nods.
A. Sorry, I beg your pardon. The Government was accepting Sir Robert's recommendation that the advice of the expert group be followed.
Q. On this specific issue.
Now, we know the position has changed and I want to try and understand how that happened and here I do need to look at a document with you. It's WITN7762015 and this is the further report of the expert group from -- I think published on 12 February this year. Can we go, and I'm hoping I'm going to get the right pages this time, Lawrence, bottom of page 4. "Introduction", excellent. Good start.
Next page, please. First paragraph on the next page. So it says here, this is the group speaking:
"We revised our initial advice in a number of respects based on the feedback from the engagement events convened by Sir Robert Francis ... This revised advice was set out in our final report. Following their acceptance of the recommendations made by Sir Robert Francis, we were invited by the Government to provide further detailed advice on three issues in order to assist with the drawing up of the Scheme ... we have been pleased to have the opportunity to consider these issues further, which we have done in light of the

engagement meetings held by Sir Robert."
Then we can see the three issues then set out if we just go back. So we can see the first is supplementary Severe Health Condition Awards.
So it would appear that by the time of this further instruction to the expert group, the Government had decided it wanted further advice on this issue. Having accepted its previous recommendation, having drawn up the scheme that was published on 23 August, why did the Government go back and ask for further advice on this issue?
A. I don't think this is a subsequent decision. The Government said in that 23 August document that further work will be done on the severe health condition route. This was the further work. So I don't think --
There wasn't a change of mind in terms of commissioning further work. It was said on the 23rd that that would happen and would need to in order to draw up what the route would look like.
Q. One inference might be that the Government didn't like the advice the expert group had given previously and was looking for a way out.
A. No, I don't think that's right or fair. I think the expert group themselves saw that their previous advice was ambiguous and were seeking to draw that out into

something definite and clear.
Q. Could we just go back to the first main paragraph again, please, Lawrence, and if we look at the penultimate sentence that's on the screen, where the group says:
"We have been pleased to have the opportunity to consider these issues further which we've done in light of the engagement meetings held by Sir Robert."
Now, I was struck reading that at the curiosity of the group saying that they'd reconsidered this or considered it further in light of the engagement meetings.
What you have is a group that had said -- and I am going to give this a kind of crude summary -- yes, we can have the SCM in light of the engagement meetings that have been held in June. How that group can say now: let's not have the SCM and still say it's in light of the engagement meetings, having consulted not one jot further. Is that something that struck you at the time?
A. I must say, that's not how it struck me at the time or reading it now.
Q. Well, let's go to page 15, please, where we see what's being said. And under that bold heading, it's the second paragraph, please, Lawrence. Thank you.
I'm going to pick it up in the third line:
"As the compensation scheme is based on clinical

markers that will be accessible, assessable and verifiable, the Group does not think it is appropriate or proportionate to require applicants to make personal life impact statements."
Did it not occur to the Government to subject that thinking by this group to some critical analysis? This was the opinion of HIV and hepatitis clinicians and a professor of healthcare law, not even psychosocial impact. Didn't it occur to the Cabinet Office that the right people to ask whether it's appropriate or proportionate to make personal life impact statements were the individuals who might be very happy to do so if it means they would actually get recognition financially for their condition?
A. So my reading of this was not -- I heard the questions that you put to the minister about this yesterday, and my reading of this is it was not the intent of the group to disparage that. As the minister said, that wasn't the intent at all, I don't think, and IBCA, as you pointed out, do ask people to tell their story, and rightly so.
I think what the group was trying to say was that the process of people qualifying for this route should not depend on some kind of further assessment, but instead should be based on information that people could

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

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

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

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

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

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

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

A. No, that's fine.

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

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

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

A. Indeed. Indeed.

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

NTHT0000059, please, Lawrence. This is now dealing with the specific point about the severe mental health condition part of the severe health awards.

You will recall, Mr Quinault, that for the severe

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

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

A. I saw it yesterday.

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

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

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

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

Q. It does.

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

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

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

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

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

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

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

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

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

A. Yes.

Q. Those are our sources, are they?

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

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

significantly reduces. Have I broadly understood it correctly?

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

Q. Yes and --

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

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

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

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

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

Q. Can I turn to another aspect --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 March will no longer receive support payments. It's one question because the minister, again, dealt with that and has agreed to take that away and look at it.

I think I do need your statement on screen for this. It's your second statement. It's WITN7755003, please, Lawrence, and it should be page 34, paragraph 213. Thank you.

I've been asked to ask you what you meant here. You say:

"Infected persons who pass away after 31 March 2025 can, through their estate, make provision for a partner from their own compensation if they wish."

That assumes that the infected person has received compensation, does it not, which many will not have done?

A. That is true.

Q. So what exactly was the point you were seeking to make here?

A. May I read the rest of the --

Q. Of course. Lawrence, could Mr Quinault be shown --

A. -- the previous page, if I may.

Q. Yes. Bottom of the previous page, just to see it context.

So you were asked the question why people will not receive support payments after 31 March.

A. Yes, so --

Q. And then if we go over to the top of the next page again, Lawrence. Thank you.

A. I think the point I am making is to try to explain why the Government thought it was acceptable to end that entitlement, and the point is that there is now a compensation scheme which pays compensation to estates but also to bereaved partners in their own right.

Q. You will have heard the questions to the minister in relation to this yesterday.

A. I did.

Q. I'm just going to leave you with the suggestion that there's a misplaced assumption there because it doesn't address the immediate needs of the person whose support payments effectively received by them as a couple are cut off. And, of course, it presupposes that the person -- the infected person has received their compensation and can therefore leave it.

Separate topic: multiple co-infections. Again, as I understand it, the scheme contains provision for co-infection with hepatitis B and hepatitis C. It contains provision for co-infection with HIV and hepatitis, and there's therefore -- I think Sir Robert described it in his report last summer -- there's an uplift applied, effectively.

A. Yes.

Q. I don't think there is any further compensation or recognition for those who are triple infected, so they are infected with hepatitis C, hepatitis B and HIV; is that right?

A. That is true.

Q. And why is that the case? Is that just not something that was thought of?

A. I would need to check back whether we did cover that, but I believe it would have been because, at that point, compensation is already at the highest level offered under the scheme.

Q. Well, I'm going to, if I may, again, leave that with you to go away and invite consideration of within the Cabinet Office, with ministers as appropriate because, although the numbers who are infected with all three may not be great, there are certainly some.

A. Yes.

Q. You will have seen, and I don't know if I need put it on screen again. I won't at the moment unless I need to. You will have seen an email from a claims manager at the Authority which deals with what's called an HIV liability window in the position prior to 1 January 1982.

A. I saw the email yesterday when it was --

Q. And I asked the minister about it. That's another matter he's going to go away and look at, and I think he understood the reasons and concerns which underpinned my questioning.

So I'm not going to ask you about the substance of that, but just to tell us this, not least because it's a position that appears to find its way into regulation 3 of the regulations.

Is this a position that was identified by the Cabinet Office, a significance of the date of 1 January '82? Did it come from the expert group, or from somewhere else?

A. This -- we are checking back as to where this came from, but my understanding is that it came not from the expert group but from the Cabinet Office.

I should say, I had not seen that email before yesterday. Again, we are checking, but I know you asked David Foley and Sir Robert Francis this morning if this was something that, you know, as it were, had been handed down to them from the Cabinet Office. As far as I'm aware, that text did not come from my team or from anyone else who works for me.

Q. We --

A. It's not -- it would not be reflective of the Government's position on that.

Q. Well, we'll look forward to a further explanation of that.

Two further matters on the regulations as -- which have been flagged up in some of the statements from recognised legal representatives.

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

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

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

A. So, under the scheme the Government originally proposed,

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

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

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

But what I would say is, I do not believe that, overall, this approach is disadvantaging people or is, you know, not fulfilling the Government's promise to make sure that people's past compensation is not affected if they take the support payments route.

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

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

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

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

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

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

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

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

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

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

are already at the top end of what the scheme can provide. So I think there is an issue there but it's not -- you know, it's small in the context of those larger awards. I think -- I looked at the issue that Mr Harrison pointed out, I think in that case what we're talking about here is a significant sum of money, but it's about 3.5 per cent of the total award.
Q. I think it would be helpful to have probably from you -- first of all, is that something the Cabinet Office can look at again because I think you accepted there might be an anomaly in some situations?
A. So I'm conscious I probably haven't given as clear an answer as I might. This is a complicated thing. If this is somewhere where it would be possible to provide a fuller written statement, I would be happy to do so.
Q. I think it would because I think you know that Mr Harrison wrote to the Cabinet Office setting out his concern about those provisions, and you've got a very clear explanation in his statement as well about the position, and the letter he's received in response which I think you have also seen, with the greatest of respect doesn't answer the question at all. So I think a proper answer to that question would be of great assistance.
Last question on the regulations and if we're able to go for a few further minutes, sir, I think I can

pretty much reach the end of my questions and then we can have the break for core participants. Regulation 33, and I am going to ask for this one to go up on screen. So its RLIT0002944, please, Lawrence, page 31. If we go down to the bottom of the page, please. So you see the Regulation 33 and just -- that's perfect. So this is the supplemental route this is exceptional reduced earnings:
"For the purposes of this Section, an eligible infected person ... has suffered exceptional reduced PAYE earnings if --
"As a result of an infection or any associated treatment, P has suffered a reduction in PAYE earnings because they can no longer --
"Perform work which is remunerated at the same level as the work they were performing before they were diagnosed with the infection or
"Work for the same amount of time that they could work for before they were diagnosed with the infection."
So it's that phrase before they were diagnosed with the infection that I have been asked to raise by you.
If you have someone who is infected as a child with HIV, notwithstanding that they manage to establish themselves in -- when they get to young adulthood in

well remunerated work that would otherwise be sufficient to bring themselves within this supplemental route and they then develop AIDS and can no longer work -- and I have a real-life case in mind when I ask this question so it's not just abstract -- this would appear to suggest that they cannot make a claim because they cannot point to work they were performing before they were diagnosed with the infection.
Now, there's some evidence I think that IBCA are taking, quite helpfully perhaps, a more liberal approach to it, but what is the Cabinet Office's position in relation to that, and does the wording of that need a little bit of amendment?
A. So I think that you could read that as saying that a person in the situation that you mention is sort of de-barred from applying to the supplementary route, which is not the intention. What IBCA are doing, in practice, is taking the peak of their earnings as the starting point for this, whenever that occurred, whether that was before the point of diagnosis or after it. They and the Cabinet Office have made clear in correspondence that that is how this is to be interpreted, and I'm very happy to clear that up.
Q. Well, that's very useful. So, essentially, a purposive rather than literal approach to those terms --

A. Yes. Quite so. Quite so.
Q. Thank you.
My last topic, then, I think, is lack of engagement and quality of engagement. Can I first just invite you to look at an extract from Sir Robert Francis' evidence in 2022. Lawrence, it's INQY1000224, and if we could go to page 36. It should be -- I'm just trying to find it. Yes. Very bottom of the page.
So if we look at the answer. A question I put to him, and he was talking here about his proposals in the compensation framework study, and you'll see a question I raise. This is bottom right-hand corner of the page, line 22. I ask him about a role for consultation with those infected, and he says this:
"Definitely, it is absolutely essential, and indeed you would probably expect me to say this as chair of Healthwatch and president of the Patients Association, they should be involved in the creative process."
This perhaps prescient observation:
"This is not an area where I would be terribly happy with two panels going away in private and coming back six months later with a proposed solution and having a six-week consultation over the summer holidays to produce a result. You need some real involvement.

As with everything else, but this scheme in particular, it needs to carry the trust of the people who are most deeply affected by it."
Now, that's exactly what did happen, except it wasn't two panels, it was one, and it wasn't a six-week consultation, it was a three-week consultation.
Was the Cabinet Office, in the thinking it was doing in 2023 -- was the Cabinet Office aware of the view that had been expressed by Sir Robert?
A. Yes.
Q. But it decided to ignore it --
A. As I say --
Q. -- and to ask him to do, and this is absolutely no criticism of him, I should make clear -- to do the very thing which he said shouldn't happen.
A. So I tried to explain in my evidence earlier how the Government ended up in that position, I think. But I can't be certain that its intention was not to do that but to consult on this over a longer period and more fully. But, in the meantime, the date of the Inquiry's Final Report, which the Government has said it wanted to wait for, had gone back and a deadline set in by Parliament in legislation to have a scheme established in law had come forward, and that is why the time available for doing this was very truncated and not

I think what the -- certainly not what had been thought of when planning for this was done.
I said in my statement that I regret that and, you know, it is certainly not what I thought would happen when I was first involved in this. It was worse even than Sir Robert says here, I must acknowledge, because not only was it happening over the summer in a very truncated period but was also happening over an election campaign, which meant that there were things that we as civil servants could not do to support this exercise.
Normally, you would expect the Government doing something like this to publish a much fuller account of its intentions than it did on 21 May in order that people could see and answer for themselves the sorts of questions that you were putting to me earlier about what are in these tariffs, and so on; what account does it take of my circumstances. But instead of publishing something for everybody, what we had to do, because of the election campaign, was to produce an unpublished document shared with people attending meetings with Sir Robert which they would be able to circulate widely to others who needed to see it, but, you know, we were not in a position to do that directly ourselves.
So I just wanted to say I think it was even more -- even less satisfactory than the description you

give, if I may.
Q. You can take that down. Thank you, Lawrence.
You have said in your statement that the infected and affected communities have had a major influence on the design of the scheme. I'm not going to ask you to go into specifics now unless I get follow-up questions. But I just want to understand, when you say they have had a major influence on the design of the scheme, are you talking there essentially about the June 2024 exercise and the 69 recommendations?
A. That is part of it. I say this notwithstanding everything I've just said about the unsatisfactoriness of that consultation. That's part of it.
I think there have been changes to the scheme since in light of engagement, and I set out what some of those are in my statement.
I think the other point I was trying to make was that the Government does think that the scheme as proposed, you know, is grounded on and based in Sir Robert's original compensation framework study. That was what the expert group were instructed to take as their starting point for their recommendations to Government, and that, of course, you know, did get some proper engagement and consultation with the community at the time.

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

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

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

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

MS RICHARDS: Thank you.

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

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

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

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

(4.08 pm)

(A short break)

(4.50 pm)

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

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

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

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

reasoning behind the decision.

Q. Thank you.

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

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

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

I'm afraid the scheme doesn't provide for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide that, but that is helpful.

That helps then I think with my next question which is, and I think this is probably explicit from the Act itself: there would be nothing unlawful, would there, about the regulations giving a bracket to IBCA for a tariff saying it can be between X and X times 5 for this category of injury or this category of loss. That would be something that, in principle, could be done. It's not the route you have gone down.

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

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

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

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

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

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

lead to that undue delay that the minister referred to.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. I think we did make an assumption in modelling the sort of overall possible costs of the scheme and from recollection, that was that perhaps 20 per cent of the cohort would be eligible for this. But that was not based on a kind of detailed assessment or any sort of particular evidence; it was an assumption, nothing more.

Q. Then final question, and it's about involving people and then the process of consultation. So you will know, and we looked back at Sir Robert Francis' evidence that what he anticipated, what the chair anticipated in his report, was the involvement of people infected and affected essentially in the creative process, in the thinking development process, rather than Government goes away, comes up with its ideas and then has a consultation on that, and we know not in that happened ultimately and you have accepted that.

Does the Cabinet Office ever involve groups, people, victims in that policy development process or is

it always working out a proposal and then consulting, I have in mind here the duty of candour, in particular what's happened with that?

A. So yes, it does. It's trying to do so in the case of the Duty of Candour Bill. And I think I can say, though I wasn't the decision-maker, that if -- I think if people had known that it would play out like this and that things would happen as they had, that they would have wanted to involve people at an earlier stage, even if at that stage that could only have been about broad principles rather than, you know, presenting sort of detail that people could grapple with. I think that would have been better and I think would have helped us avoid the situation that we are now in.

Again, I would say that I think if the Government had done that in, let's say, the autumn of 2023, I think there would have been a very understandable reaction of: well, why are you consulting us about sort of basic principles again? This surely being sufficiently established by the Inquiry and before that by Sir Robert Francis' compensation study. You know, what we want to hear now is kind of brass tacks, what is the Government actually proposing, and what would a scheme mean? And, certainly, when John Glen talked to community groups in May, they were kind of strongly saying to him, you know,

enough time was wasted. You need to get on. You need to get on with it now and tell us what you mean.

So I think that would have been better, and if one had known how this has played out, that would have been a much, much better thing to do, but I speculate that it would also have had that sort of reaction.

Q. I'm going to finish just with an observation, and it's a matter for you whether you want to comment on it, but it arises out of your answer and to suggest it should have been pretty obvious that it would go wrong if people weren't involved from an early stage.

A. I think that is a fair observation, and what I'm saying is that the Government of the time did not intend that it should happen in this way. That was not its original plan. But for the reasons we have discussed, the combination of the Act provision, setting a deadline and the election meant things were very, very different.

MS RICHARDS: Sir, those are the questions I am going to ask. Nothing from Mr Maxwell-Scott. Do you have any questions for Mr Quinault?

SIR BRIAN LANGSTAFF: I think they've largely been asked. Those that haven't been answered are awaiting further documents and elucidation from you, so I have nothing more to ask.

MS RICHARDS: Is there anything you wanted to add,

Mr Quinault?

A. No thank you.

MS RICHARDS: That concludes our hearings.

SIR BRIAN LANGSTAFF: Well, can I first thank you for coming to give your evidence. You have come at the end of our two days of hearing and you have answered a number of challenging questions, we have been very grateful for the answers, some of which are detailed, and we shall have to give our due consideration to them with the help of the submissions which I will mention in a moment or two from those who have been listening and it appears there are various observations which counsel hasn't put to you but which have been made to her which no doubt will be reflected in those submissions which I shall have to consider.

I hope that in due course you will have realised, if you hadn't realised before, I imagine you probably did, simply by the number of people here I can add to that that I've been told that the quite apart from the number watching on livestream of one form or another on the internet, there were about double the number -- at least double the number here, probably more -- than were following live BBC feed on what was happening at the Inquiry. So there are an awful lot of people who want to hear the answers because they are concerned about

where we are and that's why we've held these hearings, as you will know.

So I hope you will take away what has been said to you and in due course assist the minister in considering what, if any, changes he might make in order to do the best to restore some trust in the process. But thank you.

You can stay where you are for the moment if you wouldn't mind, otherwise it's distracting.

If I can just say that you will be concerned with what are the next steps. I could say we're going to be as quick as possible but that wouldn't tell you much about what has to happen before we can produce the report which will come really as soon as it reasonably can. But there are processes which we have to go through. First of all, there are further bits of evidence which have been referred to during the course of the hearing which have to be obtained and they have to be considered and, if necessary, sent to the legal representatives and core participants for any comments.

Submissions on what has been heard need to be in by 23 May, close of business on 23 May; no later, please. Those who are core participants who are represented will have those made by their representatives. Those who are core participants are

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 west 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.

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)

I N D E X