

1 **Friday, 29 July 2022**

2 **(10.00 am)**

3 **(Proceedings delayed)**

4 **(10.14 am)**

5 **SIR BRIAN LANGSTAFF:** Morning, Ms Deacon.

6 **THE WITNESS:** Morning.

7 **SIR BRIAN LANGSTAFF:** Let me explain the arrangements before

8 Mary invites you to affirm. You're talking not just to

9 the audience in front of you, who are a mixture of the

10 participants, Core Participants mainly, and lawyers to

11 your left. I don't think there are any representatives

12 of the press at the moment at the back but there might

13 be. But beyond this room you are talking to a larger

14 number, probably in three figures, who will be watching

15 on a mixture of YouTube or live stream. So that's your

16 audience.

17 Ms Scott will ask you the questions in a moment or

18 two. Can I apologise for the slightly later start than

19 anticipated this morning for various reasons.

20 Mary, now's the time for you to invite Ms Deacon

21 to take the oath.

22 **SUSAN CATHERINE DEACON (sworn)**

23 **Questioned by MS SCOTT**

24 **MS SCOTT:** I'm going to start with an overview of your

25 Parliamentary and post-parliamentary career. So in

1

1 there so I can understand the confusion. But it's all

2 detailed in my CV.

3 **Q.** Yes, and I'm not going to set out in detail the roles

4 that you've had because, as you say, there are many of

5 them but just to sort of summarise you've had a number

6 of roles as either board member or trustee of arts

7 organisations --

8 **A. (The witness nodded)**

9 **Q.** -- including between 2008 and 2011 being a board member

10 of Pfizer UK Foundation, which is a charity distributing

11 money and grants to community health projects?

12 **A.** That's correct.

13 **Q.** You've also been a chair or board member of a range of

14 other organisations, including the Institute of

15 Occupational Medicine, the Institute of Directors

16 Scotland and the Police Authority?

17 **A.** That's correct.

18 **Q.** Do any of the roles that you have undertaken create any

19 conflict of interest in terms of the evidence you're

20 going to give to this Inquiry?

21 **A.** No.

22 **Q.** Now, since drafting your statement you've been provided

23 with quite a few more documents by the Inquiry. So your

24 written and oral evidence needs to be seen in that

25 context; is that correct?

3

1 May 1999 you became the member of the Scottish

2 Parliament for Edinburgh East and Musselburgh; is that

3 correct?

4 **A.** That's correct.

5 **Q.** Is it right to understand that you were immediately

6 appointed Minister for Health and Community Care?

7 **A.** Yes, when the first ministerial appointments were made

8 a couple of weeks after the election.

9 **Q.** You held that post until November 2001 when you were

10 succeeded by Mr Chisholm?

11 **A.** That's correct.

12 **Q.** You ceased being a member of the Scottish Parliament in

13 2007?

14 **A.** Yes.

15 **Q.** The transcript won't pick up a nod, so if you could say

16 yes or no.

17 **A.** I'm sorry.

18 **Q.** Since then, you've had a range of different roles which

19 are set out in your CV, including professor for social

20 change at the University of Edinburgh and between 2010

21 and 2011, a role in the Scottish Government, an early

22 years adviser and champion?

23 **A.** My professorship currently with the University of

24 Edinburgh is different, that was an earlier position

25 that I had. But there's been a range of positions in

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1 **A.** I'm sorry I'm not sure I understand.

2 **Q.** I'm just making the point that, since writing your

3 statement, you've had quite a few more documents.

4 **A.** Yes, yes, thank you.

5 **Q.** You also tell us in your statement that you would have

6 liked to see your ministerial diary before writing your

7 statement but that hasn't been made available to you.

8 Can you tell us what kind of information you would have

9 liked to have seen in that diary to help you answer the

10 questions that you were asked?

11 **A.** I think the questions that I was asked initially

12 required quite a bit of detail and chronology around

13 quite a narrow period of time. But it was

14 an exceptionally, exceptionally busy period of time and

15 my only complete reference point for that would have

16 been the ministerial diary of the time, at least for

17 meetings that were recorded, and so on.

18 But what I've attempted to do is through

19 a combination of papers provided to me by the Scottish

20 Government, obviously by the Inquiry and Parliamentary

21 records and other public records from the time, to be as

22 precise as I can be in my written evidence.

23 **Q.** Now, were you asked to give evidence to the Penrose

24 Inquiry?

25 **A.** No, I wasn't.

4

1 Q. Picking up then your role as Minister for Health and  
2 Community Care, is it right to understand that during  
3 your time as the minister there was only one Deputy  
4 Minister?  
5 A. That's correct, yes.  
6 Q. We know from November 2000 that was Mr Chisholm. Who  
7 was the Deputy Minister before then?  
8 A. Iain Gray, and the designation at that time was  
9 specifically Deputy Minister for Community Care, I think  
10 I'm right in saying that changed to being Deputy  
11 Minister for Health and Community Care when Malcolm was  
12 appointed.  
13 Q. Does it follow from that that in your portfolio was the  
14 health bit and in his health portfolio --  
15 A. Essentially, yes.  
16 Q. -- was the community care bit. What level of liaison  
17 was there when you were in post as minister between  
18 yourself and the Secretary of State for Health for  
19 Scotland?  
20 A. As regards the Secretary of State for Scotland  
21 specifically, I think this is one of the things that is  
22 quite key and unique, I suppose, about the period that  
23 I was in office, we were working through the transition,  
24 obviously, to the new devolved arrangements. So the  
25 initial contact was in that transition period. So

5

1 A. **(The witness nodded)**  
2 Q. -- about health matters?  
3 A. No, as I say, not routinely. There may -- there was  
4 issues from time to time where he may be copied in if it  
5 was a particular issue where there was a key interface,  
6 if you like, between the Scottish Executive and the  
7 UK Government. But in the main, that relationship would  
8 have been with the First Minister.  
9 Q. Did you have any liaison or communications with the  
10 Department -- with, sorry, the Treasury at Westminster?  
11 A. No.  
12 Q. Turning then to the Civil Service, did you have  
13 a programme of regular meetings with senior departmental  
14 officials?  
15 A. Regular, yes, frequent, but not necessarily scheduled.  
16 I think one of the things that absolutely characterises  
17 the early months of devolution, probably the first year  
18 or two to some extent, was everything was changing  
19 almost by the week and things were evolving and  
20 developing and Parliamentary activity was growing almost  
21 exponentially.

22 So, very often, meetings with officials had to be  
23 arranged -- well, both around the practicalities of  
24 that, in terms of availability, but also very often were  
25 driven by the issues that were arising. But, yes,

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1 although we were elected and appointed in May, the  
2 powers did not transfer until 1 July.

3 So there was a period where, as ministers, we  
4 weren't able to act alone in terms of taking decisions,  
5 and I can remember certainly one occasion during that  
6 period, there may have been others where -- of doing  
7 a health announcement jointly with the Secretary of  
8 State because that transition period required that.

9 Subsequent to that, routinely, there wouldn't be  
10 contact with the Secretary of State, there was contact  
11 with, particularly, Health Ministers in the UK and in  
12 Northern Ireland and Wales, and I'm sure you'll want to  
13 discuss that further.

14 My main recollection of being involved with the  
15 Secretary of State on health matters was through the  
16 joint ministerial Committee, which certainly for its  
17 four initial meetings, which at that time were chaired  
18 by the Prime Minister and held across the four nations,  
19 the attendance from each nation was the Secretary of  
20 State, the First Minister and the Health Minister of  
21 each of the four nations.

22 Q. So just in relation to your involvement with the  
23 Secretary of State for Scotland once powers had been  
24 transferred, would you have been in contact with him --  
25 I believe it was John Reid at the time --

6

1 frequent meetings.  
2 Q. Was there a division during your time between the civil  
3 servants working for the Scottish Executive and those  
4 working for the Scotland Office?  
5 A. Yes, I can't comment on what degree of communication or  
6 liaison there was but, certainly by then, you know,  
7 these were two separate offices. As I say, in terms of  
8 the Health Department and my role as Health Minister --  
9 and I think the same would be true of other ministers in  
10 other departments -- insofar as we had an interface with  
11 our UK counterpart, by then it would really be on the  
12 subject area or with the comparable department at a UK  
13 level or, indeed, as I say, Wales and Northern Ireland.

14 I think it is important to stress though that at  
15 the beginning, like just about everything else, that was  
16 all uncharted terrain, so lots of those relationships  
17 evolved, developed, had their challenges, in different  
18 ways as the months went by.

19 Q. So you've intimated that, actually, there would be more  
20 liaison with those officials -- Civil Service --  
21 officials to officials in the Department of Health. Do  
22 you know if there were regular scheduled meetings  
23 between civil servants in the Department of Health and  
24 civil servants in Edinburgh?

25 A. I can't comment with any authority about the level of

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1 official liaison. I suppose if I was to make a general  
 2 observation I would say that, like so many things in  
 3 that period, to begin with, I think, you know, there  
 4 were some pre-existing relationships. But it took some  
 5 time to work out, I think, what relationships ought to  
 6 look like in the future. But I can't comment really  
 7 with any knowledge or authority about official level  
 8 liaison.

9 **Q.** We heard yesterday that the civil servants working for  
 10 the Scottish Executive are part of the same  
 11 Civil Service that those officials working for the  
 12 Scotland Office were part of, and indeed in Westminster,  
 13 the civil servants in Westminster. Did that, during  
 14 your time, cause any problems?

15 **A.** Well, maybe with the -- I suppose, just sharing some  
 16 broader thoughts and reflections around the  
 17 Civil Service in that particular period. I think one of  
 18 the things that's often forgotten about, we use the  
 19 shorthand "devolution" a lot and, obviously, we take  
 20 that to mean more often than not '99 and the creation of  
 21 the Scottish Parliament. But one of the important  
 22 features of Scotland is that it had had "administrative  
 23 devolution", as it's referred to, since the late  
 24 19th century, since the Scottish Office was created.  
 25 So you had a very established albeit department of

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1 opinion -- and I said at the time and I've written and  
 2 spoken about this since -- there wasn't nearly as much  
 3 thought and preparation given to what that should look  
 4 like at the other side of political devolution as there  
 5 might have been.

6 **Q.** So the transition you mentioned there in terms of the  
 7 way the Civil Service worked was a transition from what  
 8 to what, in your view?

9 **A.** Well, as I say, you know, you'd had a long-established  
 10 system, with a small group of ministers and, can I say,  
 11 there's no actual implied criticism in what I'm saying  
 12 here, it's more my attempt to analyse and explain what  
 13 I think took place during that period. So before '99  
 14 you'd had a smaller group of ministers, part of  
 15 Government, largely based in London most of the time and  
 16 a well-established Civil Service operation with, as  
 17 I say, a high degree of administrative devolution across  
 18 a range of areas in Scottish life.

19 And -- well, if I give you an example, there was  
 20 by, definition, relatively little Parliamentary scrutiny  
 21 of what went on. I think I'd be right in saying that  
 22 the Secretary of State for Scotland -- you know,  
 23 maybe -- I think it's once a month, or it may have been  
 24 slightly more frequently -- would do questions in the  
 25 Westminster chamber, for example.

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1 the UK Government, but acting across those various areas  
 2 which over many decades, you know, were very different,  
 3 which included health, housing, education and legal  
 4 system, and so on.

5 The big difference that happened in '99, and  
 6 critically the whole *raison d'être* of devolution at that  
 7 point, was to create political accountability for all of  
 8 that and to have ministers who were accountable directly  
 9 to an elected Scottish Parliament.

10 So at that point, and I guess -- I'm conscious I'm  
 11 expressing as much an opinion as just giving you  
 12 an account of some of the factual background but, at  
 13 that point, there needed to be quite a significant  
 14 transition in terms of the way that the former  
 15 Scottish Office (and who then became Scottish Executive)  
 16 civil servants worked, and I think it took quite some  
 17 time for that adjustment to take place.

18 I actually don't think the issue was as much about  
 19 what these new relationships with UK counterparts might  
 20 look like, but more to do with the way that ministers  
 21 were supported and how Government in Scotland would  
 22 become more outward facing to respond effectively to  
 23 those higher levels of accountability.

24 So I guess what I'm saying is that there was  
 25 a real process of change and flux there and, in my

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1 Overnight the First Minister was weekly,  
 2 regularly, all the time -- well, not all the time but  
 3 certainly weekly First Minister's questions -- but in  
 4 terms of wider Parliamentary media scrutiny and so on,  
 5 far, far more than before, and for the rest of the  
 6 ministerial team, of whom there were now more than 20,  
 7 compared to the handful that had been before, we were  
 8 absolutely required to be heavily scrutinised, both by  
 9 the Parliament and, I have to say, by a voracious media  
 10 in those early months, all the time, and that required  
 11 ...

12 And, you know, incidentally, that was one of the  
 13 reasons that devolution came about, was for that  
 14 accountability to take place. But that required  
 15 a higher level of engagement and communication and  
 16 a pace of response, and different ways of working with  
 17 other organisations, and so on than had gone before.

18 And, as I say, I'm not critical of individuals  
 19 that it was a struggle, I think, to make that  
 20 transition, because I think many of us going in that had  
 21 been so heavily involved in the devolution project and  
 22 campaigning politics around it, you know, we were much  
 23 more ready I think, to step in to that than maybe the  
 24 officials were. But I think there could and should have  
 25 been a lot more development of both the culture and

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1 capacity of the organisation to deal with all of that,  
2 because it wasn't just business as usual, and sometimes  
3 it felt like it was, and it just couldn't be.

4 **Q.** We'll come back and look at one of the briefings you got  
5 early on, and see how that played out.

6 Having been appointed in a ministerial post with  
7 not having been an MP or obviously not being an MSP  
8 before, were you given any training or help in  
9 understanding the Parliamentary processes and how to  
10 actually push work through as a minister?

11 **A.** Well, it's worth noting that, for that one moment in  
12 time, firstly everyone was in the same boat in that  
13 respect. You know, I think there was -- out of 129  
14 MSPs, I think there were about 13 or 14 that had served  
15 as MPs in Westminster. Everyone else, everyone else,  
16 was coming in new, to a new way of working. As I say,  
17 a completely new line of accountability with the  
18 Scottish people.

19 The procedures, there had been a big piece of work  
20 done over the preceding couple of years, through a body  
21 called the Consultative Steering Group, to draw up  
22 a kind of blueprint for how the Parliament and its  
23 procedures would work. But it's one thing, I think, to  
24 design that before the Parliament exists, it's another  
25 thing to actually embed it in practice. So the

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1 **A.** So I think there's a number of different strands in  
2 there which, you know, I'll do my best to address, and  
3 I'm sure you'll say if I haven't.

4 First, I think it's important to remember we were  
5 a coalition administration, the first post-war coalition  
6 at that time in the UK, which was another first. We had  
7 many of them. So it wasn't by any means as  
8 straightforward that it was just a Labour  
9 administration.

10 And indeed, you know, when you looked across that  
11 new UK devolved health landscape, you could see that it  
12 was by no means all a single party. So, you know,  
13 I remember sitting at a joint ministerial committee for  
14 Health with the now sadly late David Trimble, an Ulster  
15 Unionist, sitting beside his Health Minister, who was  
16 a member of Sinn Fein. You know, we were all sitting  
17 around the table together, across four nations, talking  
18 about health, so ...

19 So I think it's important to see the political  
20 variation that existed in the system at the time and my  
21 genuine view would be that what was much more important  
22 at that time was building relationships, both personal  
23 relationships, of which there were some pre-existing,  
24 obviously people that had served in Westminster  
25 together -- who were relatively few and far between, as

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1 Parliament itself it took a long time for all those  
2 procedures to be developed and built in. So everyone  
3 was travelling through that learning process at the same  
4 time, and what I would say is that I actually think for  
5 those that had served in Westminster, they just had  
6 a different challenge, because they had to unlearn  
7 a lot.

8 So it was new for everyone and, yeah, we all  
9 worked through that together, in real time.

10 **Q.** And they had to unlearn a lot because -- for the reasons  
11 you've already articulated: the greater scrutiny, the  
12 different way of working with different organisations?

13 **A.** Absolutely.

14 But, you know, it's important to say it was an  
15 immense privilege to be part of that. You know, many of  
16 us used to say it publicly and to each other: how many  
17 people ever get the chance to set up a new Parliament?  
18 It was an amazing period of time.

19 **Q.** Can I just explore with you sort of generally how you  
20 understood policy was to be developed by the  
21 Scottish Executive, being a member of the Labour Party  
22 and there being a Labour administration in power in  
23 Whitehall. To what extent did you and your, to your  
24 knowledge, fellow MSPs, want to develop policy in line  
25 with the Labour Party administration in Whitehall?

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1 I say, but where they existed then there was that  
2 personal connection. But for most of us, we had to  
3 build these personal relationships with other ministers  
4 in other parts of the UK.

5 And as with any relationship development, you  
6 know, that means both building the human connection but  
7 also getting to know each other better in terms of what  
8 you stood for, what you wanted to achieve, and  
9 I think -- whether it was at that one-to-one level or as  
10 time developed and there was more of these collective  
11 conversations and so on.

12 I think the other thing -- and I was certainly  
13 profoundly aware of this in those early months in that  
14 first year of devolution -- was we were also having to  
15 demonstrate that we were -- how can I put this? -- we  
16 were a significant and serious operation. We weren't  
17 just -- I won't use some of the pejorative words that  
18 were used around -- in public discourse at the time,  
19 but, you know, this was a serious Parliament, with  
20 a serious Government, and, you know, we were going to do  
21 the job and we were going to do it well. So we were  
22 having to establish that all the time.

23 On the issue of policy, let me again subdivide  
24 that. So often the discussion around policy  
25 post-devolution is described in shorthand in terms of

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1 "devolved and reserved powers". As I've said already,  
 2 it's not quite so simple as that, because there was  
 3 already enormous divergence in Scotland  
 4 pre-devolution -- we just got the accountability that  
 5 came with it.  
 6 The question for us at that point in time was how  
 7 we would exercise those powers in the best interests of  
 8 the people of Scotland, and how or if, where we had  
 9 legislative powers, we would use them. And how or if we  
 10 would cooperate with the UK Government where that was  
 11 regarded to be in the best public interest.  
 12 So there was a convention introduced, for example,  
 13 at the beginning of the Parliament -- and I happened to  
 14 be the first person to deploy it as a Minister -- called  
 15 the Sewel Convention, which was where the Parliament, if  
 16 you like, took a conscious decision that, even although  
 17 it had the powers to legislate, it would allow  
 18 Westminster to legislate, because it made more sense for  
 19 something to be done across the UK on the same basis.  
 20 In that instance it was food standards we were working  
 21 on at the time and that Convention still exists, it's  
 22 called the legislative consent motion now, but it's  
 23 still the same principle.  
 24 So in every case, in every issue we were dealing  
 25 with, we always had to consider what was the best way to

1 SCGV0000176\_118.  
 2 This is a document we've already looked at, so I'm  
 3 not going to go through the detail of it with you, but  
 4 we can see it is dated 15 July 1999 and it's to you.  
 5 And then it says, "Green folder". What was green  
 6 folder?  
 7 **A.** That was Civil Service speak for any correspondence that  
 8 the minister was to deal with.  
 9 **Q.** Then we can see the purpose there:  
 10 "To brief the Minister on the Haemophilia  
 11 Society's continuing campaign for compensation for  
 12 haemophiliacs infected with Hepatitis C as a result of  
 13 NHS treatment using blood or blood products."  
 14 I just want to -- if we can have the whole page,  
 15 I just want to flick through it with you.  
 16 So we can see page 1 sets out the background. If  
 17 we go over to page 2, that continues. We can see at  
 18 paragraph 4 that it says there that the previous  
 19 administration rejected claims for such a no-fault  
 20 compensation, then sets out the previous  
 21 administration's grounds for doing so.  
 22 Then it continues down with more background.  
 23 Then if we go over the page, it says at 7 how the  
 24 issue has been dealt with on a UK-wide basis in the  
 25 past.

1 try to achieve the best progress that we could for the  
 2 Scottish people.  
 3 And there were areas, if you take Health, where  
 4 things were already -- you know, pre-'99, were very,  
 5 very different, and we built on that. So, you know,  
 6 I took, for example, a very clear position from the  
 7 early days of the Scottish Parliament that we would  
 8 remove the last vestiges of the internal market in the  
 9 NHS in Scotland. Now that was very, very different from  
 10 where things were with the UK. But that was just us  
 11 building on some of the differences that existed.  
 12 There were significant areas, and still are, where  
 13 UK co-operation is essential and where, for example,  
 14 I think very recently even, you know, bodies like the  
 15 JCVI that continue to this day to advise across the UK,  
 16 and significant areas of regulation that are still  
 17 UK-wide. So everything had to be looked at on a not  
 18 quite case-by-case basis, because some of these things  
 19 were broader areas, but it was much, much, much more  
 20 multifaceted, and far more questions of judgment in  
 21 there than might have first appeared if you just say,  
 22 "That matter's reserved, that matter's devolved". It  
 23 was never that simple.  
 24 **Q.** So I'm going to move on to looking at one of the early  
 25 briefings you received. Can we turn, please, to

1 Then it makes a recommendation at paragraph 9:  
 2 "In light of the fact that the Department of  
 3 Health have rigorously examined this issue twice in  
 4 recent years and that The Haemophilia Society have not  
 5 produced fresh evidence to support their claim for  
 6 financial assistance, we advise that a further  
 7 examination of this issue would only draw the same  
 8 conclusions previously reached. We therefore recommend  
 9 that the Minister endorses the decision taken by her  
 10 predecessor and signs the attached reply."  
 11 Is this typical of the sort of briefings you were  
 12 getting then, building on what you've told us about the  
 13 officials at that time?  
 14 **A.** So let me place this in context, and in a timeline,  
 15 because I think this -- well, I hope this is relevant  
 16 and useful for the Inquiry.  
 17 The election took place in May. In fact, you  
 18 know, if you do that timeline -- I'll do it very  
 19 briefly -- you know, if you go from '97 -- you know the  
 20 referendum where 75% of people voted for a Scottish  
 21 Parliament was in '98. The legislation that put  
 22 Parliament in place was in -- sorry, it was '97,  
 23 referendum. The legislation, '98. The Parliament  
 24 elected in '99. We then -- as we touched on earlier,  
 25 within a couple of weeks ministers were appointed, but

1 their powers did not transfer until 1 July, so I make  
2 the point, and I think this is important, this was  
3 two weeks after the powers had transferred.  
4 And I speak about this submission in my own  
5 statement, and I have to say, and I should say this  
6 before going further anyway, there are an enormous  
7 amounts of detail about that period of my life --  
8 I'm not just talking about this issue -- that I have  
9 very hazy recollections of. It was so busy, there was  
10 so much going on, and there's been lots of documents  
11 that I've seen through the course of the Inquiry that,  
12 you know, I don't have a recollection of, or meetings  
13 I don't remember being it. You know, it was more than  
14 20 years ago and, as I say, it was an exceptionally busy  
15 time.

16 But I did remember this paper when I saw it and  
17 I remember it registering with me, before even talking  
18 about the substantive issue, but the language of it --  
19 and it brought it back to me when I read it, in  
20 preparing for the Inquiry, words like -- I don't think  
21 it's the page that you've got in front of me but there's  
22 reference to -- repeated reference to the "previous  
23 administration". Repeated references to "your  
24 predecessor". And I remember that really ranking with  
25 me, because I didn't see the world that way and I don't

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1 illustrative of a way of thinking and, again, for me,  
2 that spoke to -- and, you know, this linked a lot to my  
3 professional background, and so on -- it spoke to the  
4 fact there just had not been a systematic process of  
5 training and developing the people working in the office  
6 to think about what day one of a devolved administration  
7 might look like, what it might be, and what standards of  
8 scrutiny and accountability we might want to meet.  
9 So in that last comment, I suppose what I'm  
10 implicitly saying there was I never felt -- I feel  
11 irritated and disappointed when I saw that kind of  
12 language, and never felt, in a sense, overly critical of  
13 individuals, because I could see that people were  
14 working the way they knew how to work. And they wanted  
15 to be supportive, I think, of ministers but there was,  
16 at that time, I think, quite a gulf between what I think  
17 many of us felt we needed and wanted to be and what the  
18 practice in the office was, if that makes sense.

19 **Q.** So having received this submission, we know that your  
20 response was not to take -- follow what the --  
21 necessarily follow what the -- your -- and, again, I put  
22 it in inverted commas -- "predecessor" was. So can you  
23 tell us what your decision was and what the response  
24 from officials was to that?

25 **A.** I can't in any detail, in the sense that I can only tell

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1 think many of us did, actually, in that new  
2 administration. Maybe it took the former  
3 Scottish Office Ministers a little bit longer to adjust,  
4 but for those of us coming in, we saw ourselves as being  
5 something new, a first, and this notion of, "Well,  
6 somebody has done it before you and therefore you should  
7 too", actually that relatively low traction in and of  
8 itself, and I just remember that, I remember that  
9 distinctly.

10 And, therefore, if we then applied that to the  
11 issue in hand, and this issue in particular, the  
12 insufficiency for me -- and I say this knowing very,  
13 very, very little about the background and history to  
14 matters involving infected blood and blood products at  
15 that time -- but the insufficiency for me of just saying  
16 the -- and forgive me I know inverted commas in air  
17 don't translate to the transcript either -- but that  
18 "your predecessor" and that "the previous  
19 administration" had agreed something in and of itself  
20 was completely insufficient.

21 It was completely insufficient for me to take  
22 a decision and it absolutely would not stand up to  
23 scrutiny with the Scottish Parliament as a reason for  
24 doing anything, frankly.

25 So, yeah, that submission, I think, was

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1 you what I have seen of those papers that have been made  
2 available to me, coupled with, obviously, what I can  
3 remember. There will perhaps be other stages or steps  
4 or, you know, other paper around. I mean, I can see  
5 when I look through the paper, there must be other  
6 papers at that time.

7 But, as I've set out as best I could in my written  
8 statement, I've shared with you what my reaction was to  
9 that paper. And, in truth, I wasn't sure how to  
10 proceed. I just didn't want to proceed in the way that  
11 was recommended to me and, on the one hand, you could  
12 say "Well, it's one letter to one MSP", and we were  
13 starting to get letters by the hundreds, from not just  
14 MSPs but from lots and lots of people and organisations  
15 from right across the country. So you could say "It's  
16 just one letter", but, of course, the minute you as  
17 a minister pen a response, even to one letter, you've  
18 made a policy statement.

19 So I had a great anxiety about, you know, how to  
20 respond to this. And, if it's appropriate, it's maybe  
21 relevant for me at this stage, as I've said in my  
22 written statement, to just wind back slightly, because,  
23 as an issue -- and I'm talking about that moment in  
24 time, not what I knew consequently and what I know  
25 now -- but as an issue, this had been around, if I can

24

1 put it in those terms, during the election campaign,  
2 alongside lots and lots and lots and lots of other  
3 campaigning issues.

4 More MSPs were getting involved and interested and  
5 The Haemophilia Society did a lot of very, very early  
6 targeted campaigning and lobbying with the new  
7 Parliament by the time I'd been appointed the Health  
8 Minister. So, you know, unlike during the election when  
9 I'd been the education spokesperson in the campaign team  
10 and very, very attuned to the debate that was taking  
11 place in that part of the world, if you like, I very  
12 quickly adjusted to trying to pick up what some of the  
13 priorities for members might be.

14 And it was clear that a number of members, you  
15 know, were taking a very keen interest in the campaign,  
16 I think it would be fair to say, with the exception of  
17 a couple who had previously served in Westminster and  
18 had had some involvement with the issue and with the  
19 campaign previously. I think many MSPs were at a very  
20 early stage of, you know, really understanding what the  
21 background in the history was, but they clearly were  
22 seeing this as something that should be raised.

23 So all my instincts -- and I think in politics you  
24 have to rely on your instincts a lot, and I think in the  
25 first year of devolution many of us had to rely on them

25

1 So I am guessing that I might not even have seen  
2 that on the date that it was produced and I think I'm  
3 right in saying I still hadn't decided how to respond,  
4 and I'm sure it's probably sitting amongst a range of  
5 other things that were requiring attention and maybe  
6 I similarly hadn't taking decisions on, when there was  
7 a subsequent submission, which I've referred to in my  
8 statement and which I suspect you may come on to, which  
9 I think was dated 8 August.

10 So I don't know if you want me to turn to that now  
11 but that was really the next time I had occasion to  
12 formally consider a submission related to the issue of  
13 compensation for haemophiliacs with hepatitis C.

14 **Q.** But the decision you ultimately made was that you would,  
15 is this right, have a commission, an internal  
16 investigation?

17 **A.** No, can I stay with this period in time and some of the  
18 detail on this? Because I think this is very important  
19 because I've heard lots of references made and lots of  
20 different descriptors used of investigations and  
21 inquiries, and so on and I think it is really important  
22 to understand how I and the Executive at that moment in  
23 time started to, if you like, lean into what was clearly  
24 complex and sensitive issue with a long history. And  
25 I think, you know, that's much more textured than that,

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1 a great deal -- all my instincts were certainly, as  
2 I say, not to respond in the way that was suggested.  
3 But my other instincts, and this also came from a lot of  
4 wider life and work experience, was also not to do or  
5 say anything precipitous, because although I didn't know  
6 what sat underneath all this I knew there was a lot that  
7 did and a lot of sensitivities and a lot of complexity.

8 And I think I'm right in saying -- and I say in my  
9 submission "I think", because this is the kind of detail  
10 that I can't be precise on unless anybody shows me  
11 anything to the contrary -- I think I just didn't, for  
12 a couple of weeks, take a decision on that, on  
13 a response. The version that you've put in front of me,  
14 this is what enables me, I think, to be precise about  
15 timing, in a way.

16 Yes, I think the then Deputy Minister had seen it  
17 which signals to me that I think I might have been out  
18 of the office at that period, because I think I spent  
19 a lot of time in the early summer trying to use recess  
20 to get out and visit different parts of the country,  
21 because we were very tied to Parliament prior to that  
22 and tied to Edinburgh and, of course, the other thing we  
23 wanted to do in the early days of devolution is show  
24 this was not the Parliament for the central belt of  
25 Scotland, which was another significant issue.

26

1 so if it is possible to bring up the submission from  
2 8 August --

3 **Q.** I think it's the 5th -- is it 5 August?

4 **A.** The 5th, I beg your pardon, sorry.

5 **Q.** That's WITN4436004. Is that the one you're thinking of?

6 **A.** Thank you, yes, yes. And I may say, in that intervening  
7 period, you know, it was just couple of weeks,  
8 obviously, but again, I'm sorry, I can't be precise  
9 about this at all, but wherever I had the opportunity on  
10 lots of different issues at that time, I was working  
11 very hard to try to read myself into the background to  
12 issues. I had a lot of background in terms of my  
13 previous working life that -- on some of the wider  
14 issues about the NHS and health policy, and so on, that  
15 were by no means new. But some of those issues with,  
16 you know, such a background and history I was taking  
17 time to try to find out more, and relying a lot, I think  
18 on, you know, a lot of discussions with people, as well.

19 So I don't know -- I don't think I had had a lot  
20 of discussions with officials at that stage but it's  
21 perfectly possible that I might have started to talk to  
22 others, including MSPs with a prior interest, and so on,  
23 to try and just get a sense of some of the issues  
24 involved.

25 However, the next formal submission, as I say,

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1 that came before me is the one you have put up on  
 2 screen, and --  
 3 **Q.** Shall I take you to what you're being asked -- what's  
 4 being suggested to you?  
 5 **A.** Yes, thank you.  
 6 **Q.** I think that's at page 2. This arises out of a BBC  
 7 enquiry, because they're planning to run a story on  
 8 claims for compensation for haemophiliacs who have  
 9 contracted hepatitis C as a result of infected blood.  
 10 If we look at the bottom of page 2, some background is  
 11 set out and then it says "Lines to take":  
 12 "We propose that the following line be given in  
 13 response to the enquiries from the BBC ..."  
 14 If we go over the page we can see what is said  
 15 there:  
 16 "The actions taken by the NHS in Scotland in the  
 17 1980s to ensure the safety of blood products  
 18 administered to haemophiliacs do not suggest that there  
 19 was any negligence on the part of the health services,  
 20 given the state of knowledge at that time about  
 21 protection against Hepatitis C and the practical  
 22 difficulties of introducing a Hepatitis C-safe product  
 23 any sooner in Scotland.  
 24 "This suggests that compensation for this set of  
 25 patients, tragic as their case may be, would not be

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1 important for me with these two submissions, and just to  
 2 illustrate the sort of starting point for the new  
 3 Executive, was that on that 15 July submission, we have  
 4 a few pages that, you know, basically says "This has all  
 5 been looked at" -- the generality of the issue, the  
 6 totality of the issue of compensation for haemophiliacs  
 7 with hepatitis C and, by extension, others infected, and  
 8 so on, that had all been looked at, it was all done and  
 9 there was no requirement for us to look at this any  
 10 further, on the basis of couple of pages.  
 11 Now what we had, and it's important to set out the  
 12 genesis of this, if you go to the beginning of this  
 13 paper --  
 14 **Q.** Back to page 1.  
 15 **A.** -- if you could, please -- you'll see that the story  
 16 that the BBC is about to run is based on information  
 17 that The Haemophilia Society has provided to the BBC,  
 18 which I think I'm accurately quoting from  
 19 The Haemophilia Society's press release at the time was  
 20 described as "worrying new evidence" that there had been  
 21 a discrepancy between the time when the heat treatment  
 22 of blood products had been introduced in Scotland to  
 23 eliminate the HCV virus, and when that had been done in  
 24 England, and there was a disparity there.  
 25 So that was the nub of the story, that was going

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1 appropriate, as compensation should only be paid where  
 2 the NHS or individuals working in it have been at fault.  
 3 "Of course it is open to the Scottish Parliament  
 4 to discuss the matter and the Executive would have no  
 5 objection to these issues being aired in debate if  
 6 Members so wish."  
 7 **A.** Thank you, and just to comment briefly on very much  
 8 a secondary matter, but, again, like that first  
 9 submission, to just give a sense of the prevailing  
 10 culture at that time, that last paragraph -- and again  
 11 I remember this, in a way that I don't necessarily  
 12 remember other things -- but that last paragraph of  
 13 saying, "Of course it is open to the Scottish Parliament  
 14 to discuss the matter and the Executive would have no  
 15 objection to these issues being aired in debate if  
 16 members so wished", I mean, it was inconceivable on any  
 17 issue that we could use that kind of language.  
 18 It was entirely up to the Parliament what they  
 19 debated and discussed. It was not for us to give  
 20 permission or say we'd have no objection.  
 21 So, just on a microcosm, that paragraph there,  
 22 I suppose, speaks to that wider change that we were  
 23 going through, but to go back to the important  
 24 substantive issues, and obviously how they relate to  
 25 matters that we're discussing today, I think what was

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1 to -- and the report that was going to be run and that's  
 2 what I was being asked to respond to.  
 3 Now, having had a very brief submission that said  
 4 that the wider issues required no further examination,  
 5 I now had -- and, again, you know, I'm putting this in  
 6 its context of the very early stages of our new devolved  
 7 administration -- what I now had was something that was  
 8 specific to Scotland, albeit historical, about an agency  
 9 that now fell within the devolved administration, and  
 10 again, I was being given a couple of paragraphs that  
 11 basically said, "Look, we think everything is fine here,  
 12 there's reasons for this", and the quote you read out of  
 13 course was a very reassuring quote that we were then to  
 14 give to national media to say this was all fine.  
 15 So again for me, that was insufficient. That was  
 16 just insufficient. You couldn't -- both in terms of the  
 17 importance of the issue, but also the way that we wanted  
 18 to develop decision making in Scotland at that time, and  
 19 the accountability that we had, the gap there was  
 20 immense, and I took a decision, at that point, certainly  
 21 at the very least, at the very least, that we had to  
 22 examine properly what had happened in the '80s around  
 23 heat treatment and to set out the facts as best we could  
 24 in the public domain.  
 25 And, again, that might not seem particularly

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1 radical or novel now, but it speaks to that period of  
 2 time where we were trying to sort of open the doors and  
 3 let the light shine in to decision making in Scotland,  
 4 and it was clear to me that we would have to do that, we  
 5 would have to set out, you know, factual information.  
 6 It was inconceivable that I could just stand up when the  
 7 Parliament came back and be asked about this, and say,  
 8 "Oh, no, it's fine", you know, "I've had some  
 9 assurances", read out a couple of paragraphs and move  
 10 on.

11 Equally, I was not about to initiate, you know,  
 12 a major piece of work around all this because we  
 13 hadn't -- we weren't even at first base of knowing just  
 14 what else sat underneath this, and the degree of --  
 15 well, you've seen it -- advice and caution around the  
 16 Department, and I think amongst my colleagues as well,  
 17 you know, was, you know, was such that again, you know,  
 18 I wasn't going to do anything precipitous on this. But  
 19 it needed to be looked at and it needed to be understood  
 20 better and so what was --

21 So I did two things at that time on the back of  
 22 this second submission, which were just my own decisions  
 23 at that moment to start to steer a different course on  
 24 this, but in a practical and pragmatic way, I suppose,  
 25 and that was (1) to instruct the Department to pull

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1 and be everywhere, absolutely.

2 But there was also that element of let's call it  
 3 protection of, you know, a minister doesn't need to meet  
 4 with this group or that group. So I remember frequently  
 5 during that period -- actually it kind of didn't come up  
 6 specifically in this case, because the question hadn't  
 7 even been posed and The Haemophilia Society hadn't  
 8 contacted us, so the officials hadn't said anything on  
 9 that front but I knew for sure, from all the other  
 10 recommendations that we were starting to get, that they  
 11 would generally, let's put it, err on the side of  
 12 caution in terms of whether the ministers should go and  
 13 meet with people where there was difficult or  
 14 controversial issues.

15 So for me it was important to just, you know, cut  
 16 through all of that and just say, on the day, there and  
 17 then, "No, I want to meet with the Society, I want the  
 18 Department to look into it more", and that's what we'll  
 19 tell the BBC.

20 This is -- excuse me -- you know, there's a new  
 21 Minister, there was a new Executive, and yes, it was  
 22 blood to some extent, because there was some element of  
 23 continuation at ministerial level as well from those who  
 24 had been in the Scottish Office, but it was a new  
 25 Executive with a new Minister and, for me, it was just

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1 together proper facts on this, you know, not  
 2 two paragraphs, but, you know, like "Can we get the  
 3 information?" I do believe passionately, and I do to  
 4 this day, that your starting point for any informed  
 5 discussion and any informed decision making is to try  
 6 and establish some basis of fact.

7 If the facts are contested, well, that's fine,  
 8 that's how knowledge moves on, but you need to have  
 9 something there to work on. So I wanted to bring that  
 10 out and I wanted to make sure that it was understood  
 11 what had happened in that precise moment in time that  
 12 The Haemophilia Society specifically had raised in  
 13 relation to Scotland at that point.

14 And the second thing which, again, wasn't  
 15 necessarily preferred option or recommended, as far as  
 16 the Department was concerned, and I found this, I have  
 17 to say, in relation to many external organisations, that  
 18 I wanted to speak to The Haemophilia Society and  
 19 I wanted to hear from people who had experienced this in  
 20 Scotland. And, you know, I just note that there was  
 21 a -- the other thing I remember very vividly from that  
 22 period of time was that there was a bias, if you like,  
 23 against meetings. Now, some of it was because the  
 24 demand for ministers' time had just grown exponentially  
 25 overnight with devolution and you couldn't do everything

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1 really important to say, you know, I'm willing to take  
 2 a fresh look at this.

3 So I know I've made -- I've gone into some detail  
 4 around those two dates and those two submissions, but  
 5 for me, they were really -- they were illustrative, they  
 6 were illustrative, I think, of wider context, which  
 7 I think is important. But they are also absolutely the  
 8 point at which, you know, I set something else in train,  
 9 how things then evolved and developed I'm sure we'll  
 10 come on to talk about, but that was the starting point.

11 **Q.** Did you, given what you've told us about the culture,  
 12 and so on, did you have any concerns at that point that  
 13 the investigation into establishing the facts, I think  
 14 you called them, the proper facts, would be undertaken  
 15 in an objective and open and comprehensive manner?

16 **A.** No, is the short answer.

17 Because when I initiated that piece of work, and  
 18 I do stand on this, and I've thought about it a lot,  
 19 even reflecting back, you know, 20 years on, it was  
 20 absolutely the sensible next stage -- next step to take.  
 21 You're moving from, you know, a page of, sort of, fairly  
 22 high level reassurance, you know, to saying, "Well,  
 23 okay, show your workings then", you know? Whether it's  
 24 the Department, whether it's SNBTS, fine, if that's the  
 25 case, if everything that could be done at that time was

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1 done, set it out. Find out.  
 2 And that was, if you like, part of this new way of  
 3 working in Scotland, was to at least raise the bar about  
 4 what we would be willing to, as Government, look at, and  
 5 set out publicly.  
 6 So, as things went on, other lines of enquiry and  
 7 fact finding became added on, if you like, to that  
 8 process, but it was very, very clear that it was  
 9 absolutely an initial step to try to shine some light on  
 10 the issue and, specifically, the Scottish specific issue  
 11 if I can put it that way, because the other thing that  
 12 was becoming crystal clear to me, and certainly became  
 13 crystal clear the more that I did look into the issue  
 14 and entered into discussion with The Haemophilia  
 15 Society, was the extent to which the wider issues were  
 16 intertwined and inextricably linked with all sorts of  
 17 UK-wide decisions and practices.  
 18 And all the many years of history that went back,  
 19 you know, that was clear to me at a very early stage  
 20 that it was going to be acutely difficult for us, as  
 21 a Scottish administration, to really address all of  
 22 that. But what we could do means we could at least  
 23 focus on this issue that had gained quite a lot of  
 24 profile and traction and the Health Committee said they  
 25 wanted to, you know, have an investigation into it, and  
 37

1 14 September to hear their concerns about [infected  
 2 blood]."  
 3 I then want to go over to the annex, please,  
 4 Annex B which starts at page 7. We can see here it's  
 5 called "Hepatitis C and the Development of Factor VIII:  
 6 a Brief Overview Arising from Investigations Carried Out  
 7 So Far". Then it sets out the background, and it goes  
 8 through various topics that the officials have  
 9 looked at. And then if we can just take it to page 10,  
 10 please, and we can see there at paragraph 18 "Initial  
 11 conclusions" and:  
 12 "Our initial impressions from this outline of  
 13 events, which has been gathered from our preliminary  
 14 investigations are:  
 15 "that SNBTS did all they could at the time to  
 16 develop a Factor VIII product which was safe from HCV,  
 17 given the state of knowledge at the time ...  
 18 "... no evidence that SNBTS lagged without good  
 19 reason behind England ...  
 20 "the Haemophilia Society's claim that 'Scotland's  
 21 500-600 haemophilia patients may have been exposed to  
 22 the risk of hepatitis C infection for up to a year  
 23 longer than people treated in the rest of the UK' can be  
 24 firmly rebutted ..."  
 25 The question I just wanted to ask you was this:  
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1 so on.  
 2 What we could do was pull that information  
 3 together for that period and, as I say, I do believe  
 4 fundamentally that it is so important to get information  
 5 out and then for it to be debated and, at that time  
 6 especially, the Parliament and its committees were to be  
 7 the vehicle that we would create that openness.  
 8 So it was a starting point on that journey, at  
 9 a time where, I may say, when the Parliament wasn't even  
 10 yet sitting, but that -- such is the timeline of how  
 11 early on this was in the devolution process. The  
 12 Parliament opened officially with its powers on 1 July  
 13 and then went immediately into recess and then didn't  
 14 sit for the first time until 1 September so that was the  
 15 period we were in.  
 16 Q. Can we turn then next to take it to the  
 17 8 September 1999, SCGV00000423\_047. Again, this is  
 18 a document we've already looked at, so again I don't  
 19 want to take time going through it; I just want to draw  
 20 your attention to one point. If we could just have the  
 21 first page we can see what it is. 8 September,  
 22 a submission to you, we can see the purpose of it at  
 23 paragraph 1:  
 24 "To provide initial briefing to the Minister prior  
 25 to her meeting with The Haemophilia Society on  
 38

1 were you surprised or concerned that preliminary  
 2 conclusions had been made at this early stage before  
 3 meeting with and hearing the case that  
 4 The Haemophilia Society was concerned about?  
 5 A. So -- so I'll make two points of that that I think are  
 6 important. One in terms of process. If you go back,  
 7 you know, the submission on 8 August, what the  
 8 officials -- the officials had already obviously got an  
 9 initial answer to the question, on the question that had  
 10 been raised by The Haemophilia Society about heat  
 11 treatment in the '80s, and they said in that submission,  
 12 "And we will look into this further in the next few  
 13 weeks". And what I did was raise that up a level to  
 14 say: no, it needs to be much fuller than that, there  
 15 needs to be other inputs to it, and it's going to be  
 16 published, it's going -- you know, it will be out there.  
 17 You know, it's not just for me so I can stand up and  
 18 give a short answer in the Chamber or whatever. There's  
 19 going to be a basis of fact there.  
 20 So on that particular issue, the fact that they  
 21 were continuing to iterate, "Here's what we think from  
 22 preliminary investigations", I actually think that was  
 23 part of that progression. And for me, given there was  
 24 going to be something at some point that was going to go  
 25 out publicly, you know, that's -- that's how you test,  
 40

1 you know, the information.  
 2 But what I would say, and this is where you link  
 3 back to the way that official advice worked and so on at  
 4 the time, was -- and forgive me for generalising because  
 5 I realise -- and I do want to focus absolutely on the  
 6 people and the issues that we're talking about today,  
 7 but this was, for me, a real generic pattern at the  
 8 time, that you would say as a minister -- and I can  
 9 remember with colleagues we would actually talk about  
 10 this and chuckle about it sometimes. You know, we would  
 11 say -- you know, like, we want to meet with a group,  
 12 because we wanted to meet with them and we wanted to  
 13 speak to them and hear from them and have a free-flowing  
 14 conversation with them. And you would get this pile of  
 15 information that was all this briefing and, "Here's all  
 16 the Government position" and "Here's what the agenda  
 17 might be" and "Here's what the minister should say" and,  
 18 to be honest, rather than going toe to toe with that,  
 19 you know, I think many of us just said, "Well, thank  
 20 you", you know? We cast an eye over the sort of  
 21 background briefing and would enter into discussion.  
 22 And insofar as I can recall from all that time  
 23 ago, you know, I think a submission like that, which was  
 24 sitting alongside lots and lots and lots of other things  
 25 like that, I don't think that I would have -- I think

1 wasn't shared with them --  
 2 A. No, no -- well, absolutely these comments from officials  
 3 about -- from the preliminary investigations weren't  
 4 shared. Because as far as I was concerned, that's all  
 5 that they were, they were comments from officials at  
 6 a preliminary stage. The point was about entering into  
 7 a discussion with The Haemophilia Society was absolutely  
 8 to find ways of engaging them in that process.  
 9 Now I would be the first to say, in this and  
 10 frankly a host of other areas that I was, you know,  
 11 kickstarting activity at that time, you know, you could  
 12 spend, you know -- and over the years, actually there  
 13 has been a lot more investment, in much bigger, broader  
 14 consultative engagement processes and so on. But at  
 15 that moment in time, insofar as we had the capacity and  
 16 resource to do it, and given that the starting point of  
 17 the department was basically "no change no engagement",  
 18 then, you know, having that meeting -- and if you look  
 19 at the work that came through that, there were  
 20 discussions with The Haemophilia Society, there were  
 21 inputs from haemophiliacs in Scotland from their  
 22 experience.  
 23 Now I, you know, can see through a lens -- and  
 24 I understood then as well, you know, that there was --  
 25 there were many other issues to be raised and to

1 I would have seen it in that light, basically. Because  
 2 as far as I was concerned I wanted to go and have  
 3 a discussion. You know, "Well, thank you, you've put  
 4 all this together. Yes, we're going to push ahead with  
 5 something that will go out in the public domain at some  
 6 point on this, but, you know, I want to have the  
 7 conversation."  
 8 But like so much in this Inquiry, to be honest,  
 9 it's brought back to me just -- just practices that, at  
 10 the time ...  
 11 And I don't think, as I say, this is about  
 12 criticising individuals, I don't think it's sinister or  
 13 anything, it was just a pre-existing practice of, you  
 14 know, keeping things very closed, and -- and thinking  
 15 that sometimes ministers shouldn't be allowed out alone  
 16 just to speak to folk and make up their own minds.  
 17 Q. Now you've subsequently met with The  
 18 Haemophilia Society, on 14 September, and there's  
 19 a minute of the note, which I don't think we need to go  
 20 to, and the question for you in relation to that is that  
 21 that minute doesn't record you saying to The Haemophilia  
 22 Society, "Look, these are our preliminary conclusions,  
 23 you know, is there anything you would like to -- any  
 24 evidence that you would like to submit to us that's  
 25 relevant to those conclusions?" Is that right? That

1 investigate, but in terms of looking into the specific  
 2 issues there, there were discussions.  
 3 And there was also, of course, a meeting with  
 4 SNBTS, with The Haemophilia Society, which I don't  
 5 think -- although obviously correct me -- I don't think  
 6 that had happened previously and that was also an  
 7 attempt to try to create some more of that dialogue and  
 8 try to open it up.  
 9 So I understand the point that you're making,  
 10 and -- but I keep coming back to, I think it's important  
 11 to see the progression of thinking and decisions and  
 12 actions on this issue in tandem with that massive  
 13 culture change that was taking place, in a context of  
 14 hundreds of different issues coming from all directions,  
 15 many of which, you know, were in the programme for  
 16 Government, many of which had been in manifestos -- you  
 17 know, there was no previous manifesto commitment around  
 18 any of the issues involved here, for example, albeit  
 19 there was MSP interest -- you know, there were so many  
 20 things that we had to do that, for me, this was  
 21 a practical and pragmatic way of starting to try to open  
 22 it up and to create some -- some dialogue, and to bring  
 23 some background and facts out into the open that  
 24 wouldn't just be for me but would be for  
 25 Parliamentarians as well.

1 Q. And I should just read the document reference for the  
2 minute for The Haemophilia Society meeting into the  
3 transcript, which is WITN4436005.

4 And also, just so that we understand the  
5 chronology, just to -- during that meeting, the remit of  
6 the investigation, the internal investigation, was  
7 widened, wasn't it, to look beyond the heat treatment  
8 issue and to look at the information given to patients  
9 during their treatment around risks of hepatitis C,  
10 non-A, non-B as it was then, and around testing?

11 A. Yes, so it started out as being a fact-finding exercise  
12 to answer the questions that The Haemophilia Society had  
13 raised about that period in time. There wasn't a remit  
14 beyond that. It was: set out the facts.

15 We entered into discussion with The  
16 Haemophilia Society -- I say "we"; I had a meeting. But  
17 subsequently there were other channels of communication.  
18 But arising, I think, actually from the meeting  
19 that I was involved in, obviously there were a range of  
20 different other questions raised, including issues about  
21 information to patients. So subsequent to that, there  
22 was a published remit. So we didn't start with a remit;  
23 we started to say let's compile more facts.

24 But -- and I think I've got the dates, in fact I'm  
25 sure I put this into my statement, but then we then

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1 on it was going to be very difficult. But I still  
2 thought it was right to at least try and, as I say, shed  
3 a bit of light on at least one dimension of what had  
4 happened in Scotland, and to start to engage in a bit  
5 more direct interaction with the people involved.

6 Q. Just for the transcript, that correspondence or some --  
7 certainly some of that correspondence with  
8 Karin Pappenheim is SCGV0000170\_015 and HSOC0005179.

9 I want to move on to an issue that was raised with  
10 you by the Health and Community Care Committee in  
11 June 2000 about the remit of the investigation.

12 Now, they sent you a letter, I'm not going to turn  
13 to this but for the transcript it's SCGV0000171\_005, on  
14 7 June, and you replied, and I want to turn to that.  
15 SCGV0000171\_010.

16 And you replied on -- ah, SCGV -- is that -- ah,  
17 there we go -- 13 June, and you say:

18 "Thank you for your letter of 7 June.

19 "You ask whether the exercise I have instigated  
20 covers non-haemophiliacs who might have contracted  
21 hepatitis C through contaminated blood products and, if  
22 not, to extend the remit to include them."

23 Then you go on in the next paragraph to say that  
24 you'd:

25 "... instigated an exercise following the specific

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1 moved to some definition around the published remit.

2 There was also an exchange of correspondence, all  
3 of which, again, is referred to in my statement,  
4 following that meeting between myself and Karin  
5 Pappenheim, the Chief Executive of The  
6 Haemophilia Society, with an attempt, you know, on my  
7 part, you know, to put some parameters and -- and scope  
8 some of the work that we could do, and to take on board  
9 questions and concerns that we could do, but also to be  
10 clear about, you know, what we couldn't do.

11 So it iterated, but again, as I say in my  
12 statement, I can't remember the exact phrase  
13 that I used, but it did become clear to me very, very  
14 early on that it was going to be difficult to find a way  
15 of working through this, and to manage expectations.  
16 Because having said, you know, sincerely, you know,  
17 that I wanted to take a fresh look at this, I knew that  
18 the Parliament did too, it was clear that there were  
19 just so many strands of issues and history and  
20 complexity around this, that -- and forgive me if this  
21 sounds, you know, slightly clinical, but in terms of how  
22 we could manage that, within not just the devolved  
23 powers but, you know, the whole capacity and resource  
24 that we had, the processes that still hadn't even been  
25 developed, to be honest, it was clear to me very early

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1 concerns expressed a year ago about the discrepancy in  
2 the heat treatment of Factor VIII between Scotland and  
3 England in the period 1985-87. Having listened  
4 carefully to representations from the Haemophilia  
5 Society, I made sure the remit of the exercise was  
6 worded so as to concentrate on this issue. I believe it  
7 is generally accepted that other people have contracted  
8 the Hepatitis C virus via blood in other ways -- for  
9 example, through blood transfusions before a test was  
10 available to screen blood for the virus. (The virus was  
11 only isolated and identified in 1989.) I would see  
12 limited value in directing resources towards examining  
13 an issue of which we already know the outcome, and for  
14 this reason I must respectfully decline your request to  
15 open up the exercise further."

16 Can you just help us with what you meant there by  
17 "limited value in ... examining an issue of which we  
18 already know the outcome"?

19 A. Just to confirm I understand, this was 7 June 2000?  
20 That's -- (overspeaking) --

21 Q. It's 2000, yes.

22 A. So if I could again put some context around this, by  
23 that time, the work that I had kickstarted in a given  
24 moment, on a given day, faced with a particular decision  
25 about what to say publicly in this issue that could

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1 enable us to start to engage positively and practically  
 2 with such -- I say again, complex and sensitive issue --  
 3 that piece of work, as I say, was started in August.  
 4 There is actually -- it's in amongst the papers --  
 5 there's correspondence at the early stage and it all  
 6 seems bizarre actually looking at this now, but bearing  
 7 in mind that initially it was focused facts on  
 8 a specific issue, it was originally said that that could  
 9 be compiled within a month, and that was in the public  
 10 domain, that was there.

11 Having met with The Haemophilia Society in  
 12 September -- and I'm sorry I will come back to this.  
 13 I know the specific point you're raising but I just want  
 14 to explain where this sits in the chronology, if that's  
 15 all right.

16 So we met with The Haemophilia Society in  
 17 September. That then resulted in other questions being  
 18 raised, that resulted in other areas of enquiry being  
 19 taken on board. As I say, SNBTS met with  
 20 The Haemophilia Society -- or the representatives of  
 21 haemophilia groups in Scotland as well, I think, at that  
 22 time. There was various discussions.

23 So the period was extended -- this was the point.  
 24 The period was extended until December to allow  
 25 submissions, whether from the Society or from

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1 I remember getting very, very seized during that period  
 2 of the need for us to put parameters around what we  
 3 could, at that point in time, actually report on and  
 4 comment on, because by that time, too, this was  
 5 definitely an issue that Parliament was going to look at  
 6 further as well, not least because there had been two  
 7 petitions submitted through the new public petitions  
 8 process that was put in place when the Parliament came  
 9 into being.

10 So the detail of that letter and the phrase that  
 11 you've read out to me, and like so many letters --  
 12 I know ministers always look at these things and think,  
 13 "Oh, somebody else drafted this, it's not quite how  
 14 I would have put it if I'd had time to rewrite  
 15 everything". But while the phraseology is not something  
 16 that I would have initiated on myself, I think what we  
 17 were also going through there, by then, was a process of  
 18 trying to put some parameters around this initial range  
 19 of discussions and enquiries that we'd undertaken, to be  
 20 able to put that out into the Parliamentary process for  
 21 further examination and further discussion.

22 It was crystal clear to me by that time that there  
 23 were just so many limitations of what we could actually  
 24 look at, address, enquire into, and so on, at our own  
 25 hand within -- not just within the Scottish Exec, the

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1 individuals, and indeed from Haemophilia Centre  
 2 Directors I think, you know, who were all feeding into  
 3 this process that was kind of growing by then. So we  
 4 were then into the spring and in that period there still  
 5 continued to be further strands of examination and  
 6 investigation, and the submission, which I know is in  
 7 amongst the Inquiry documents and I think is referred to  
 8 in my own statement, the submission that The Haemophilia  
 9 Society made to this limited fact-finding exercise that  
 10 we had initiated, which I don't recall seeing fully at  
 11 the time, but I have seen submissions where certainly it  
 12 was referred to, it was a very full submission covering  
 13 the whole range of different issues that sat in that  
 14 whole debate about how to examine, how to address, how  
 15 to support, you know, people who had been affected by  
 16 infected blood and blood products across that whole  
 17 range of issues.

18 So we were sitting with a limited piece of work  
 19 that was being done on a specific area, and all the  
 20 wider issues that had been raised not just in relation  
 21 to Scottish issues but, you know, UK matters too. So  
 22 the gap there was really significant. So I remember  
 23 during that latter period -- and bear in mind that we'd  
 24 said that we'd get something out on this fairly quickly,  
 25 we then had agreed to look at more things -- and

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1 devolved Scottish Exec, I have to keep contextualising  
 2 this within that very early period where we were trying  
 3 to do so much across so many different areas, and the  
 4 disconnect. Sometimes -- you know, I worked through  
 5 processes like this when I was a minister and I have  
 6 done before and since -- sometimes when you get in  
 7 a room with people and start to identify issues and  
 8 a problem, you can work together and you can find a way  
 9 through and, on this occasion, it was like we'd just  
 10 gone further and further apart, and it was really  
 11 difficult to think about how that could be brought back  
 12 together.

13 But there was going to be ongoing debate and  
 14 discussion so for us to put as much as we were able to  
 15 into that, and allow that discussion to continue,  
 16 I think was where we were. And I'm sure we'll come on  
 17 to the issue of compensation but, by then, also, I had  
 18 clearly got more and more deeply into the background and  
 19 discussions on those issues too, and so I knew that  
 20 I had to be clear about what we found around the issue  
 21 of the introduction of heat treatment and be public  
 22 about that, because I'd committed to that, but try to  
 23 find some other way of moving on that wider discussion  
 24 and range of issues.

25 Q. Again, for the transcript, the haemophilia submission is

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1 PRSE0001404. I'm conscious that we're due to take  
 2 a break but I just want to ask one follow-up question  
 3 from what you've said. The range of issues, the  
 4 complexity, these are terms you keep coming back to.  
 5 Did you at that time think "well, actually, this is too  
 6 much for an internal investigation, really we need to be  
 7 looking at a public inquiry?"  
 8 **A.** So -- and if time is limited, you know, maybe you would  
 9 prefer my answer to be later, but I think there are  
 10 two -- for me, in my mind, in that period in time -- and  
 11 I think it's important I explain this because I know  
 12 this has been a substantive issue of interest -- there  
 13 are two distinct questions, distinct but related  
 14 questions here.  
 15 One is the question of a statutory public inquiry  
 16 and the other is the question of how, if, when and  
 17 whether to conduct further investigations. But I make  
 18 a very clear distinction in my own mind, and I did at  
 19 the time in thinking this through, if there's time, do  
 20 you want me to say more at this point about those  
 21 decisions in my thinking at that time?  
 22 **Q.** Well, perhaps we can come back to that after the break.  
 23 **SIR BRIAN LANGSTAFF:** Let me just ask, before we do take  
 24 a break, just looking at this letter, it may not be  
 25 a letter you've drafted but it's a letter that you

1 discussions, I think there was a circularity in -- not  
 2 just for us but others that had been involved in this  
 3 matter over the years, which was what was known, what  
 4 wasn't known, what needs to be looked into what -- you  
 5 know, so I think the Health Committee specifically  
 6 wanted us to look more widely in non-haemophiliacs and  
 7 others who had been infected through blood transfusions.  
 8 And I think that probably what was intended by  
 9 that reference in there was to say that, well, we know  
 10 what happened and, of course, that lies at the heart of  
 11 this Inquiry, as to how much did we know what happened?  
 12 And I think in my head, which is maybe slightly  
 13 different, there was an issue about we have to draw some  
 14 lines around the work that we've done, we don't have the  
 15 capacity, the capability, the wherewithal, to actually  
 16 open all of these matters up and we need to complete the  
 17 piece of work we started and pass it on to the next  
 18 stage of open discussion.  
 19 **SIR BRIAN LANGSTAFF:** So if the issue is giving hepatitis C,  
 20 or contracting hepatitis C through contaminated blood  
 21 products, which it's an ambiguous word, as you say,  
 22 you're right about that, but assuming that it means  
 23 that, the outcome is, what: people were infected? Is it  
 24 sufficient to say, well, people that had been -- in  
 25 effect, people were given hepatitis C or may have

1 signed and was sent on your behalf. The issue, looking  
 2 at the last sentence of the second paragraph:  
 3 "I would see limited value in directing resources  
 4 towards examining an issue of which we already know the  
 5 outcome ..."  
 6 Was the issue, that which you refer to in the  
 7 first paragraph, first full paragraph, whether the  
 8 exercise you've instigated covers non-haemophiliacs who  
 9 might have contracted hepatitis C through contaminated  
 10 blood products, or was it something else?  
 11 **A.** I think, like a lot of communications that I have seen  
 12 from this time, I think there's an ambiguity around  
 13 that, and I think that reflected actually some of the  
 14 challenges of working through things.  
 15 I think in my own head it was as clear as I could  
 16 be, from information that I'd seen. On the specific  
 17 issue that had been raised in relation to that period in  
 18 Scotland, I, you know, thought we had assembled  
 19 a reasonable basis of facts there, around that question.  
 20 **SIR BRIAN LANGSTAFF:** Well, you --  
 21 **A.** I think the extension -- yeah, the -- I'm sorry, the --  
 22 **SIR BRIAN LANGSTAFF:** The first question is what the  
 23 question is.  
 24 **A.** I know. No, I understand that, I understand that. And  
 25 I think you'll have seen from rereading through lots of

1 contracted hepatitis C through blood or blood products  
 2 and they got hepatitis C? I mean, what's the outcome?  
 3 What's meant by this? It looks, I think, to -- or may  
 4 look to some as though this letter is just fobbing  
 5 someone off.  
 6 **A.** Well, as I say, for my part, I was clear by that stage  
 7 we needed to draw a line through this work and be able  
 8 to pass something on to the Parliament so that they  
 9 could start the process that they had committed to do  
 10 that was on hold. So I think there was a-- I completely  
 11 understand the point they raise but I think there was  
 12 a very practical and pragmatic sense in my head that we  
 13 couldn't keep having more strands of -- adding more  
 14 strands of Inquiry on to something that started out very  
 15 focused and very fact based, which was now starting to  
 16 move into highly contested areas, and would require far  
 17 more investigation than we had put in place.  
 18 So that's where I was coming from. I think and  
 19 I do feel it sits at the heart of so many of the issues  
 20 in the Inquiry, and I've thought about this as I've  
 21 looked back through the papers from my time in office.  
 22 You know, undoubtedly at that point in time, and the  
 23 advice that was repeatedly being given was, "We know  
 24 what happened, we know what happened here, so why look  
 25 any further?"

1 I think what was possibly also confused and  
2 conflated, possibly even, dare I say it, even in some of  
3 the Parliamentary discussion, was the question of the  
4 past and the question of the present. So I think, you  
5 know, the present is the question of how you support and  
6 potentially give financial support or compensation to  
7 people now, and then the past, of course, is what  
8 happened in the past and then, of course, by that stage  
9 in time, the two had got so confused and conflated --  
10 I think in every part of the UK we were just stepping  
11 into a part of it -- that I think that's what you see,  
12 I think, in a lot of that ambiguity.

13 And I'm sitting here now, and I've pored over  
14 these documents, and thought through just where we were  
15 as a devolved administration at the time and  
16 reflected on what I could/should/might have done  
17 differently and better, and there's always so much. But  
18 in that point in time, including what was often very  
19 inadequate and, yes, ambiguous communication it was part  
20 of what was coming through, and certainly as a minister  
21 there was just limitations on how much you could drill  
22 in, how much you could question, how much you could  
23 amend, how much you could clarify, how much you could  
24 change.

25 But I completely accept that the point that they  
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1 that at this moment.

2 I don't think we were ever -- I genuinely don't  
3 think we were ever closing the door on further  
4 investigation and enquiry.

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

6 Well, we'll take a break now until 12.10. It's  
7 a little bit later than usual.

8 Let me just say to you what I say to all witnesses  
9 at this stage: you're giving evidence on oath. You must  
10 not discuss the evidence you have given or, for that  
11 matter, anything you think you may later be asked about  
12 with anyone, whoever that anyone is. But you can talk  
13 about anything else you like.

14 **A.** Thank you.

15 **SIR BRIAN LANGSTAFF:** 12.10.

16 (11.42 am)

(A short break)

18 (12.10 pm)

19 **SIR BRIAN LANGSTAFF:** Yes.

20 **MS SCOTT:** I asked you a question about public inquiries  
21 before the break. I said I'd come back to it but, in  
22 fact, can we park that? I'm going to park that little  
23 a little bit later on and pick back up again with the  
24 chronology with the internal investigation.

25 We were looking before the break at the terms of  
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1 make and I think it is unclear and I think I had was  
2 unclear for many of us at that time just what should be  
3 looked at how it could be looked at and what questions  
4 were still to be addressed because there was lots of  
5 people around about saying "Well, that's closed, we know  
6 that, that's done, why look at that?"

7 **SIR BRIAN LANGSTAFF:** So is it a fair understanding of what  
8 you were trying to convey, by albeit ambiguous words,  
9 is, "We're looking at this, let's do that first, get  
10 that out of the way and then we'll look at something  
11 else if we need to"? Is that what you're attempting to  
12 say or are you saying "That's what we're going to look  
13 at, we're going to look at nothing else?"

14 **A.** No, I think -- I don't think we were ever saying "We're  
15 going to look at nothing else". I don't think that  
16 particular statement ever applied. I think there was  
17 constantly a challenge about what else we could look at,  
18 and how else we could look at it.

19 But I don't think it was ever about saying we  
20 won't look at anything else; it was about saying that,  
21 you know, we started to look into and bring out some of  
22 the background and some of the history, particularly  
23 around a moment in time, for issues of particular  
24 concern to haemophiliacs in Scotland, at that point in  
25 time, you know, actually we can't go any further than  
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1 reference, and what was going to be included and what  
2 wasn't and I'm going to go back a little in time now to  
3 pick up a document from 23 September 1999, so a few days  
4 after that meeting with The Haemophilia Society.

5 SCGV0000170\_152. Again, this is a document we've  
6 looked at in the hearing before. It's an email dated  
7 23 September, on behalf of the First Minister, to  
8 a Mr Palmer, and it says:

9 "The First Minister has seen your minute of  
10 17 September to the Minister for Health outlining a way  
11 forward following the meeting with The Haemophilia  
12 Society. He was a little concerned about the possible  
13 financial implications and fears that an open mind could  
14 be taken to mean an open cheque book. He would be  
15 grateful for information on the likely exposure if  
16 compensation were to be awarded."

17 Then if we scan back out, we can see there's two  
18 lots of handwriting. The one on the left appears to be  
19 a sticky note, and the one on the right, I think,  
20 says -- I'm not sure what the first "SM" or "FM":

21 "Ms Deacon's office advises that this is very much  
22 a PR exercise and there is unlikely to be any  
23 compensation paid."

24 So, first of all, is it right to understand from  
25 this that this is -- at least if you hadn't seen the  
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1 email that's been sent by the First Minister, at least  
2 the comments that he makes would have made their way to  
3 you?

4 A. So the comments in the bottom, if I can just deal with  
5 that, there have been a lot of notes and official and  
6 Private Office exchanges and stuff that I've seen during  
7 the course of this Inquiry that I regard as very  
8 inadvisable shorthand and very inaccurate shorthand,  
9 this one in particular.

10 So I saw these notes for the first time just when  
11 this came up in the Inquiry earlier in the week, and  
12 I just want to say, unequivocally: I don't think that  
13 way, I don't speak that way, and I certainly didn't  
14 think or speak that way about this particular piece of  
15 work. So I'd like to -- these are notes between Private  
16 Offices and however they decide that they want to  
17 communicate things on behalf of ministers and, yes, that  
18 does say "FM" at the top and it says, "Ms Deacon's  
19 office advises". I don't know what conversation took  
20 place but it wasn't with me.

21 So if I can say that and come back to the  
22 substantive point that you asked me about, Donald's note  
23 and, again, this looks to me, like, you know, a PS has  
24 typed up a comment that he's made as he's been going  
25 through papers and, knowing Donald Dewar as I did,  
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1 about to do, you know, anything that's going to  
2 fundamentally, you know, change, you know, entire  
3 systems within the NHS, you know, just on a whim or on  
4 the basis of one thing I've seen, but we need to at  
5 least start to look at this and start to discuss it".

6 And, you know, that -- and it was becoming  
7 clear -- well, not at that point, actually, but later,  
8 it did become clear to me, as I say around that  
9 particular concern we had about Scotland in the '80s,  
10 that I was seeing a sufficiency of information to be  
11 able to say well, you know, it was suggested that  
12 there'd be -- that this was, you know, some negligence  
13 on the part of SNBTS. I'm not seeing that.

14 But on the wider issue, I was trying to take it  
15 very cautiously, one step at a time, to look at where we  
16 could go on this. So I think that note, although  
17 I don't recall the note and I don't think I did see it,  
18 actually, I suppose it does chime with just a concern  
19 that existed on this issue but I would be bound to say,  
20 across a range of issues at that point in time, because  
21 we had a fixed block grant.

22 We had a new Parliament that was a spending-only  
23 Parliament, that -- and we had literally hundreds, if  
24 not thousands, of different organisations across just  
25 about every walk of Scottish life. They wanted us now  
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1 I could hear him say something like this. It's the way  
2 that he would gently but firmly, I suppose, raise  
3 a concern.

4 I don't remember and, in fact -- well, I don't  
5 remember seeing that ever as a note, like typed up in,  
6 you know, in that form. And I'm looking at the  
7 distribution and I'm slightly confused by the  
8 distribution, and I'm not on it. Um -- no, my office  
9 isn't on it at all. It's gone to an official in the  
10 Department.

11 I genuinely don't understand quite what the  
12 distribution and circulation of that particular note is.  
13 What I can say, without doubt, is from the outset, from  
14 whenever I started to look into this issue and ask  
15 questions, and suggest that I was going to give  
16 commitments that were at variance with the advice that  
17 I was being given, there was enormous concern around  
18 about me. I wasn't say opposition. I'm talking here,  
19 you know, about Cabinet colleagues, and so on. You  
20 know, I wouldn't say opposition but enormous concern as  
21 to what this might mean.

22 And I was constantly saying -- and this wasn't  
23 just to, you know, to settle the nerves of ministerial  
24 colleagues, this was genuinely my view, I was also  
25 saying throughout, I said, "Look, you know, I'm not  
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1 to right the wrongs of the past, build everything better  
2 in the future, give people more in so many different  
3 ways and, in that moment in time, there was a real  
4 concern about how we could manage that fixed budget that  
5 we had in a way that would really deliver  
6 an expectation.

7 So there was a lot of things around at that time,  
8 and the debate around free personal care for older  
9 people was a case in point in that first year where, you  
10 know, again, there was strong arguments, you know, as to  
11 do something in that space, and we did try and do  
12 something in that space and, eventually, did go further.  
13 But the concern about how we would fund some of these  
14 big divergences were immense.

15 And I may say, again, the devolution element of  
16 all of this, at that time the zeitgeist was absolutely  
17 be different from England but only if you were doing  
18 more or better than the England did. Nobody wanted you  
19 to take something way or do more or less, they just  
20 wanted you always to do more and better. And we had  
21 a block grant and there was a limit to what we could  
22 do -- we may come on to this further -- and as I've  
23 reflected on this period of time, I think this was very  
24 much in our consciousness, especially for me in Health,  
25 as I started to get a sense of all the needs across the  
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1 Health budget of just proceeding with caution and on any  
2 commitments that we might make.

3 And, incidentally, since I've touched on budgets,  
4 it was absolutely the view that since the Health budget,  
5 much more so than in Westminster, where there's other,  
6 bigger spending departments and things like the MoD, and  
7 so on, the Health budget was such a big proportion of  
8 the Scottish block grant that if you're going to be  
9 doing anything in Health it would be coming from within  
10 your budget and I've seen and gone through the papers,  
11 I note, to that effect, as well, on this specific issue.

12 So I hope that helps to shed a little light.

13 But I don't think I really would have seen that at  
14 the time.

15 **Q.** So did you see the internal investigation as a PR  
16 exercise?

17 **A.** Absolutely not. Absolutely not. I saw it as exactly  
18 what I articulated earlier on, which was an attempt to  
19 try looking at this issue, shine a bit of light on it,  
20 address the specific Scottish issue that had been  
21 raised -- and this had been raised very, very  
22 specifically in quite a high profile way by  
23 The Haemophilia Society, and the Parliament itself, as  
24 I say, all around the same time because it was all  
25 happening, everything happened in very short order in

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1 wrongdoing that may lead to compensation. What would  
2 you say to that?

3 **A.** Well, if I can leave to one side what I regard as  
4 being -- well, leave to one side whatever Private  
5 Offices might say to each other and think instead or  
6 comment instead on the officials who were actually doing  
7 the work, which I think, you know, is quite distinct  
8 from all this chatter that goes on between offices and,  
9 you know -- well, yeah, Post-it notes and the like and  
10 whatever. But the officials who were actually looking  
11 into this issue -- and yes, they had initially or at  
12 least I can think of at least one person who was  
13 involved who -- or around it anyway -- who at least  
14 initially had given me that re-articulation, if you  
15 like, of -- you know, that we didn't need to look at  
16 this and that had been resolved and that we'd want to  
17 continue that position.

18 I think my experience was that once we set in  
19 train that piece of work -- and there was another  
20 official actually who led on this, and the name appears  
21 on various documents -- my sense was, and is, having  
22 seen further documentation in the recent period, that  
23 they worked quite assiduously to pull together a picture  
24 of what had gone on, to gather together views and  
25 accounts. It was absolutely -- you know, we're kind of

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1 that period of time, and very publicly, and in the  
2 media, and so on.

3 So, you know, Parliamentarians as well were all  
4 saying "This must be investigated" and that's what  
5 I did. I started a process to actually look into  
6 something and shine a light on it. As I say, as we  
7 progressed, some of the complexities and wider issues,  
8 you know, became apparent and I'm sure we'll come on to  
9 them.

10 **Q.** Can you assist us at all in understanding how someone in  
11 your Private Office may have got the impression that  
12 that was the way that you saw the internal  
13 investigation?

14 **A.** It's unwise, probably, to guess at that. I would only  
15 go so far as to say that I think our desire to be  
16 accountable and to be open and to communicate as  
17 a fundamental part of the way that Government needed to  
18 be done differently in a devolved Scotland might be  
19 described and perceived differently from a more  
20 traditional perspective.

21 **Q.** And it might be said, to those -- it might be said by  
22 those reading that note, that it shows a lack of  
23 willingness on the part of the Scottish Executive, at  
24 least as that as understood by the official writing  
25 that, to carry out an investigation to uncover any

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1 back to that thing about culture and capacity in the  
2 office at that time. It was a product of its time  
3 I think in many respects in the way it was done. But  
4 I have seen quite a bit of evidence of, you know, some  
5 of the officials that were involved in this doing their  
6 best to look back, drill down, pull out information from  
7 quarters where, you know, it wasn't necessarily easy to  
8 do that, including from the Department of Health.  
9 Although, to be fair, I have not seen evidence of the  
10 Department of Health being resistant to feed into this.

11 But again, you're in terrain that, here's this new  
12 sort of kid in the block of the Scottish Executive want  
13 to see our files from stuff that happened a long time  
14 ago. So that was already, you know, slightly difficult.  
15 But no, I think the officials that worked on this,  
16 within the constraints of the kind of culture and  
17 mindset and practice of the office at the time, I think  
18 they were -- they were professional and they were  
19 assiduous. I would say that.

20 I don't know to this day even, even thinking this  
21 through now, listening to some anyway of the discussion  
22 that's taken place around the Inquiry, I don't know what  
23 else happened in layers and layers of other  
24 conversations in the past. They're at different levels  
25 of Government in a pre-devolution media and so on. But

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1 I think those that picked up the reins to do this piece  
 2 of work did their best.  
 3 **Q.** And again it might be said that this kind of comment  
 4 coming from the First Minister to those officials who  
 5 are undertaking this investigation might constrain them  
 6 in the way that they carry out that investigation. What  
 7 would you say in response to that?  
 8 **A.** Well, to be honest, I'd take his comment -- as I say, it  
 9 sounds to me like a verbal comment that's been written  
 10 down, and these things don't always translate  
 11 particularly well. And I do wonder often, you know,  
 12 when private secretaries and so on capture things -- and  
 13 I've seen things from the time that were, you know,  
 14 supposed captures of the things I said, you know, and --  
 15 you know, there's no nuance there or accuracy there and  
 16 all that kind of stuff. So I think as a way of  
 17 communicating a point, this capture of some verbal  
 18 comment isn't a particularly good one. I think the  
 19 general point of there being a sense of -- you know,  
 20 given that I had said, you know, I wanted to look at  
 21 this with an open mind, and I presume that's what it's  
 22 a reference to, then that presumably was Donald's way of  
 23 saying, "Okay, but, you know, wherever you end up in  
 24 this, if there's going to be additional financial  
 25 implications for us, you need to think about whether we  
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1 me trying to retrospectively give you a picture of how  
 2 things worked.  
 3 **Q.** Can we move on, then, to the report itself, GGCL0000010.  
 4 We can see it's "Hepatitis C and heat treatment of  
 5 blood products for haemophiliacs in the mid-1980s", and  
 6 it's dated October 2000. If we move over to page 2,  
 7 please. We can see under the summary, it sets out the  
 8 "Remit":  
 9 "to examine evidence about the introduction of  
 10 heat treatment in Scotland for Factor VIII in the  
 11 mid-1980s, to assess whether patients in Scotland with  
 12 haemophilia were exposed to the risks of the hepatitis C  
 13 virus longer than they should have been, given the state  
 14 of knowledge at the time."  
 15 So that's the first part of the remit.  
 16 Why was it that the investigation didn't consider  
 17 other issues relevant to whether people with haemophilia  
 18 in Scotland were exposed to hepatitis C longer than they  
 19 should have been, other than the heat treatment? So for  
 20 example, testing, or whether or not product from BPL,  
 21 8Y, should have been purchased?  
 22 **A.** Well, I come back to what I said earlier: that a piece  
 23 of work was commissioned to answer a question that  
 24 The Haemophilia Society had raised, that I regarded to  
 25 be an important question to be addressed and reported  
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1 can meet them". And that for me seems reasonable.  
 2 **Q.** And do you know whether or not calculations were  
 3 provided to him as a result of this intervention?  
 4 **A.** Well, it looks to me -- no is the answer. I don't know.  
 5 I'm pretty certain that the answer is no. And the only  
 6 thing that I have absolutely -- or had visibility of, in  
 7 terms of anything that he saw, would be, you know, where  
 8 we were having Cabinet discussions and so on about these  
 9 matters. So anything else is conjecture, to be honest.  
 10 And we weren't at that point in time, you know,  
 11 actually in the space of doing -- because I'm very  
 12 early on -- you know, in the space of actually thinking  
 13 about, you know, financial implications of -- we were --  
 14 rather, we were leaning into the facts, the evidence,  
 15 the history, the issues, you know, and that, I think,  
 16 would have actually come later. Although I have seen --  
 17 only in papers that I've seen through the Inquiry, you  
 18 know, I have seen that there were bits of discussion in  
 19 other bits of the office about, you know, what  
 20 compensation might involve. But there was limited  
 21 compensation in that sense.  
 22 So I apologise, I feel in a number of these  
 23 answers, you know, I'm giving you lots of different bits  
 24 of insight and so on, but that -- that was what it was  
 25 like, really, and that's what it's like now, in terms of  
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1 on, and not just the basis of, as I say, a short couple  
 2 of paragraphs that had been given to me that seemed to  
 3 be enough to say that there was nothing to answer there.  
 4 Ironically, in some respects -- maybe "ironically"  
 5 isn't quite the right word -- but in attempting to  
 6 broaden the thinking and the enquiry a bit as that  
 7 developed, it also raises, both then and now, more  
 8 questions about "Why didn't you do more still?" And  
 9 I suppose that comes back to what I said to Sir Brian  
 10 earlier that, you know, we have to draw a line around  
 11 this. You know, I come back to -- you know, we'd said,  
 12 you know, we'd publish it -- you know, this was part of  
 13 a continuum. This is a progression through the first  
 14 year -- of this first year of devolution.  
 15 And I won't re-rehearse what I've said about some  
 16 of the limitations that there were around us and the  
 17 raft of other issues, and so on, that we were dealing  
 18 with, but, you know, I personally have a pretty low  
 19 tolerance level for politicians that, you know, stand up  
 20 and promise to do things or just say they'll do things  
 21 and then it's not followed through, but in the moment it  
 22 makes them look good and sound good, and so on.  
 23 And, you know, I would rather, frankly, you know,  
 24 place some parameters around something and get it done  
 25 to the best of my ability, or get others, you know, to  
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1 do it on my behalf, to the best of my ability, and see  
 2 how it can be built upon, than try and suggest that we  
 3 were in a position to be able to start addressing all  
 4 these other different issues, and if we do come back to  
 5 the question of inquiries, and so on, then I'll  
 6 elaborate further on that.

7 **Q.** Then if we go back to the remit, we can see the second  
 8 part of it is:  
 9 "to examine evidence about the information given  
 10 to patients with haemophilia in the 1980s about the risk  
 11 of contracting the hepatitis C virus from blood  
 12 products."  
 13 Then if we look down the page we can see the  
 14 "Findings", and there are findings there set out in  
 15 relation to SNBTS and heat-treated product, the first  
 16 three bullet points there, and then the last one is in  
 17 relation to the second part of the remit, which is:  
 18 "no evidence of any policy by Haemophilia Centre  
 19 Directors deliberately to mislead patients about the  
 20 risk of hepatitis."  
 21 On that last part, on the findings there, did you  
 22 understand why the findings in relation to that second  
 23 part of the remit were confined to whether or not there  
 24 was a policy in place to deliberately mislead patients  
 25 about the risk of hepatitis, rather than making findings

1 are people who are still affected by what happened all  
 2 that time ago -- but if we go back to, you know, when  
 3 this initially happened, given that we were looking at  
 4 historical events, you know, again, because I was in,  
 5 I suppose, facilitation mode of trying to get  
 6 information out and into the public domain, you know,  
 7 I was seeing an account there of like references to  
 8 patient information leaflets and the like, which, to my  
 9 mind, are woefully inadequate in terms of meaningful  
 10 communication with patients in any circumstances.  
 11 But I was also partly seeing it through the lens,  
 12 well, if that factually was what happened at the time,  
 13 you know, that's where I was with that piece of work --  
 14 was put it out factually what went on.  
 15 I'm acutely aware that -- and I'm even more  
 16 acutely aware with, you know, other discussions taking  
 17 place around the Inquiry and elsewhere, that, you know,  
 18 there was -- there is a much wider discussion about  
 19 that, and the one thing I do remember -- I say  
 20 I remember, I've seen in the papers me commenting, or  
 21 maybe being asked to comment, I can't remember which,  
 22 and this was in Scottish Government papers, rather than  
 23 I think anything the Inquiry has given me -- was that  
 24 there -- and I say this for completeness -- there was at  
 25 one point --

1 about the wider issues that were in the remit?  
 2 **A.** I think I'm right in saying that that second point of  
 3 the remit, to look at this area at all, was added  
 4 post-the meeting with The Haemophilia Society. Now, as  
 5 with other aspects of this report, you know, although  
 6 I kept getting reports about it from time to time, you  
 7 know, I was doing other things in between times, and,  
 8 you know, when it came before me or when I got an update  
 9 then I would comment, I would question or whatever, you  
 10 know.  
 11 But I was not following, nor could I in this or  
 12 any other area, you know, exactly what was being done to  
 13 look into these different issues. So there's an extent  
 14 to which, you know, I just would not be aware at all of  
 15 some of the detail of what was happening in that space  
 16 of gathering that information.  
 17 Looking at the report, I have vague recollections  
 18 of this at the time as well, you know, and I was  
 19 doing -- I was doing other work at the time on other  
 20 areas of work as Health Minister where, you know, I was  
 21 really seeing just how far we'd come but also how far we  
 22 still had to go in terms of communication with patients.  
 23 So I guess, given that we were looking at  
 24 something that was -- and forgive my use of the term  
 25 "historical" because I realise that, to this day, there

1 You know, the question was being asked, I can't  
 2 remember whether it was being asked explicitly to me or  
 3 whether it was more sort of raised as a sort of just  
 4 point in a wider document, you know, about could we or  
 5 should we, you know, try and look into what had happened  
 6 to individual patients? And I remember comment -- or  
 7 I don't think it was -- actually, I think I'm being  
 8 inaccurate in that but, certainly, the point was raised  
 9 that questions had been raised by so many people about  
 10 their own individual experiences and, as I say, I say  
 11 for completeness that, you know, I've seen myself  
 12 commenting at one point to the effect that "That's  
 13 a whole other investigation, you know, that's a whole  
 14 other line of enquiry, we need to again draw a line  
 15 around this if you've established" --  
 16 This is more than I put in the comment but this  
 17 was my thinking, you know, that basically, if you've got  
 18 the information about the generality of what was going  
 19 on at that time, that's what we needed to put out there.  
 20 So there were lots of other questions and they  
 21 grew as the work went on, you know, inevitably,  
 22 I suppose, you know, lots of questions that, yeah, there  
 23 could be lots of other lines of enquiry.  
 24 **Q.** Then if we go to page 12, just pick up some of the  
 25 "Conclusions", we can see at paragraph 13 -- 39,

1 sorry – conclusions are drawn in relation to the heat  
 2 treatment issue. Then if we go over the page, we can  
 3 see the conclusions are drawn in relation to the second  
 4 remit, and it says there:

5 "In relation to information given to the patients  
 6 about the risks involved with their treatment, we accept  
 7 that knowledge of the effects of HCV would have been  
 8 limited. We accept that clinicians would have had  
 9 available to them information about the general risks of  
 10 blood-borne disease, including hepatitis, and that they  
 11 would have been able to pass this information on to  
 12 patients. We accept that it would be good practice to  
 13 offer people a test for HCV when it became available and  
 14 to discuss the result with them. We have seen no  
 15 evidence that clinicians had a policy to test without  
 16 informing patients. Whether these policies may have  
 17 failed in the case of any individual patient is outwith  
 18 the scope of this exercise; we have outlined the  
 19 complaints procedure in this report and we also note  
 20 that some patients have started legal proceedings."

21 So aside from the fact that the policy here seems  
 22 to be about testing patients without informing them, and  
 23 the conclusions relate -- that the policy is to  
 24 deliberately mislead patients, were you satisfied,  
 25 reading that at the time, the conclusions, that they

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1 coming afterwards? Is that where the discussion  
 2 broadens out into public inquiries and further  
 3 investigations?

4 **A.** There's two different answers there. Again,  
 5 I apologise, but, factually, by the time this was  
 6 published, in terms of wider decision-making processes  
 7 within a devolved Scotland, factually the progression  
 8 was into the Parliament. These two petitions that I'd  
 9 referred to -- and by the way, you know, just to mention  
 10 that word "petition", you know, people think of, you  
 11 know, sheaves of signatures, and so on.

12 I mean, the whole point was it was an integral  
 13 part and an innovation in the Parliament to create  
 14 a gateway where any individual or organisation, could be  
 15 hundreds of people but could also be an individual, you  
 16 know, could find a route into the Parliament to have  
 17 their issues raised.

18 Again, in that first year or two, there was still  
 19 quite a lot of settling down about "And then what?"  
 20 Where do the petitions go? Where are they raised?  
 21 I can't remember whether it was built into the beginning  
 22 or whether it was something that was put in place over  
 23 the course of that first year but, certainly, by the  
 24 time this work was completed, there was -- I apologise  
 25 if I get the precision of the language of this wrong

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1 adequately addressed the remit, the allegations being  
 2 made by The Haemophilia Society?

3 I'm not asking you whether or not you think that  
 4 the conclusions are right but whether they actually  
 5 adequately addressed what the report set out to address?

6 **A.** I thought we had gone some way -- I say "we" in the  
 7 collective sense of the Executive -- I thought that we  
 8 had gone some way towards opening up discussion and  
 9 providing evidence around some of what had gone on. It  
 10 was very clear to me there were many, many other more  
 11 questions and, you know, it surprised me a little, to be  
 12 honest, as the years have gone by, you know, I'm talking  
 13 about long after I'd been a minister, and so on, but  
 14 also, even at the time, how much store was put on this  
 15 piece of work.

16 It was what it was. And I do, to this day,  
 17 genuinely see it as being part of a progression of a new  
 18 devolved Scotland starting to get their collective heads  
 19 and arms around what had gone on here and think about  
 20 what was possible within our powers, capabilities and  
 21 resources. And when I say "resources", I don't just  
 22 mean money; I mean human time, all of that.

23 I don't think I can add to that, really.

24 **Q.** So in terms of your thinking then that this is the first  
 25 step in a progression, what would you have anticipated

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1 but, essentially, there was a requirement, I think,  
 2 for -- certainly if it involved an area of Executive  
 3 policy, that there was requirement to get, you know,  
 4 an input from the Executive before the Committee started  
 5 to consider that -- there was a sort of sequencing of  
 6 that.

7 And, in addition, by that stage the Health  
 8 Committee had indicated very explicitly indicated that  
 9 they wanted to look further into these matters. So,  
 10 factually, that's where it was going to go next.

11 There was a separate set of dilemmas and  
 12 deliberations that frankly continued for me right  
 13 through my entire time in office about what else we, the  
 14 Executive, could and should do. Whether that was  
 15 about -- in the present day, going forward, and I was,  
 16 I have to say, you know, very focused on a lot of things  
 17 at that time, you know, thinking about how we can make  
 18 improvements for people now or whether, you know, that  
 19 was going back and looking at history -- or historical,  
 20 sorry, past events.

21 So, yeah, that continued to be a dilemma for me,  
 22 which I can elaborate on further.

23 **Q.** Can we pick it up then next --

24 **SIR BRIAN LANGSTAFF:** Before we pick it up next, may I just  
 25 ask a question.

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1 When you began earlier on in your evidence, you  
 2 said that you made a point of talking to people who had  
 3 issues to raise, although your officials were saying,  
 4 "Ooh, don't do that".  
 5 This document here is prepared by officials. They  
 6 say in the second-last sentence:  
 7 "We have seen no evidence that clinicians had  
 8 a policy to test without informing patients."  
 9 What is difficult about no evidence of nothing  
 10 happening is there is nothing to see if it hasn't  
 11 happened. The only way of finding out is by asking the  
 12 patients. Did you challenge or ask the people who  
 13 compiled this report how many patients they had spoken  
 14 to?  
 15 **A.** Well, there was some articulation of that in the report  
 16 and, again, you know, this is over 20 years ago, so  
 17 I genuinely can't recall discussions that took place  
 18 along the way, and there would have been discussions.  
 19 But I think I was sufficiently satisfied at the time  
 20 that there had been -- I wasn't satisfied that there  
 21 were no further questions to answer or work to be done,  
 22 undoubtedly, but I was satisfied that there had been  
 23 sufficient work done and conclusions drawn by those that  
 24 had done it, and a sufficient articulation of how they'd  
 25 done it to put something into the public domain, to

1 there was a pragmatism frankly to just say -- and sorry,  
 2 pragmatism -- just to finish my sentence -- pragmatism,  
 3 to just completely weren't going to allow it to run, and  
 4 I think actually, when I think about it, as well as just  
 5 the time limit -- limitations of my time, I suppose  
 6 I was also at an extent to which, although I commented  
 7 on drafts and asked questions, there was a limit to how  
 8 much I wanted to absolutely get in the middle of saying,  
 9 "But what about this and what about that?" and changes.  
 10 Because at what point does that start to become,  
 11 you know, me being too involved in something when I've  
 12 just said, "Look, report and publish", you know, even  
 13 looking back when I was doing my written statement and  
 14 realising that I did comment on things along the way,  
 15 you know, I thought -- you know, was that the right  
 16 thing to do? Should I have just left them to do  
 17 something and just publish it, you know, without ever  
 18 saying anything?  
 19 So I think I was -- actually, when I think about  
 20 it, I think that was a real hesitancy on my part as  
 21 well, because there were people that had looked at these  
 22 things, and there was an extent to which I had to let  
 23 their statements stand and, for me, say and publish how  
 24 they'd got there, even if I and others maybe, you know,  
 25 regarded these things as inadequate.

1 share it with The Haemophilia Society, to share it with  
 2 the Parliamentary Committee, and to take that debate and  
 3 discussion forward.  
 4 And I knew it would continue. I didn't know where  
 5 it was going to go, I didn't know where, as  
 6 an Executive, we would go next, but as I say it was  
 7 a progression. And I don't think I would add to that,  
 8 to be honest, because it was what was done, and what  
 9 could be said and done at the time.  
 10 Again, I understand the point. And I think, to be  
 11 honest, the fact that some of the commentary that is in  
 12 the report is there, you know, has spawned some of this  
 13 debate and discussion. It's not the way you'd  
 14 deliberately set out to do something but, in a way, it  
 15 has opened up some of that debate in itself, and I can't  
 16 tell you enough about how much -- for me, at that period  
 17 in time -- and frankly as a person, just in terms of the  
 18 way I think and work, how important it was for me to try  
 19 to have some open and informed discussion around this.  
 20 I think that became incredibly difficult and  
 21 I think, frankly, when I look at some of the exchanges  
 22 that that I myself was involved in, and stuff, it was  
 23 anything but, you know, measured, informed discussion,  
 24 which is by far and away my preferred mode. But lots of  
 25 things were very politicised at that time as well. But

1 **SIR BRIAN LANGSTAFF:** Yes, thank you very much.  
 2 **MS SCOTT:** Can we move, then, to the press, the news  
 3 release, HSOC0016541, and it's page 2 of that document.  
 4 So this is dated 24 October, news release headed  
 5 "Blood Products and Hepatitis C, Fact-Finding Exercise  
 6 Published". I'm just going to read out a couple of  
 7 paragraphs from it:  
 8 "Health Minister Susan Deacon has concluded that  
 9 Scotland's National Blood Authority was not negligent in  
 10 its efforts to remove the risk of contracting  
 11 Hepatitis C from blood products in the 1980s.  
 12 "The announcement follows an exhaustive  
 13 fact-finding exercise into the heat treatment of blood  
 14 products in the mid 1980s, the report on which has been  
 15 published today.  
 16 "The Minister asked officials to undertake this  
 17 exercise last year after concerns had been raised that  
 18 haemophiliacs who contracted the Hepatitis C virus  
 19 through blood products in Scotland need not have been  
 20 exposed to such a risk."  
 21 So just pausing there, is it right to understand  
 22 that you, having received that report, then drew from it  
 23 the conclusion that's articulated here: there's been no  
 24 negligence?  
 25 **A.** About that period in time.

1 Q. Yes, sorry, about that period -- about the matters in  
2 the report.  
3 Then if we turn over the page to page 3 you say  
4 this -- this is the second paragraph down:  
5 "Having studied all the facts, I have concluded  
6 that there is no evidence that the relevant authorities  
7 did anything other than their best for patients. As  
8 a result I do not believe that the NHS should pay  
9 compensation for non-negligent harm to those  
10 haemophiliacs who contracted Hepatitis C during the  
11 period covered by the report.  
12 "When I announced this exercise I stressed that  
13 we would -- as a new Executive -- take a fresh look at  
14 the evidence and we have done this.  
15 "But we have seen no new evidence and nothing to  
16 demonstrate that compensation is owed".  
17 I just want to ask you about that phrase that  
18 you've used there, that the "no evidence that the  
19 relevant authorities did anything other than their best  
20 for patients". The Inquiry heard evidence from  
21 Jeremy Hunt MP this week about the way in which  
22 institutions close ranks after something has gone wrong.  
23 And one of the ways in which he described what he was  
24 calling as groupthink in that respect was the stages  
25 that the group thinking goes through. And his second

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1 you've described, I think there was also a degree of  
2 concern and defensiveness across the entire system, and  
3 I -- you know, I think this has included us as  
4 ministers, you know, about just where -- I use this  
5 phrase again -- where we would go next and what the  
6 costs and consequences might be.  
7 But that was not devoid of concern for  
8 individuals. In fact a lot of it -- and I do just want  
9 to add this, I've hated some of the language, to be  
10 honest, that's -- especially when I re-read papers from  
11 Government back in -- back from that period. You know,  
12 it's language that's been around the Inquiry, I know,  
13 about "holding the line" and what was affordable, and so  
14 on. It's so dehumanising, it's horrible, I mean -- but  
15 what I do recall at that time was being desperately  
16 concerned about a whole range of other needs -- and I'll  
17 say needs, not even demands but needs -- that we were  
18 seeing for different people that required health and  
19 social care, for different staff that needed to provide  
20 health and social care.  
21 So if you had a parallel bit of groupthink, if you  
22 like, which was also about there's all this litigation,  
23 there's all these things that we could be asked to pay  
24 for, there's all these, you know, things that might come  
25 down the track, then yeah, I think -- I think that

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1 stage -- and I'm not quoting directly from what he said,  
2 I'm summarising it -- was that the thinking would be  
3 that these were good people trying to do their best, and  
4 we just need to recognise that it wasn't an easy  
5 decision.

6 Then the groupthink moves on to: we need to  
7 protect these people who were only trying to do their  
8 best.

9 Now, looking at the language that you have used or  
10 has been attributed to you in this news release, do you  
11 think, looking back, that the approach that  
12 the Department had to the investigation and to the  
13 process that they went through may have involved some  
14 element of that groupthink, of, "Well, look, these were  
15 good people trying to do the best they can, so therefore  
16 we must protect them"?

17 A. Undoubtedly, and I think in addition to that, and we  
18 may -- I'm sure we probably will come on to this -- what  
19 isn't yet apparent from the documents that we've  
20 looked at so far in the timeline that we've covered, is  
21 running in parallel with this relatively focused piece  
22 of work and that process of opening up wider discussion  
23 was a deepening or developing conversation, discussions,  
24 discussions, about financial issues and compensation and  
25 litigation and so, in addition, to the groupthink that

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1 combines to take you to a particular place, which isn't  
2 necessarily the right one.

3 Q. And you've been very clear that -- the premise of my  
4 question was: looking back, what -- do you think this is  
5 what has happened? You said yes.

6 The follow-on question from that then is: was that  
7 groupthink apparent to you at the time?

8 A. I would expect, and I say this partly just from kind of  
9 wider life and work, I would expect there to be an  
10 element of groupthink in any organisation. I would  
11 certainly expect there to be a substantial amount of  
12 groupthink in a very traditional arm of the British  
13 Civil Service, if you like.

14 And yet as I think -- as I've alluded to, but  
15 albeit on much less significant issues, but it did apply  
16 to significant issues too, then yes, I was conscious of  
17 that across a range of different areas. But I think  
18 you're right: I think you see more of that, obviously  
19 when you look through -- when you look back, than  
20 necessarily you were able to see at the time.

21 And the other thing I would want to say, just --  
22 you know, I -- this particular news release, in that  
23 particular moment in time -- and before I say it, can  
24 I just say, there were a lot of things we managed to  
25 achieve in those first couple of years, and do good

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1 things and bring to fruition. There are other things  
 2 that, you know, I look at now and regard as so  
 3 inadequate in terms of the way they were done. Not  
 4 deliberately, but they were. They just were.  
 5 And the thing that I feel horrendous about to this  
 6 day is that -- leaving the report to one side and all of  
 7 that, because, as I say, that was what it was in terms  
 8 of putting out there -- even leaving to one side, and  
 9 unpopular I know this is, right, you know, that my own  
 10 views were hardened and I was under some pressure to say  
 11 something around that general compensation issue and so  
 12 on, which is all woven up in here, even leaving these  
 13 substantive points to one side, I will always regret us,  
 14 and me in particular, not communicating better with the  
 15 people in Scotland that this affected. We had become  
 16 far too reliant on, and ... well, we had -- we'd become  
 17 far too reliant on that access with The Haemophilia  
 18 Society as a campaigning organisation and that whole big  
 19 fight that was taking place across the UK, and had lost  
 20 sight of the human connection that we should have been  
 21 building.  
 22 And I'm pleased to say in other areas we did  
 23 successfully build that with people in Scotland that had  
 24 needs. But ...  
 25 So by the time this finally came out -- and to be  
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1 mouth by whoever drafted this to say. Were they your  
 2 actual words, do you know?  
 3 **A.** I can't answer that for sure. I would have -- you know,  
 4 with any news release, you comment, you add -- I mean,  
 5 I think one of the things that, from a communications  
 6 point of view, that I always found very difficult was  
 7 sort of commenting on drafts. I mean, as a minister you  
 8 were rarely in a position to really draft something from  
 9 scratch. I've always preferred, like how I am today, to  
 10 do verbal communication, if I can, to talk to people.  
 11 So getting these sort of clunky officious defensive  
 12 drafts was never a comfortable starting place for me.  
 13 And, you know, I would tweak bits and, you know, you  
 14 couldn't fight on every front and you couldn't take  
 15 issue with every bit of paper, every letter that was put  
 16 in front of you, so you had to be selective. So I'm  
 17 sure -- I don't think I've seen anything in the  
 18 papers -- I may have done but I'm sure that would have  
 19 adjusted words, but I would have started from something  
 20 that probably wasn't my voice in the first place.  
 21 But at the end of the day, you know, my  
 22 responsibility -- I mean, it's my name that's there. So  
 23 I don't run away from that.  
 24 **SIR BRIAN LANGSTAFF:** Because what I wanted to ask you about  
 25 was the expression "unforeseen outcome":  
 91

1 honest, it was one of the most horrible months of my  
 2 life, for various reasons, and probably one of the most  
 3 horrible months for the Executive as well --  
 4 Donald Dewar died -- I'm getting -- yeah, I think just  
 5 in that period of time. It all was mixed up even with  
 6 when we were able to publish the report. The Executive,  
 7 you know, went into -- well, it seriously impacted both  
 8 politically but emotionally even for, you know, for  
 9 people. We went into a leadership contest as  
 10 a consequence and, as we see today, leadership contests  
 11 aren't very good things. It was a horrible period and  
 12 it's, in my view, a very suboptimal piece of  
 13 communication. And as I say, that's taking it away from  
 14 the matters of substance. But, you know, I also --  
 15 looking through the rearview mirror, if you like,  
 16 I understand all that was going on at the time, and that  
 17 doesn't make it right. So ...  
 18 **MS SCOTT:** Sir, I note the time.  
 19 **SIR BRIAN LANGSTAFF:** Well, let me just ask one question  
 20 which arises out of the discussion we've had on  
 21 groupthink.  
 22 We've heard quite a lot of evidence in this  
 23 Inquiry about questions of candour. Can I ask, in the  
 24 second-last paragraph in the page, beginning "I do not  
 25 for one moment". Those are words which are put in your  
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1 "... the sad fact is that the evidence shows that  
 2 nothing further could have been done to avoid this  
 3 unforeseen outcome ..."  
 4 I had thought that the report which you showed us  
 5 a moment or two ago, GGCL10, can we go to the last page  
 6 of that, the bit where it deals with there being no  
 7 evidence about clinicians misleading patients.  
 8 **MS SCOTT:** It's page 13.  
 9 **SIR BRIAN LANGSTAFF:** Thank you.  
 10 **MS SCOTT:** GGCL000010.  
 11 **A.** I'm not going to, you know, try and explain, less still  
 12 defend, to be honest, the way that that's expressed.  
 13 **SIR BRIAN LANGSTAFF:** What it --  
 14 **A.** I wouldn't have written -- that wouldn't have been my  
 15 choice of words, so I must have signed off on something  
 16 that was put in front of me.  
 17 **SIR BRIAN LANGSTAFF:** I mean, it looks as though, in this  
 18 last paragraph, does it not, that:  
 19 "We accept [it says] that clinicians would have  
 20 had available to them information about the general  
 21 risks of blood-borne disease, including hepatitis, and  
 22 that they would have been able to pass this information  
 23 on to patients."  
 24 In other words, they'd have been able to tell the  
 25 patients "If you take this, you may get -- very likely  
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1 to get, perhaps, hepatitis". So the disease was  
 2 entirely foreseen, wasn't it? It may not have been  
 3 avoidable. That's a different question. But it  
 4 certainly wasn't unforeseen, was it?  
 5 **A.** No, I would agree with you and, you know, I would say  
 6 the following not to excuse, but just to explain,  
 7 because, as I say, my name's on that and I don't like it  
 8 as a piece of communication at all, either in terms of  
 9 accuracy or tone, or the way it was put out there, you  
 10 know and, as I say, if there is one thing that I would  
 11 like to be able to turn the clock back and change, it  
 12 would be around the communication of a lot of that.  
 13 I'm not sure that the substantive actions or  
 14 decisions would necessarily have been different but, as  
 15 I say, I think this should have been a different way of  
 16 conveying all of this.  
 17 And the point I was going to say, that is to  
 18 explain but not excuse, is the other thing with the way  
 19 that these things were dealt with -- and I was reminded  
 20 of this looking through a lot of Inquiry papers as  
 21 well -- is you would have policy civil servants doing  
 22 a piece of work there, and communications people  
 23 drafting things over there, so there was a depth and  
 24 substance in the policy work and, to be fair, the  
 25 communications people, you know, were pretty much across

1 (1.05 pm)

(The Short Adjournment)

2 (2.10 pm)

3 **MS SCOTT:** I'm going to pick it up now just before you left  
 4 office as minister, so we know from the papers and from  
 5 other witnesses that the Health and Community Care  
 6 Committee published its report on hepatitis C on  
 7 3 October. We don't need to go to that but for the  
 8 transcript it's MACK0001929\_001.  
 9 We looked at that yesterday, and the  
 10 recommendation that they made for a payment scheme.  
 11 I just wanted to ask you about events very soon  
 12 before you left office. So it seemed from the papers  
 13 that you'd formed a view a matter of days before leaving  
 14 office that you would reject that recommendation made by  
 15 the Committee and look to appoint an expert group to  
 16 look into the question generally about no-fault  
 17 compensation and specifically in relation to those  
 18 infected with hepatitis C from infected blood.  
 19 Now, I asked Mr Chisholm yesterday about the  
 20 decision that ultimately he made to advise the Cabinet  
 21 to reject that recommendation from the Committee and I'm  
 22 not going to ask you questions about that because that  
 23 was his decision. But I just wanted to try to  
 24 understand from you why you had suggested, why you  
 25

1 the policy issues but they would write in a different  
 2 way and to promote/defend, I suppose, the Government in  
 3 a different way, and I think that's another reason why  
 4 when you're in terrain that is so deeply sensitive and  
 5 human, you just have to manage all that communication  
 6 completely different.  
 7 And I'm sorry I didn't have the wherewithal, for  
 8 a whole host of different reasons, to do that better at  
 9 the time.  
 10 **SIR BRIAN LANGSTAFF:** So what you're saying is you accept  
 11 that the statement is defensive rather than accurate?  
 12 **A.** Certainly defensive. I would need to, I suppose, really  
 13 immerse myself back there again to assess that question  
 14 of accuracy.  
 15 **SIR BRIAN LANGSTAFF:** I should say, because otherwise  
 16 I might be guilty of it myself: wholly accurate.  
 17 **A.** Yeah.  
 18 **SIR BRIAN LANGSTAFF:** That would be a better way of putting  
 19 it, I think.  
 20 **A.** It could certainly have been much better and more  
 21 precisely articulated --  
 22 **SIR BRIAN LANGSTAFF:** Thank you.  
 23 **A.** -- as well as more sensitive.  
 24 **SIR BRIAN LANGSTAFF:** Well, we'll take a break now for  
 25 lunch, and 2.10. 2.10.

1 thought, that commissioning an expert group to look at  
 2 this question of compensation was the way to go?  
 3 **A.** I wondered if you were going to bring a paper up on  
 4 that? No, you just want me to speak on that.  
 5 **Q.** Absolutely, I can do. It's SCGV0000247\_030. Just so we  
 6 can understand, if we go to page 2 of that document --  
 7 **SIR BRIAN LANGSTAFF:** Can we see the document first?  
 8 **MS SCOTT:** Yes. It starts on page 2. That's page 1. If we  
 9 go to page 2, we can see this is a draft, "Draft 2",  
 10 22 November 2001 from you to the First Minister, and we  
 11 can see the "Purpose":  
 12 "To seek agreement to the Scottish Executive's  
 13 formal response on the recommendations made in the  
 14 Health and Community Care Committee ..."  
 15 So just to put this in context, we looked  
 16 yesterday with Mr Chisholm at this minute that had been  
 17 developed and that he ended up submitting to the Cabinet  
 18 for decision. So this appears to be a draft, drafted  
 19 during your time and then developed during his time.  
 20 The bit that I would draw your attention to on  
 21 this question is at page 4. So, in fact, if we just go  
 22 back to page 3, we can see the relevant heading.  
 23 It says, "Discussion" and then "Support for Hep C  
 24 sufferers", and then if we go over to the following  
 25 page, paragraphs 14 and 17 are the relevant paragraphs:



1 "14. Our proposed response to the Committee  
2 therefore rejects these recommendations that propose  
3 financial and practical support for all people who have  
4 contracted Hep C from NHS Scotland blood. Instead, it  
5 offers to set up an expert group to examine whether the  
6 general principle of offering such support is a) right,  
7 b) practicable, and if so, what universal criteria could  
8 be applied."

9 Then go down at 17:

10 "Establish commission to examine system of  
11 negligence and fault-based compensation.

12 "The response to the Committee falls slightly  
13 short of their recommendation. It offers to look at the  
14 issue for all health outcomes, rather than just for  
15 blood and blood products. Also, the proposed review of  
16 the issue could conclude that the general principle was  
17 unsound or impracticable. In that case the review would  
18 not progress to the detail of when and how compensation  
19 should be awarded. Nevertheless, establishment of  
20 a review group would represent a significant gesture by  
21 the Executive."

22 So the question is why had you suggested going  
23 down this route of commissioning an expert group?

24 **A.** So on the point about an expert group, and even if  
25 I were looking at this cold, because you've put the  
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1 that period, and remember the Committee report had been  
2 published, I'm sure I should have been involved in  
3 discussions and, as I say, it makes sense to me even now  
4 that one of the actions to set forward would be to set  
5 something up in that kind of space.

6 But of the papers there, and there was one on the  
7 21st that you shared with me, which I think came up  
8 yesterday as well, a minute of the 21st, with a draft  
9 Cabinet paper?

10 **Q.** Yes. I believe that's the one we looked at yesterday  
11 with Mr Chisholm. Do you want to have a look at that?

12 **A.** Yes, please, thanks.

13 **Q.** SCGV0000247 -- no, I've got the wrong -- that is the  
14 wrong reference. I'm just about to give you the  
15 reference for this one. I noted down the wrong  
16 reference, so I'm not sure what the reference is. If  
17 you just give me a second, I will be able to find it.

18 I think -- I'm not sure -- I don't think  
19 21 November is the one we looked at yesterday.

20 **A.** I would be grateful if you could check that because  
21 I think Malcolm in his evidence referenced the 21st.

22 **Q.** Sorry, this is a paper from 22 November we're looking at  
23 now. I'm not sure I've got a reference for the paper  
24 from 21 November. You think you've seen one from the  
25 21 November, do you?  
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1 papers in front of me from all that time ago, the  
2 absolutely sensible next step, I think, would be have  
3 that, because from what had been set out as a direction  
4 of travel and an intent on the part of the Committee  
5 would have had to have been translated into some  
6 workable proposition, with a proper framework around it.

7 So, actually, the idea of setting up a group to  
8 me, as I say, just logically feels like the right way to  
9 progress an issue.

10 If I could though, I'd like to just understand  
11 a bit better something about some of these papers  
12 because I've been confused by this. As you say, this  
13 was just a few days before I left office and, in that  
14 period there -- and now this is a year on from the point  
15 in time we were talking about before when the Executive  
16 review was published. But, at this point, we were by  
17 then having another leadership contest for another new  
18 First Minister, under very different circumstances, and  
19 my recollection is that it was earlier that month the  
20 previous First Minister resigned, and it was that very  
21 same week that the dates in question here came -- sorry,  
22 it was the very same week as the dates in question here,  
23 where that transition of leadership was taking place.

24 Now, my reason for asking about this is because  
25 I have no direct memory of what I did or didn't do in  
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1 **A.** I would love to be able to reach my own files and then  
2 I could answer with absolute confidence but I'm fairly  
3 certain, on that detailed timeline, there was a draft  
4 Cabinet paper and that the date of the covering note was  
5 the 21st or --

6 **Q.** Yes --

7 **SIR BRIAN LANGSTAFF:** He said the 21st, I think. I think  
8 30 November is the date that I was given, and the  
9 reference is SCGV0000247\_002.

10 **MS SCOTT:** Sorry, sir, you're absolutely right. That's the  
11 document we looked at yesterday with Mr Chisholm.

12 I think it may be -- can we go to the --

13 **SIR BRIAN LANGSTAFF:** I have a note that he said it was  
14 21 November but it didn't, I think, correspond with what  
15 was on the document.

16 **MS SCOTT:** Can we go to page 1 of the document we're  
17 currently looking at, please, Lawrence. I think this  
18 might be the answer to what Ms Deacon is saying.

19 The covering email for this document,  
20 SCGV0000247\_030, which is the one we've been looking at  
21 from 22 November, if we go to page 1 of that, this the  
22 covering email, is this what you're talking about,  
23 21 November, 2001?

24 **A.** Yes, that dates the timeline for me. Thank you very  
25 much, yes.  
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1 Q. I started -- I think I got myself muddled up.  
 2 So this is the covering email, this was the  
 3 document we were looking at. This is the covering email  
 4 dated 21 November. If we go over the page, we can see  
 5 that the -- there's a draft dated 22 November and the  
 6 document we looked at with the Mr Chisholm is dated  
 7 30 November.  
 8 A. And I think could you go to the back of the document  
 9 we're currently on? So Malcolm's responded to this in  
 10 his capacity as then Deputy Minister for Health and  
 11 Community Care. I don't see any response from me. And  
 12 I don't know, I'm not saying I didn't -- I don't know  
 13 what stage of drafting I did or didn't see or agree to,  
 14 just as a matter of factual accuracy.  
 15 And what I do know, because I actually queried  
 16 this in the documents because I was trying to answer  
 17 that question for myself about what -- where I had -- at  
 18 what point I'd left in the decision making, so that I  
 19 would know for coming here, and when asked about that,  
 20 one of the things that I also -- I don't know if  
 21 "discovered" is the right word because maybe it's in the  
 22 papers somewhere, but the submission deadline, if you go  
 23 back --  
 24 Q. Go back to the first page.  
 25 A. Yeah, the submission deadline was extended because of  
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1 of another draft but at that point it's still a draft.  
 2 Q. You have told us already and we can see, from the  
 3 papers, correspondence, and discussions between yourself  
 4 and various Health Ministers in the UK Government, so  
 5 there are various bits of correspondence between  
 6 yourself and Lord Hunt, there's correspondence between  
 7 yourself and Yvette Cooper, and there's a record of  
 8 a telephone call with John Hutton, and I'll read the  
 9 references into the transcript in a moment, but that all  
 10 suggest that you saw the issue of a payment scheme for  
 11 those that have been infected with hepatitis C from  
 12 blood or blood products, as a UK-wide issue.  
 13 Could you just tell us why that is?  
 14 A. It wasn't just the -- a payment scheme. And I may say  
 15 that some of those -- the -- alluded to changes there in  
 16 terms of subsequent developments came a little bit later  
 17 from all this. So in my time, and where I left off,  
 18 what we were still all grappling with was wider policy  
 19 in direction, an explanation, and that whole area of  
 20 compensation, financial assistance and so on. Then, it  
 21 was later, they expect -- you know, put definition  
 22 around that and the rest for others to answer.  
 23 But as far as the -- that general shared view,  
 24 I would put it, because I don't think there was ever  
 25 a point in time where, you know, there was all these  
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1 that change of leadership, of an entire change of  
 2 First Minister, reshuffle of Cabinet, and so on.  
 3 So as I say, just for accuracy -- and obviously if  
 4 there's anything else in the Inquiry's papers and so on  
 5 that answers that point, then, you know, I'll be guided  
 6 by that because I don't have that recollection, but  
 7 I don't know, and I would query, how far things were  
 8 signed off as such.  
 9 And to be honest, by that stage, precisely because  
 10 there was -- nobody apart from perhaps the incoming  
 11 First Minister knew who was going to be in which Cabinet  
 12 positions after that, but we all knew there was going to  
 13 be a First Minister. So I think there was also a bit of  
 14 a hiatus at that point to allow that then new Cabinet to  
 15 consider and draw breath.  
 16 Q. So I understand where that goes. So although you're --  
 17 is this right: although your name is on that draft  
 18 paper, you don't remember whether you were involved in  
 19 that decision, and you may not have been, for the  
 20 reasons that you've articulated?  
 21 A. Well, there's a difference between involvement, I guess,  
 22 and sign-off. What I definitely place a question mark  
 23 over is just how far I was involved in signing anything  
 24 off. I may have been involved in offering comments of  
 25 some sort, either on general direction and/or on wording  
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1 ministers coming together saying, "Yes, let's do all  
 2 this together", I think, as in a number of other areas,  
 3 actually, you know, I think there was an evolution of  
 4 thinking that this is something that we need to work  
 5 together on, just as there were issues around pay at  
 6 that time, just as there were issues, you know, around,  
 7 oh, different aspects of service development.  
 8 You know, the -- oh, and actually, and I should  
 9 have said this, you know -- variant CJD actually was  
 10 probably one of the most important contemporary examples  
 11 at that time of the need for co-operation, that just  
 12 because you could do things separately didn't mean you  
 13 should.  
 14 And that was a shared view across the four  
 15 nations. I mean, I think if you look at a lot of the  
 16 earlier correspondence during my time, you'll see that  
 17 the -- routinely, there's a lot of communication that's  
 18 shared between four ministers, not just two even.  
 19 I think there was a particular axis between Scotland and  
 20 the UK, and at that time it was before anybody was  
 21 comfortable talking about England, in that context.  
 22 There was a particular axis there because of where we  
 23 were, in our thinking and discussion, and yes, some of  
 24 the litigation issues and so on that was around, but it  
 25 was an area that it made sense to try to move forward  
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1 together on. You could share more understanding. If  
 2 there was going to be some kind of financial  
 3 arrangement, you could try and work something out.  
 4 And by the way on the finances, and I have to  
 5 Malcolm Chisholm has much more expertise on this very  
 6 specific issue than me, and probably most people,  
 7 because of two policy issues dealt with in his time --  
 8 well, one is my Deputy Minister and then subsequently  
 9 this, but -- and it's the interface between payments  
 10 made under the devolved power and social security  
 11 arrangements. Then. Been some changes since in powers  
 12 in more recent years.

13 So -- and financial issues, you know, there were  
 14 these interfaces that would need to be managed on  
 15 litigation, as I know you've looked at, even though  
 16 something had been decided in court -- in the English  
 17 courts, that would be taken into account in terms of any  
 18 decision here, and so on.

19 So there was a sense that that the way that, yeah,  
 20 this was one of the areas that we should move forward  
 21 together on, and not because you had to, but because it  
 22 made sense, certainly at that time and given the issues  
 23 we were looking at then.

24 Q. And for the transcript --

25 A. Oh, and I'm sorry, could I add something to that --  
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1 "To invite Cabinet to endorse a course of action  
 2 regarding compensation for people who have been infected  
 3 with hepatitis C as a result of receiving blood (or  
 4 blood components) from the National Health Service in  
 5 Scotland. This course of action takes account of the  
 6 recent English High Court judgment clarifying the law in  
 7 this area."

8 Then you set out the background to  
 9 Mr Justice Burton's judgment and then at 5, it says  
 10 this:

11 "The inevitable consequence of this is that we  
 12 cannot avoid the immediate financial consequences of  
 13 settling legally valid actions already raised under  
 14 CPA."

15 Just pausing there, this comes after you had got  
 16 legal advice from counsel. We don't need to go to that  
 17 but, for the transcript, it's SCGV0000243\_161, and  
 18 that's what you're reflecting there in paragraph 5.

19 Then if we go over the page, you set out your  
 20 course of action that you recommend, and if we can pick  
 21 it up at five bullet points down, you're setting out  
 22 what you've borne in mind, and then you say:

23 "while we sympathise with individuals affected, we  
 24 also have to recognise that any compensation payment  
 25 which we make which is not in connection with  
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1 Q. Yes.

2 A. -- because I realise that statement could be really open  
 3 to interpretation. When I say move forward together,  
 4 that means discussing, sharing thoughts, not -- a kind  
 5 of no-surprises approach, in a sense, with each other.  
 6 It doesn't mean to say that you're ever bound to either  
 7 party's direction of travel, but you at least work  
 8 through that thinking process together, and if you think  
 9 you then can work together on delivering something, you  
 10 do that too.

11 Q. For the transcript the references to the communications  
 12 and discussions I mentioned earlier are SCGV0000174\_068,  
 13 DHSC0038520\_109, and SCGV0000247\_036.

14 I'm going to move on to a different topic now, and  
 15 it's in relation to the consequences in Scotland to the  
 16 decision that was handed down by Mr Justice Burton in  
 17 the hepatitis C litigation in March 2001.

18 I'm going to pick it up in a submission that you  
 19 made to the Cabinet on the 6 June 2001, once you'd  
 20 reached your decision about what you were suggesting  
 21 Scotland should do, and we find that at SCGV0000243\_156.

22 So we can see it's 15 June -- I don't know why  
 23 I said 6 June -- Friday, 15 June 2001, "For Decision",  
 24 for the Scottish Cabinet:

25 "Purpose

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1 a legitimate action raised under the CPA will make it  
 2 virtually impossible in the future to maintain the  
 3 general principle of not paying compensation for  
 4 non-negligent harm. Each new special case erodes that  
 5 principle."

6 Then:

7 "any out of court payment would be a compassionate  
 8 move by government, but is likely to be used by pressure  
 9 groups, the media and interested MSPs to argue for the  
 10 principle of compensation to be extended ..."

11 Then if we go down to paragraph 8:

12 "I also considered various up the options such as  
 13 hardship funds, a public enquiry, and no-fault  
 14 compensation for people affected before the inception of  
 15 CPA. However, my strong view, supported by legal  
 16 advice, is to settle only those cases which are exactly  
 17 analogous with the English judgment, ie those where the  
 18 claimant received blood or blood products contaminated  
 19 with Hepatitis C virus after 1st March 1988 and has  
 20 raised an action under CPA which is not time-barred  
 21 (or likely to be allowed by courts even if it is  
 22 time-barred)."

23 Then paragraph 9:

24 "Any other course of action would establish a new  
 25 policy on non-negligent compensation that would have far  
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1 reaching consequences in the future; we would need time  
 2 to consider this very carefully in consultation with the  
 3 other UK administrations."  
 4 Then you set out at paragraph 10 your recommended  
 5 course of action. Well:  
 6 "My recommended course of action:  
 7 "does not conflict with previous government  
 8 policy", et cetera, and then:  
 9 "removes the need for genuine claimants to fight  
 10 their case through the courts (although it is possible  
 11 that some claimants will decline to settle on reasonable  
 12 terms, in which case we shall face one or more court  
 13 cases anyway) ..."  
 14 Then you go on to sort out the other consequences  
 15 of your decision.  
 16 So we can see here you are weighing up on the one  
 17 hand the pros and the cons of the consequences of the  
 18 judgment, saying, on the one hand, if we pay beyond  
 19 those cases that would succeed under the judgment, if it  
 20 applies in Scotland, that would set a precedent. Then  
 21 you've considered on the other hand a compensation  
 22 scheme, and you're balancing that out in this paper for  
 23 the Cabinet; is that the right way to understand what  
 24 you're doing here?  
 25 A. I don't think I would substantively disagree with your  
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1 particularly on matters of law. I'm very wary about  
 2 that, for reasons I hope you'll appreciate.  
 3 I suppose I would make just a couple of points  
 4 really. One, that point about the sort of mental  
 5 somersaults at times that I think many of us were going  
 6 through, as to how we could try and do something, do the  
 7 right thing for -- both for people who had been affected  
 8 by infected blood and blood products, primarily  
 9 obviously we've been considering issues relating to  
 10 haemophiliacs, but, as we all know, there were others  
 11 too.  
 12 But also, more widely than that, what any of this  
 13 would mean for an NHS that was where we -- we did the  
 14 right thing and the best thing for all the people that  
 15 depend on it.  
 16 So we, as I say, we went round and round and round  
 17 on these issues and, as I say, I will leave that paper  
 18 to stand on that particular issue. The only thing  
 19 I would add, and I know the Inquiry has taken  
 20 an interest in the question of advice -- I also, and  
 21 I don't know if was written down anywhere and for all  
 22 that I've studied public policy for years, it maybe the  
 23 opposite is written down somewhere. But, in my head, as  
 24 an elected politician, a minister during that period,  
 25 there is a kind of hierarchy of advice, probably at the  
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1 summary there. I suppose what I would add to it was  
 2 this was one of a lot of deliberations. This specific  
 3 paper came about because of the specific ruling in these  
 4 particular cases. And I hope you'll forgive me but  
 5 20 years on, and, you know, on these detailed legal  
 6 matters, I remember us spending so much time really  
 7 looking at them, understanding them, thinking about the  
 8 implications -- and, by the way, by then on this case,  
 9 we weren't just thinking about matters to do with blood  
 10 or blood products; there was additional concerns like  
 11 the Consumer Protection Act had come into play, that  
 12 that might further impact on other aspects of NHS  
 13 practice and products, and so on.  
 14 So you were into a whole other array of  
 15 considerations about what might the implications of this  
 16 judgment be. But, as I say, 20 plus years on, and given  
 17 the time that we spent on some of the detail of these  
 18 matters at the time, and, as you say, we sought counsel  
 19 opinion, there is a paper on record which  
 20 Malcolm Chisholm and myself were both at -- sorry,  
 21 a note of a meeting that we were both at, where that --  
 22 that was discussed with the QC in question, and so on.  
 23 I wouldn't trust myself 20 years on to really talk  
 24 about much technical detail here to be honest, because  
 25 I almost certainly would be imprecise and inaccurate,  
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1 bottom bit, not in a disrespectful sense, as policy  
 2 advice.  
 3 That's the space where, as a minister, you could  
 4 push in quite hard and argue the toss and, you know,  
 5 think about different ways of doing things.  
 6 There's then, in the case of a Health Minister,  
 7 medical other or other, I would say, specialist advice  
 8 and particularly in areas of health and public health,  
 9 and so on, you'd tread with great caution, I think, when  
 10 you start to question bona fide clinical advice.  
 11 And probably alongside that, I don't think I'd go  
 12 so far as to decide between lawyers and doctors but, you  
 13 know, alongside that, there's legal advice and certainly  
 14 particularly when you get to the stage of taking like  
 15 counsel opinion, and so on.  
 16 I just note that because sometimes that the thing  
 17 about advice, what advice did you get, what advice did  
 18 you follow, you know, is a very -- and I just amplify  
 19 a very important concern to understand how and why  
 20 ministers take decisions, but there's multiple types of  
 21 advice. There's multiple sources of advice. Different  
 22 levels of weight that you have to give to different  
 23 types of advice and, at the end of the day, you're held  
 24 to account for how you balance all of that together and  
 25 come out of the other end.  
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1 So, yes, this was another development in the  
 2 continued evolution, if you like, of some of the legal  
 3 precedents and outcomes of certain, you know, litigation  
 4 processes that were developing in different parts of the  
 5 UK, but it sat in that much wider tapestry and all that  
 6 range of advice and opinion that was coming towards us.  
 7 **Q.** So my question is in relation to the precedent point,  
 8 and it's this: why would making payments to those who  
 9 have received a defective product, so infected blood, as  
 10 a result of the judgment, lead to a general principle to  
 11 pay compensation for non-negligent harm? So if we look  
 12 back at the paper that we've just been looking at, it's  
 13 the bullet point that says, "While we sympathise with  
 14 individuals affected", so about a third of the way down:  
 15 "while we sympathise with individuals affected, we  
 16 also have to recognise that any compensation payment  
 17 which we make which is not in connection with  
 18 a legitimate action raised under the CPA ..."  
 19 So I understand that to mean if you were to pay  
 20 those that had been infected before 1 March 1988, so  
 21 before the Consumer Protection Act came into force, the  
 22 rationale seems to be "it will make it virtually  
 23 impossible in the future to maintain the general  
 24 principle of not paying compensation for non-negligent  
 25 harm". And my question to you was: why was that the

1 And I genuinely and sincerely hope that this  
 2 Inquiry -- you know, because if anybody can do it,  
 3 I think, you know, you can, given, you know, the extent  
 4 to which you've looked across, you know, all the sort of  
 5 policy issues, but also the technical issues and legal  
 6 issues and all of those matters, then, you know, I think  
 7 if we can get progress, not just for haemophiliacs and  
 8 others that have been affected through infected blood,  
 9 but frankly others, others for the future, progress, to,  
 10 you know, get some greater clarity and definition about  
 11 how you deal with harm, whether it's fault-based harm or  
 12 not, for people that have clearly had an adverse  
 13 experience, then, you know, I think it would be great if  
 14 we could, you know, get better clarity and definition  
 15 around that.  
 16 At that point in time, we were still, as I say,  
 17 going round and round and round trying to work out how  
 18 to marry together what many of us would feel the need,  
 19 or desire to do, but equally, had to marry it together  
 20 with, you know, that wider framework that we were  
 21 working within.  
 22 Given where we were at the time. As I say, yes,  
 23 I know there's been lots of further development and  
 24 thinking and discussion and people pushed into that and  
 25 tried with varying degrees of success to take different

1 view that was taken, if those people had received  
 2 a defective product?  
 3 **A.** So there's two aspects to this, I think, from where I'm  
 4 sitting, now and then.  
 5 I think what comes through there is that we are  
 6 still returning to that general principle -- right,  
 7 that -- I know that this is, you know, contested today  
 8 especially in this room, but, you know, we are keeping  
 9 coming back to "we have to stick to a general principle  
 10 here". And that -- sorry, just to repeat the full  
 11 words:  
 12 "... the general principle of not paying  
 13 compensation for non-negligent harm."  
 14 The challenge in the question -- and the  
 15 deliberations in so many rooms, over so much time --  
 16 was: how do you help people who have been affected as  
 17 a consequence -- in consequence of infected blood and  
 18 blood products and maintain that principle?  
 19 And this was another development where -- and this  
 20 is where I don't want to comment on the technicalities  
 21 because I don't feel equipped to do that all these years  
 22 on -- you know, this was another process of advice and  
 23 recommendation that said that if we were to stick to  
 24 that general principle, here's how it applies in this  
 25 case.

1 decisions, you know, and it's not undermining that  
 2 principle. I understand all of that. I'm just saying  
 3 at that moment in time we were still working round and  
 4 round that.  
 5 **Q.** So having taken the decision to only pay what's been  
 6 termed "analogous cases", I just want to ask you a few  
 7 questions about what your expectation was as to how that  
 8 would play out.  
 9 Was it your expectation that those cases that had  
 10 been issued and that were analogous would be identified  
 11 and negotiations started to see whether settlement was  
 12 possible?  
 13 **A.** I don't think I can comment beyond what's in the paper,  
 14 and there was a lengthy public statement that I made to  
 15 Parliament on all of this, and I think I would just  
 16 point towards that. Because I think -- well,  
 17 I certainly -- I don't think I can talk about  
 18 expectations and the likes back at that point in time.  
 19 I think it -- I can only turn to myself what was  
 20 actually recorded and communicated at the time.  
 21 **Q.** And were you kept up to date at all about what steps  
 22 were taken?  
 23 **A.** Again, I don't recall how much we were told at the time,  
 24 but I've seen additional papers now, from that period,  
 25 that, you know, is about some of that process working

1 through and, to be honest, there was nothing there.  
 2 There are other things that I've seen during the Inquiry  
 3 that I may have sort of raised my eyebrows at, but in  
 4 this instance, you know, the Cabinet -- and it wasn't  
 5 just me by this stage, the Cabinet had taken a decision  
 6 and it was for officials to take that forward and apply  
 7 it, and ministers wouldn't be involved in things like  
 8 legal settlements and so forth. We would set the policy  
 9 framework.  
 10 **Q.** Set the policy framework, expect the officials to get on  
 11 and do it?  
 12 **A.** (The witness nodded)  
 13 **Q.** And expect them to report back to you or not  
 14 necessarily?  
 15 **A.** Not if they're acting within the letter and the spirit  
 16 of what a full Cabinet discussion and paper has decided.  
 17 Yeah.  
 18 **Q.** I'm going to turn now to the last topic that I'm going  
 19 to ask you questions about, and it is the topic that  
 20 we've trailed I think all day, and that's the question  
 21 of public inquiry. My question to you is very simple.  
 22 Why did you not make a decision to have a public  
 23 inquiry?  
 24 **A.** So I said earlier when we touched on this that I wanted  
 25 to make a distinction between a statutory public inquiry

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1 inquiries but not public inquiries as we would recognise  
 2 them for the purposes of this discussion today.  
 3 So there was already, you know, quite a high bar  
 4 there for anything that you would do in that space in  
 5 Scotland.  
 6 Secondly, any public inquiry at any time,  
 7 necessarily takes time to establish, many years to hold,  
 8 and considerable resource to deliver. That's not  
 9 a reason for not having a public inquiry, but it is just  
 10 a statement of fact.  
 11 And at the beginning of devolution, we had no idea  
 12 where public inquiries would even sit in the new way  
 13 that we were going to be working. As I've mentioned  
 14 already, you know, we had this entire new Parliament in  
 15 place with this committee system that now -- like so  
 16 much at the beginning of devolution, hopes and  
 17 expectations and optimism far outweighed and outstripped  
 18 what was ever going to be deliverable, it has to be  
 19 said.  
 20 But, at that point in time, we had huge  
 21 expectations for how the Parliament would become this --  
 22 and its committees would become the space through which  
 23 there would be open Inquiry, and so on -- and -- and  
 24 this is still in me in the generic space in about  
 25 a public inquiry in Scotland, in that first year or two

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1 and some other form of independent investigation, and on  
 2 that latter point incidentally, as I say, that's not  
 3 a label that I ascribe to the piece of work that I did  
 4 commission. That was a fact-finding exercise. I'm  
 5 talking about some other form of bigger, wider  
 6 independent investigation.

7 So on a statutory public inquiry, having said  
 8 publicly and again now, that I wanted to move into the  
 9 issues involved here with an open mind and hear people's  
 10 views and so on, there is one area where I did have  
 11 a clear and firm view from the outset, and I never  
 12 moved, and that was on the issue of a statutory public  
 13 inquiry. And I said that when I met with  
 14 The Haemophilia Society, I said it in subsequent  
 15 correspondence, and I'd like to just explain now why  
 16 that was the case and what my rationale was, because  
 17 I've heard others come since, and give a very different  
 18 rationale, certainly from what mine was at that point in  
 19 time.

20 So if I talk about public inquiries in general, at  
 21 the beginning of devolution, there had been very, very  
 22 few Scottish public inquiries. I mean, most notably  
 23 we'd had the work of Lord Cullen around the Piper Alpha  
 24 Disaster and the Dunblane shootings. There are very,  
 25 very few Scottish-led inquiries. Some other judge-led

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1 of devolution, the other issue, I think, was in this and  
 2 in many other areas I think I and my ministerial  
 3 colleagues were very aware of the fact that anything we  
 4 did, particularly in that first year -- I say a year  
 5 but, you know, a year or two, that very early period --  
 6 but anything we did for the first time was a precedent,  
 7 by definition.

8 And there were many other demands for public  
 9 inquiries. When I say demands, well, I'll give  
 10 an example that I think maybe you want to touch on but,  
 11 you know, another very complex and sensitive issue  
 12 that I dealt with through my time as Minister was the  
 13 experience of bereaved parents whose children's organs  
 14 had been retained without consent and, for example, they  
 15 began, at the beginning of that process, with a demand  
 16 for a public inquiry.

17 Now, in that case, we managed to find a way were  
 18 we could work through things within the context of  
 19 devolution, in a way that achieved far quicker, better  
 20 resolution and in a way that moved forward and I think  
 21 our mindsets at that time was very much to try to find  
 22 ways, within the powers and processes that we had where  
 23 you could make real and practical difference to resolve  
 24 issues for people and make progress with people. And,  
 25 in that particular instance, I remember one of the

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1 parents being quoted publicly, saying I'm really pleased  
2 we didn't have a public inquiry because we've managed to  
3 move forward much better than we would have done through  
4 that means.

5 So for me, in a generic sense, if I can put it  
6 that way, I cannot envisage circumstances in those first  
7 few years of devolution where I would have reached for  
8 a public inquiry as a means to progress an issue. Can  
9 I say "progress"? I mean, investigate, enquire, bring  
10 forward answers, you know, learn lessons for the future,  
11 that whole area.

12 I cannot think of a situation where we would have  
13 done that for a whole host of these different reasons,  
14 and I suspect my colleagues would have been in exactly  
15 the same place for the same reason, and it was many,  
16 many years later, actually, before public inquiries  
17 became more common in Scotland, and there's been --  
18 they've become even more common just in the recent  
19 period. And I've seen ministers of different political  
20 hues over the years, you know, rearticulate some of what  
21 I've said there. So that's the generality about  
22 a public inquiry.

23 And then if I could turn to how, for me, and my  
24 whole background in work and before I became  
25 a politician and since, you know, is kind of in the

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1 illustrated or evidenced by some of the experience with  
2 Penrose -- I don't want to say any more than that -- on  
3 the other hand, or alongside that perhaps, I didn't have  
4 a closed mind about other forms of independent  
5 examination, and the experience that we had around  
6 children's organ retention, I gave as an example of  
7 this, where we did manage to move things on through that  
8 type of process, several strands to it, in fact.

9 I -- and I say this openly and honestly -- I could  
10 not see at that -- at the point of time -- for the  
11 duration of that two-and-a-half years that I was there  
12 which, you know, isn't very long in the span of time,  
13 but it was a significant period, and there was a great  
14 deal changing in the whole way we were working in  
15 Scotland and in that period in time, I couldn't see what  
16 the parameters of an independent examination would be  
17 and what the means would be through which we could take  
18 this forward.

19 The potential, actually, wouldn't even just end up  
20 in an even worse kind of complicated confusion of issues  
21 that that very small exercise that I had taken forward  
22 did, and I was very, very keen to ensure that if there  
23 was going to be any other work done, particularly in  
24 looking back to what had happened in the pre-devolution  
25 period, you had to be confident and clear they could be

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1 space of trying to think about how do you get the right  
2 facts and the right process in place to get, you know,  
3 a fair and reasonable result and outcome for people?  
4 Because if you mismatch the problem with the process,  
5 then it doesn't move you forward.

6 So those were my general concerns about a public  
7 inquiry. As far as looking at infected blood issues  
8 were concerned, the more I looked at this -- I've  
9 touched on this earlier -- the complexity of the issues  
10 involved here and the degree to which they took place  
11 before devolution and the extent to which they involved  
12 a complexity of UK-wide issues, for me, you know, even  
13 if I hadn't had that a starting point about public  
14 inquiries in a more general sense, for me that  
15 absolutely tipped the balance that we could not move  
16 this issue forward through that vehicle.

17 I understand why people would ask for it,  
18 although, interestingly, there was a lot of different  
19 demands at that time, or different phrases even, both in  
20 the Parliament and even some of the campaign materials  
21 about independent examinations, public inquiries, and so  
22 on. But as far as (*unclear*) public inquiry was  
23 concerned, for me, that was not going to be the way  
24 forward in Scotland. And I think some of the concerns  
25 that I've just articulated there, you know, where

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1 done, and done properly and well, as I think ...  
2 I don't -- I won't say with certainty what exactly was  
3 in my head then, but certainly looking back now, I think  
4 you could only ever do that on a UK basis apart from  
5 anything else, whatever process you put in place.

6 **Q.** Just so that I can understand your evidence, because  
7 you've given -- because you've been asked this question  
8 various times during the day at different times, but is  
9 this a fair way to not summarise, but crystallise what  
10 you've said: I think you said that as a result of that  
11 internal investigation, that there were lots of  
12 questions that were left unanswered, and then talked  
13 about the multiplicity and complexity of the issues that  
14 had been raised with you at that stage, and you've also  
15 told us that you saw that as the beginning of  
16 a progression or part of a process. And then is it fair  
17 to understand what you've just told us is that while you  
18 didn't think that the next stage in that process was  
19 a public inquiry, you didn't actually know what the next  
20 stage would be?

21 **A.** Yeah, there was a next stage evolving, as we've  
22 discussed, around these payment issues because of the  
23 Committee report, but in terms of wider forms of  
24 investigation and inquiry, I hadn't worked that out, and  
25 I wasn't bad sometimes at being able to work out a way

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1 to do complex and difficult issues, but that -- yeah,  
 2 I think I'll just leave it at that.  
 3 **MS SCOTT:** Sir, those are the questions that I had for  
 4 Ms Deacon.  
 5 **SIR BRIAN LANGSTAFF:** Yes, well, you'll want to take  
 6 a moment or two to enquire of Core Participants what  
 7 questions they may have.  
 8 Let me explain, Ms Deacon. The Inquiry is in  
 9 large, in statute, a collaborative exercise between  
 10 Core Participants and the Inquiry team, and  
 11 Core Participants play a valuable role. Part of  
 12 that is, through their Recognised Legal Representatives,  
 13 putting questions through Counsel to the Inquiry to  
 14 a witness about the evidence which that witness has  
 15 given. Plainly, they can't really finalise that until  
 16 they've heard everything you've had to say, and we have  
 17 to give them a reasonable time to do that. So what  
 18 would you suggest? About half an hour or so?  
 19 **MS SCOTT:** I would have said not before half an hour,  
 20 certainly.  
 21 **SIR BRIAN LANGSTAFF:** Not before. Very well. Well,  
 22 let's -- I'll use the formula not before, because it  
 23 means that it may be a little bit later. I can't tell  
 24 you how long it'll be. You'll be told if it's any later  
 25 than 4.30. Yes, about -- 3.30.

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1 the end of your sentence there, if it were to be looked  
 2 in more fully. I think it's probably just -- I'm  
 3 guessing, but as a statement of fact, I suspect that it  
 4 would have been as an issue that legal eyes would see at  
 5 any time.  
 6 And I paid closer attention, actually, to the  
 7 description lists in the context of looking at some of  
 8 these papers in the Inquiry, and I'm aware of some of  
 9 the questions and concerns that people who have -- I say  
 10 people who have been affected, Core Participants, if  
 11 that's the best way to refer to people in this context.  
 12 I've seen some of the questions that have been  
 13 raised. In this instance, having a legal person on that  
 14 distribution doesn't particularly register with me as  
 15 signalling any more than it's seen as an issue where  
 16 there are legal issues. There may be other times where  
 17 I would think why, but I know that people have asked,  
 18 you know, why were the lawyers in the room? And that's  
 19 often the practice for a lot of issues, even if there  
 20 isn't litigation, even if there aren't things being  
 21 contested. You know, there's just -- it's often the  
 22 case. I don't think I should say any more than that  
 23 about lawyers being in the room, but -- in this  
 24 environment. But genuinely I didn't -- yeah, I hope  
 25 I've answered.

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1 **(Laughter)**  
 2 Just as well I corrected myself. Any later than  
 3 3.30, and you will too of course. And I can't tell you  
 4 how long you'll be kept after that, it depends how many  
 5 questions there are and how long an answer they deserve.  
 6 **A.** Thank you.  
 7 **SIR BRIAN LANGSTAFF:** So 3.30.  
 8 **(2.57 pm)**  
 9 **(A short break)**  
 10 **(3.30 pm)**  
 11 **MS SCOTT:** Ms Deacon, I've got a handful more questions for  
 12 you. Can we start by putting up on the screen  
 13 WITN4436004. This the memo we looked at earlier this  
 14 morning of 5 August 1999, and this is a question  
 15 relating to the copy list, it's copied into Mrs Towers  
 16 of solicitors, and the same point is made in relation to  
 17 that same point the other memo we looked at this morning  
 18 of 15 July 1999.  
 19 The question is this: why were these initial  
 20 briefings copied to Mrs Towers, a solicitor, from the  
 21 start of your tenure? Was the issue of Contaminated  
 22 Blood Scandal viewed by officials as a matter which had  
 23 potential legal ramifications if it was to be looked  
 24 into more fully?  
 25 **A.** I think the short answer to that is yes, even without

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1 **Q.** The next question also relates to this document, so if  
 2 we could go over, please, to page 2 and this is the bit  
 3 we looked at earlier, at the bottom of page 2, we were  
 4 looking at the lines to take from this. Then if we  
 5 could go over to page 3., and it's the first paragraph  
 6 there:  
 7 "The actions taken by NHS in Scotland in the 1980s  
 8 to ensure the safety of blood products administered to  
 9 haemophiliacs do not suggest that there was any  
 10 negligence on the part of the health services ..."  
 11 It's the reference there to negligence, and we  
 12 have seen that again in later documentations, and we saw  
 13 it in your press release. After the internal  
 14 investigation the conclusion you drew was no negligence,  
 15 and the question is: why was the focus, even from this  
 16 early point -- and we see it through the documents, on  
 17 the question of whether there'd been negligence -- was  
 18 that not a matter for the courts and the Government  
 19 should be looking at something different?  
 20 **A.** Again, I'd be cautious about making a general comment  
 21 for all the reasons I said earlier about being so far  
 22 away from some of the discussions now and some of the  
 23 precision around it, but there is a comment maybe of  
 24 some precision that I can make, albeit with a slight  
 25 caveat because my memory is playing tricks on me. But

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1 that word "negligence" -- and when I say "memory" this  
 2 isn't thinking about 20 years, this is just thinking  
 3 back to when I wrote my statement, I'm afraid -- but  
 4 I repeat it in my statement because it was the  
 5 phraseology that was put inconsistently in reports to me  
 6 on the issue, including in the previous page, I think,  
 7 actually, in this submission.  
 8 **Q.** If we look at page 2 --  
 9 **A.** Yes, please. Thank you. Or the previous page, sorry.  
 10 **Q.** Or page 1.  
 11 **A.** Or maybe the ...  
 12 **SIR BRIAN LANGSTAFF:** It's the top of page 2, I think.  
 13 **MS SCOTT:** It's also on page 1.  
 14 At paragraph 2, at the bottom of that paragraph 2:  
 15 "Our advice [it starts] has been that the blood  
 16 transfusion services were not negligent in administering  
 17 infected blood and blood products ..."  
 18 **A.** No, the point -- without hunting through the document,  
 19 the point is that -- I think it's in that submission,  
 20 I am sorry, I'd need to focus on it better to find it --  
 21 where the official commentary was along the lines of  
 22 "The Haemophilia Society are claiming negligence on the  
 23 part of ..." And, as I say, I think that phraseology  
 24 has worked it's way into my submission as well and  
 25 I think, subsequently, when I was looking in more  
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1 reference to negligence.  
 2 **A. (The witness nodded)**  
 3 **Q.** And we saw in your press release after the internal  
 4 investigation you drawing a conclusion there was no  
 5 negligence.  
 6 **A. (The witness nodded)**  
 7 **Q.** And the question is whether or not you adopted this  
 8 assertion from the Civil Service that there was no  
 9 negligence or whether you probed it and came to that  
 10 view yourself?  
 11 **A.** Oh, I've probed a lot of things. Whether they were the  
 12 right things, I don't know. But see, in my non-lawyer's  
 13 head, right, and I realise that the terminology is  
 14 really important in lawyers' heads, but in my  
 15 non-lawyer's head, in all honesty, and this includes  
 16 looking at the points that The Haemophilia Society have  
 17 raised at various points, and in their submissions to  
 18 the Executive and so on, I think there has been a lack  
 19 of clarity, let's just say, sometimes, about whether the  
 20 debate is around fault and causation, or whether it is  
 21 around, you know, some -- what might be termed more --  
 22 in the space of the sort of moral question and so on.  
 23 And I think -- if I may say so, I think the -- I've  
 24 thought a lot about this point about how you resolve and  
 25 take issues forward, as you've gathered and  
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1 detail, I think it's a moot point.  
 2 I don't think the word features in The Haemophilia  
 3 Society release on this specific issue. Again, I'd need  
 4 to look at it and I think it's a moot point whether  
 5 that -- this phraseology, they seem to be suggesting  
 6 negligence or words to that effect.  
 7 Here we are, the first paragraph, actually:  
 8 "The haemophiliacs appear to be claiming  
 9 negligence by the [NHS in Scotland]", as it was referred  
 10 to then.  
 11 So I would agree and I'm aware of the point -- the  
 12 question that you raise, and I think it would have to be  
 13 for others to answer why that phraseology and  
 14 terminology had become so embedded, maybe.  
 15 **Q.** And the next question arising from that is that these  
 16 assertions that are being made about no negligence and  
 17 so on by officials in the documentation. Is that  
 18 something that -- and we see you drawing that conclusion  
 19 yourself after the internal investigation in your press  
 20 release. Is that assertion something you adopted  
 21 without question or did you probe this --  
 22 **A.** Sorry, I'm --  
 23 **Q.** -- conclusion?  
 24 **A.** -- not sure.  
 25 **Q.** So we see in the documents, as you've just discussed,  
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1 cross-referred with other examples where I feel it's  
 2 been possible to do that.  
 3 And I think by the time I was engaged in this,  
 4 I think there had been so much kind of compound  
 5 articulation -- or articulation around this, in other  
 6 words layers of articulation, not just on the  
 7 Government's part, I may say, but politicians and the  
 8 points that were raised, and on different sides, that  
 9 I think it just -- I just think the further you get away  
 10 from when something has actually happened, the more  
 11 messy all of that becomes and -- yeah.  
 12 So for me, when I look back even now, and I look  
 13 at all sides, for I look at MSPs' questions, of which  
 14 there were lots, MSPs' correspondence, of which there  
 15 was lots, debate in the chamber and then committee,  
 16 campaign materials, I just think by that stage,  
 17 everybody was being pretty fuzzy and pretty -- and  
 18 because I understand why those campaigning were trying  
 19 to get some movement, so you look to different, you  
 20 know, ways that you can do that, but then it adds to the  
 21 fuzziness and then Government and others all start, you  
 22 know, fighting something over there instead of over  
 23 there. Yeah.  
 24 I'm sorry, I've moved quite far away from the  
 25 question that was asked. But if I could finally, just  
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1 in my, as I say, layperson's terms around this specific  
2 point in time and the specific issue raised, it was part  
3 of my thinking, rightly or wrongly: have they done  
4 something wrong here or negligent? And my small "n",  
5 negligent? Have they been too -- you know, consciously  
6 too slow to act? Has somebody, you know, been sleeping  
7 on the job and not done something that should have been  
8 done? Has somebody not spent the money on something  
9 that should have been done? That's where my head was,  
10 rightly or wrongly.

11 **Q.** In commissioning an internal investigation into the  
12 issue of heat treatment in the mid 1980s, were you  
13 concerned about the -- about whether or not it was  
14 appropriate to ask officials who had presumably worked  
15 closely with those in SNBTS whom they were investigating  
16 to investigate their colleagues?

17 **A.** I think in the first instance, as I've said throughout  
18 and in my written evidence, yes is the short answer in  
19 the first instance. To take that to the next stage.  
20 And, you know, I -- well, that's my short answer.

21 **Q.** So yes, you were concerned about that?

22 **A.** No, no, no, I think it's -- sorry, I thought your  
23 question was is it appropriate, I think was --

24 **SIR BRIAN LANGSTAFF:** Yes.

25 **MS SCOTT:** Sorry, it was is it appropriate, I beg your  
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1 build confidence in parts of -- not just Government but  
2 particularly in the NHS, you know, there's real issues  
3 here, in that first stage form of what would be termed  
4 an internal examination and inquiries, so that you don't  
5 constantly sort of reach for the external inspection.

6 To be fair, we do have, you know, hierarchies and  
7 escalating processes in other areas, but actually in  
8 Government? Government, you know, it's really muddy and  
9 messy. And I can understand why people don't have a lot  
10 of trust in that. From where I was sitting, and I'm  
11 sitting still, yes I do think it was appropriate in that  
12 context for that exercise at the time.

13 **Q.** Did you ever meet people who were infected over the  
14 period that you were a minister?

15 **A.** I only had -- and this sits alongside one of the  
16 comments I made earlier -- I mean, I only had one formal  
17 meeting with The Haemophilia Society and through  
18 a combination of lots of different things, which, yes,  
19 was being spread so thin across so many different areas  
20 and trying to meet and visit so many parts of the  
21 country, but which also I think became, over time, what  
22 I was alluding to earlier, which -- and, you know, was  
23 probably getting closer to what might have been my  
24 official's mindset rather than when I started out, of  
25 just feeling we're not just going to be able to have  
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1 pardon, yes.

2 **A.** So in answer to the question is it appropriate, then  
3 yes, I think it was in the first instance, because you  
4 have to -- you know, there's some fundamental points  
5 here I think that are quite important about -- I know  
6 previous public inquiries, you know, like Phillips and  
7 so on, have said some things about public  
8 administration, and I suspect this one will too, and  
9 I think that -- sorry, I don't know whether it's  
10 improper for me to second guess that. But I think that,  
11 you know, at the heart of some of this is that really  
12 interesting question about, you know, how you avoid some  
13 of the groupthink we spoke about earlier, how you  
14 counter just close working relationships that -- that  
15 even if people do act very professionally, that people  
16 aren't confident in. But then also if you bring in  
17 independent people all the time, then often they miss  
18 other things that, actually, you know, people who are  
19 part of the system can see. And it's a challenge all  
20 the time, in any form of inspection, regulation, and  
21 audit, and so on.

22 So I think that's a truly interesting question.  
23 It does nothing to resolve what's gone on before, or not  
24 been resolved before, but I think there's a genuinely  
25 interesting question for the future about how you can  
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1 a constructive conversation here and move things  
2 forward, then I think that stood in the way of me  
3 meeting more people who had been through this experience  
4 in Scotland.

5 I had other chance meetings, as you do. I was in  
6 a very high profile role at that time and I was going  
7 all round the country, so there was kind of no hiding  
8 place for me, and I had other chance conversations as  
9 I went about the country, and of course also was  
10 representing a constituency. But I ought to have had  
11 more dialogue during that time and that's something I've  
12 taken away from this experience.

13 **Q.** After discovering the complexity of the issues and  
14 appreciating that it was realistically a UK-wide matter,  
15 did you ever consider calling for a UK-wide inquiry  
16 instead of just a Scottish one?

17 **A.** No, and I think my -- because of some of my wider views,  
18 I think again, my -- I would make a distinction between  
19 a statutory public inquiry and some other form of  
20 investigation. I think what I said earlier was if there  
21 was going to be some form of wider retrospective  
22 examination, then I think it would need to be done at  
23 a UK level and that's, you know, what's happening  
24 through a public inquiry here and now.

25 I think at that time -- I think in that time I was  
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1 more concerned with what we do looking forward and yet  
2 you could never get out of -- you can never move  
3 forward, because there hadn't been resolution about the  
4 past.

5 So I hadn't got to the conclusion that you suggest  
6 there, and I don't know if I would have done, and  
7 I think I still would have been concerned about  
8 introducing further delay. But then nor did I think  
9 we'd be sitting here 20 years on.

10 **Q.** Is it right to understand from that, and I think your  
11 earlier evidence, that it was your view that you  
12 couldn't have looked at the whole scandal, ie matters  
13 that were outside Scotland, if you had an investigation  
14 within Scotland, even though you were responsible for  
15 NHS in Scotland with which the scandal sat?

16 **A.** Can I just clarify -- (overspeaking) --

17 **Q.** I've mangled that question.

18 Let me just read it as it says. You said it  
19 became clear that the Scottish issues were linked with  
20 all sorts of UK decisions and practices, and that it  
21 would be acutely difficult as a Scottish administration  
22 to look at all of that.

23 Why couldn't you have looked into the whole -- all  
24 of the issues, if you were responsible for the NHS in  
25 Scotland?

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1 I think that was also linked with that question  
2 about how much to look back, how much you want your  
3 Blood Transfusion Services to be spending time looking  
4 back when you actually need them to be looking forward,  
5 and that's just a further dilemma in all of this,  
6 I think.

7 **Q.** I'm going to return to the issue of the internal  
8 investigation. Now, Dr Keel gave evidence to the  
9 Inquiry, and she told the Inquiry that the officials  
10 took at face value the information given to them about  
11 what was told to patients about the risks of  
12 non-A, non-B and results of testing, and so on, that  
13 they took that information at face value.

14 Were you aware that that was the nature of the  
15 fact-finding exercise, which your officials had  
16 undertaken?

17 **A.** I'm sorry to ask you to go back a little bit.

18 **Q.** Yes?

19 **A.** Did you say that she said in her evidence that that was  
20 the case?

21 **Q.** Yes. She was asked questions about how the  
22 investigation was carried out --

23 **A.** Oh, I see. I'm sorry, the investigation. Sorry. Yeah.

24 **Q.** -- and she said the officials had taken at face value  
25 what Professor Lowe and Professor Ludlam had told

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1 **A.** I don't think we -- I think there were real limitations  
2 of power and there absolutely would have been  
3 limitations of resource, and I think there would be  
4 a serious question about, you know, if you're going to  
5 respect the devolution settlement, even if you could --  
6 even if you had the powers and even if you had the  
7 resource, I would really question the appropriateness of  
8 that.

9 Yeah. I think the area where -- no, I was just  
10 going to reinforce the point that I think the area where  
11 the UK-wide piece was so important, and the fact that --  
12 and it links to us trying build these new relationships  
13 post-devolution as well -- was, as I say, much more  
14 about looking forward, and if I could -- I touched on  
15 this earlier and I know it's a long step removed from  
16 the question, but I've mentioned vCJD.

17 You know, I think I certainly -- I can't speak for  
18 other ministers of the day -- I think we were very  
19 focused on the future, in terms of a lot of blood  
20 services and supply issues at that time. And I think we  
21 were informed, to be fair -- well, I say I, I shouldn't  
22 speak for others -- I think we were informed by what had  
23 happened before, not least to make sure that we took the  
24 right steps that we could do in our time to prevent  
25 there being further harm and suffering down the track.

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1 them -- had said, sorry, to patients about those issues.  
2 The question for you is: were you aware that that --

3 **A.** Yes, I understand.

4 **Q.** -- was the extent of or the nature of the fact-finding  
5 exercise which your officials had undertaken?

6 **A.** I think I've seen quite a bit and more through the  
7 eyes -- through the papers of the Inquiry, to satisfy me  
8 that there was some real and meaningful examination  
9 around this done, in a range of different places.  
10 I think that particular example that you've given me,  
11 and if that was what was said in evidence, I think that  
12 kind of sits in a slightly different space, which is --  
13 it kind of comes back to my question about how far you  
14 drill and what you ask, and I don't -- in the first  
15 instance, I don't necessarily see there being anything  
16 wrong with that being an approach at an early stage  
17 investigation or inquiry.

18 I think then, and this is the point about getting  
19 facts out into the open, what you need to follow that  
20 through and make it meaningful is you then need to be  
21 able to deal with the next stage which is when people  
22 say, "Wait a minute, that's not our account", and then  
23 you need to have a mechanism to then further test. And  
24 we only ever completed, really, that first step, so  
25 I think --

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1 I'm not hugely critical, necessarily, of that  
2 approach being taken in that first step, but it's how  
3 you work that through and then when so-called facts are  
4 challenged or contested -- or evidence is contested, how  
5 then you identify what's contestable.

6 Because I think there was a -- you know, there was  
7 a degree or a level of information came out through that  
8 piece of work, that hadn't been collected in one place  
9 previously and, clearly, I've seen it has been used by  
10 others and not contested, you know, just around some of  
11 the issues around state of science and knowledge at the  
12 time and the sequence and chronology of events, I think  
13 into the terrain of what people were told and  
14 particularly when you take that to the level of your  
15 individual clinicians, and so on, then, as I said  
16 earlier, clearly there's far more questions.

17 Yeah.

18 **Q.** The evidence you've just given, that within that first  
19 stage, that internal investigation, you didn't think  
20 there was any problem with not probing or testing the  
21 evidence of Professor Lowe and Ludlam. Is that the  
22 case, even though the patients were saying something  
23 different?

24 **A.** To answer just for myself, in terms of a process point  
25 here, well, there's two things. One, if you've asked  
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1 report, left them feeling they'd been disbelieved and  
2 dismissed?  
3 **A.** I can see that with much more clarity now than I could  
4 at the time. And I think that's also a function of --  
5 you know, I've heard some other evidence, not all, but  
6 I know you've heard -- I'm guessing every ex-minister  
7 that's been here has said there's so many different  
8 things going on and I suppose I've said, during that  
9 devolution period, and without a well-developed  
10 government machine and with, you know, one  
11 Deputy Minister, and so on, and trying to make progress  
12 across the whole raft of the way that we set the  
13 direction for the NHS in Scotland, and so on, then there  
14 absolutely was a limit to how much I could question all  
15 these things but, again, I come back, because that --  
16 I'm really not in the business here of trying to make  
17 any excuses for me personally.

18 I suppose what I feel -- well, in relation to that  
19 specific question, my short answer would be yes, and I'm  
20 sorry that that was the case, and I think taking things  
21 on face value at the time, with the available time to  
22 examine, to question, to challenge, and so on, that  
23 there was, then, you know, it just -- it was not  
24 practically possible. It was -- you know, I talk a lot  
25 about the art of the possible and there was a lot of  
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1 for evidence to be collected in something, unless it's  
2 your full-time job, frankly, you can't, you know, be  
3 questioning every bit of that evidence gathering, unless  
4 you're the person that's actually in charge of the  
5 inquiry and doing it for yourself, or overseeing it.

6 And that is not the role of a minister in doing  
7 these things. You put a process in place. You have to  
8 deploy people to look into these things. Yes, you can  
9 have touch points along the way and ask questions, but,  
10 you know, you can't, and I would argue you shouldn't, be  
11 in interrogating a lot of these points.

12 I come back to the point that you then need to be  
13 able to have a way of testing and questioning further  
14 afterwards, which we never resolved in that time.

15 I think I -- is that sufficient to answer the  
16 question that's been raised? I'm sorry, it's getting  
17 late and I'm forgetting what the start of the question  
18 was.

19 **Q.** Then a follow-on question from that: as the issues about  
20 information given to them about non-A, non-B, the risks  
21 and the treatment, what they were told about their  
22 infections, had emanated from patients, who had said  
23 they had not been so informed, ie they took a different  
24 view. Do you understand how your conclusion, that there  
25 was no evidence to support what they were saying in the  
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1 things during that period that was the art of the  
2 possible in terms of moving them forward and that  
3 doesn't mean that you always did things as well as you  
4 would have liked.

5 But I also, just off the back of that, just want  
6 to make another point that I haven't made elsewhere, and  
7 again as somebody who is really interested in these  
8 things and has been over the years, there is so much  
9 about the way that the decision-making process works in  
10 Government that is so defective. I mean, it just is  
11 defective.

12 And, you know, all this bittiness of information  
13 and all the, you know, the departmentalism that sits in  
14 every -- you know, I've worked with governments in  
15 different places and at different times, you know, all  
16 that departmentalism about everybody having to, you  
17 know, protect their minister and put their point over  
18 there, and, you know, and you're getting reports on  
19 things that have been through goodness knows how many  
20 filters, and all that kind of stuff. The  
21 dysfunctionality of that, to actually get meaningful  
22 dialogue, discussion, and get to the truth, and to  
23 navigate the terrain of different opinions of things, is  
24 just utterly ineffective.

25 And I just think this is an example of just  
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1 a system failure of being able to actually address the  
2 needs of groups of human beings that have experienced  
3 awful harm and suffering and just not managing to do it.

4 So, I'm sorry, I've extrapolated what was  
5 a precise question into a much wider observation, but  
6 that's my conclusion.

7 **Q.** Then the last question is in relation to the actions  
8 taken after receipt of the report. Why did you not meet  
9 with campaigners and/or The Haemophilia Society to  
10 explain to them the limitations of the report, the  
11 difficulties you'd experienced, your plan for taking  
12 things forward and the fact that this was the first  
13 stage in the process, not the end of the road or the end  
14 of the story?

15 **A.** I wish I'd had more discussions at that point. I made  
16 that plain earlier. I think there was a difficulty  
17 about continuing the dialogue with the Society, at the  
18 UK level. I just -- I -- but that, as I said before and  
19 I'll say again, just was not a reason nor an excuse to  
20 not have more dialogue with the people in Scotland that  
21 were absolutely at the heart of this.

22 **MS SCOTT:** So those are the questions I was going to ask  
23 from Core Participants. I'm just looking behind me. No  
24 questions from Ms Deacon's legal --

25 **SIR BRIAN LANGSTAFF:** Well, I have no questions of my own.  
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1 presentations for that week which focus on section 9 of  
2 our terms of reference, so issues in relation to  
3 candour, cover-up, openness, and so on, obviously themes  
4 we've heard with a number of witnesses, but we'll be  
5 focusing on aspects of that during that week.

6 Then the second week in September, 19 September,  
7 we will be hearing the evidence of Professor Tedder and  
8 then there will be some other witnesses to be added to  
9 the timetable, so if Core Participants and legal  
10 representatives keep an eye on the website in the course  
11 of August, there will be some additions to the timetable  
12 there.

13 **Statement by SIR BRIAN LANGSTAFF**

14 **SIR BRIAN LANGSTAFF:** Thank you. Well, as I have said,  
15 I have some important things to say.

16 Until September, of course, the Inquiry's work  
17 will continue but I would like to speak to you about two  
18 things in particular. First, on the Inquiry timetable,  
19 and then to update you on the question of interim  
20 payments.

21 Firstly, the timetable.

22 The majority of legal representatives of people  
23 infected and affected have asked me to put back the date  
24 when they have to submit written submissions to me from  
25 24 October to 23 December, with oral submissions to  
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1 Ms Scott?

2 **MS SCOTT:** Ms Deacon, have you got anything you'd like to  
3 add?

4 **A.** No, I think I've shared a lot of reflections there and  
5 I'm very grateful for getting the opportunity to do it  
6 and I hope, if nothing else, it's given people a sense  
7 of some of what happened along the way, however  
8 inadequate it might have been.

9 But I would just say, I suppose having said that,  
10 however slow, messy and inadequate, I'm pleased that, in  
11 a Scottish context, I think, you know, we did manage to  
12 move things on, if not bring things to a place that they  
13 needed to be brought to. Thank you.

14 **SIR BRIAN LANGSTAFF:** Well, can I, for my part, thank you.  
15 You've given us quite a bit of information about the  
16 context in which you made the decisions and a lot of  
17 detail of your own thoughts around that. Thank you.

18 Can I ask you just to stay there for a moment or  
19 two because I have one or two things which I must say.  
20 They don't concern you directly.

21 Ms Richards, the first, I think, is to ask, as  
22 I always do: when next and who?

23 **MS RICHARDS:** We resume our hearings in the week beginning  
24 12 September. The first witness that week will be  
25 Lord Crisp and we have a number of witnesses and  
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1 follow next year.

2 They suggest next year starting on 20 January.

3 There are good reasons for this request. They  
4 point out that to do justice to the evidence that we  
5 will hear in September and early October, and to allow  
6 proper time for consultation with their clients, more  
7 time is necessary for the preparation of final  
8 submissions. They argue that this should enable more  
9 helpful and focused submissions, and thus result in no  
10 loss of speed overall. And I accept that none of the  
11 participants wish to prolong this Inquiry a day longer  
12 than is necessary and I join them in that.

13 Well, I'm going to accommodate that request,  
14 although with two slight modifications. A new deadline  
15 for these final written submissions on the evidence will  
16 be 16 December this year. 16 December this year.  
17 That's a Friday.

18 It follows that the time for oral submissions will  
19 also need to be moved, and these will now be heard  
20 during the weeks of the 16th, which is a Monday, 23 and  
21 30 January, the weeks beginning on those dates.

22 Second, interim payments. Well, as you know, on  
23 15 July I invited submissions from Core Participants and  
24 Government bodies on whether I should exercise my powers  
25 to make a recommendation about interim payments.  
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1 The Inquiry received 15 submissions on this  
 2 matter, all of which urged me to recommend that an  
 3 interim payment should be made. In addition to those  
 4 formal submissions, the Inquiry received several hundred  
 5 emails from individuals, which indicates the strength of  
 6 feeling among the Inquiry participants.

7 Having considered the submissions as well as the  
 8 evidence and report by Sir Robert Francis QC, I have  
 9 today, in line with the requirements of the  
 10 Inquiries Act, sent my report on interim payments to the  
 11 Minister. I have disclosed it to Core Participants.

12 In advance of my sending the report to him, he  
 13 gave me the permission to publish it, and I should say  
 14 that it's a requirement under the Act that I have the  
 15 Minister's permission to publish and he gave it to me.

16 I have decided that my report exactly as delivered  
 17 to the Minister will be published on the Inquiry's  
 18 website once these proceedings have concluded today. It  
 19 is a report about interim payments only. As you read  
 20 it, please bear in mind that the full-scale of the  
 21 evidence heard and read by the Inquiry, and the results  
 22 of its investigative work, can only be recognised in my  
 23 final report. Please also remember I have no power to  
 24 order interim payments. My sole power is to make  
 25 a recommendation. It doesn't have to be accepted by

1 in this short report on interim payments. I repeat.  
 2 The interim report concerns only whether I should  
 3 recommend interim payments.  
 4 Finally, let me say this. I know that many of you  
 5 follow the Inquiry's work closely, but I am conscious  
 6 that being a participant in an inquiry can bring with it  
 7 an emotional burden. The Inquiry team will continue  
 8 working away preparing for the next hearings but, until  
 9 we meet again in September, I wish you a peaceful and  
 10 restorative break. Thank you.

11 (Applause)

12 (4.08 pm)

13 (The Inquiry adjourned until Monday, 12 September 2022)

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1 Government, nor does it have to be accepted in full.

2 I set out to answer two questions. First, whether  
 3 I should exercise my powers to make a recommendation  
 4 that interim payments should be made, and second -- oh,  
 5 I should say, I have recommended that they should!

6 The second issue concerned the scope of those  
 7 payments, and this is more complex.

8 Sir Robert Francis QC recommended interim payments  
 9 because the payment of full compensation could not be  
 10 delivered quickly. He made a compelling case that  
 11 interim payments are needed now to alleviate suffering,  
 12 and further suffering, and I agree with him and I am  
 13 obliged to recognise that the practical way to make  
 14 payments swiftly is to do so through the current  
 15 infected blood support schemes. And that's why I've  
 16 decided to recommend that interim payments of no less  
 17 than £100,000 are made to all the infected people and  
 18 all the bereaved partners who are currently registered  
 19 with the schemes and those who register between now and  
 20 the inception of any future scheme.

21 I know that that will be disappointing to some of  
 22 you who may fall into neither category, and I apologise  
 23 for that. I ask those who are disappointed to remember  
 24 that this is not the end of the Inquiry's work and the  
 25 question of compensation and its scope is not resolved

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