Thursday, 29 July 2021

(10.00 am)

(Proceedings delayed)

(10.12 am)

MS RICHARDS: Sir, before I ask Lord Clarke further questions, you raised a question yesterday about the actual amount paid to the Macfarlane Trust in 1989. We have sought to ascertain what the answer is. I'm just going to put up a couple of documents and give you a couple more references. These aren't questions for Lord Clarke and we haven't troubled him with the material.

The short answer, and then I'll just show the documents, is that we understand that £24 million was what was paid to the Macfarlane Trust, calculated on the basis of 1,200 times 20,000. In fact, the documents show that there were then slightly more than 1,200 applications, and so there was a need for a small amount of further money. Some of that further money was paid out of interest, but there appears to have been one further request, or possibly more, to the Government for a small additional sum to ensure that those could be paid.

That, I think, was later in 1990 and 1991. The answer to the question of why the earlier materials

refer to 20 or 19 million is a little more complicated. It, I think, turns on how the Macfarlane Trust was set up and envisaged, I think, initially £5 million being utilised from the Macfarlane Trust, but that, I think, proved to be not an option that could be gone down because of the need to set up the Macfarlane Special Payments Trust but we can investigate that in more detail, but the short answer, sir, is £24 million was paid.

SIR BRIAN LANGSTAFF: I recollect Peter Stevens' evidence about his outrage, as we called it, at the suggestion the £5,000 should be taken out of --

MS RICHARDS: 5 million.

SIR BRIAN LANGSTAFF: -- 5 million, sorry -- out of the Macfarlane coffers in order to pay for what the Government had just announced as a further bonus.

MS RICHARDS: Yes, and I'll just show the documents, three documents, and give you a fourth document reference, just so that everybody can see the basis for what I've just indicated.

THE WITNESS: Just to make it clear, before I start being misreported again, this all after I left the Department. This is all nothing to do with me.

MS RICHARDS: Some is after, some is before, but it doesn't require any questioning of you, Lord Clarke.

So MACF0000002_022. These are the minutes of a meeting of the Macfarlane Trust on 22 March 1990. If we go to page 3. I'm sorry, I don't have -- thank you. If we look under the heading "Ex-gratia payment -- progress report":

"The administrator reported for formal record that negotiations had been completed shortly after the January meeting and the Macfarlane Special Payments Trust Deed had been engrossed on 29th January 1990. A Copy of the Deed had been sent to all Trustees. He further reported that, on the basis of the rate of expenditure forecast, the Government had paid the full £24 million in a single tranche and this had been received on 31st January."

That shows the actual sum transferred and the date of transfer.

If we then go to DHSC0003357_015, this is a minute to the -- I think it's the private office of the Minister of State for Health, who at that time was Virginia Bottomley, dated 28 November 1990. Then we will see it says:

"As MS(H) knows, the Macfarlane (Special Payments) Trust was set up with a grant of £24 million to pay £20,000 to each haemophiliac infected with HIV. At the time there were an estimated 1,200 such cases

but the Trust now knows of 1,219 potential beneficiaries.

"The Trust has paid 1,206 from capital and the interest earned on it and is able to pay two more. However it needs an additional £120,000 to cover six further payments which it will be ready to make very shortly. Further funds may be required for the remaining five but the Trust has not asked at this time as three applications are still validated and in two cases there is no contact with next of kin."

Then if we look at DHSC0003357_014, and the last document and the present document post-date Lord Clarke's time in office. You'll see there, there's the confirmation in relation to the additional payment being given by the Secretary of State, so by this time William Waldegrave.

Then there's one further documentary reference, sir, which I'll read out but which I don't have available, but I'm reading it into the transcript so that recognised legal representatives, as well as you, can look at it when it's disclosed.

It helps, I think, understand the position in relation to the 19 million figure and what was envisaged in relation to the 5 million shortfall. And that will be found, but doesn't -- isn't available for

display now -- at SCGV0000230_060.

I'm just going to check I've read my handwriting. I think that's correct. I have the handwriting of a doctor.

So, sir, I hope that's a sufficient answer, for present purposes at least, to the question that you posed yesterday.

SIR BRIAN LANGSTAFF: Yes, so the overall picture is that 24 million plus --

MS RICHARDS: Yes.

SIR BRIAN LANGSTAFF: -- was paid, the sum in effect being calculated as at £20,000 for each of the beneficiaries. That class increased. It's a bit uncertain from the figures you've given what happened to any payment in addition to the six or five further payments, but it's small money in terms of the overall, but at least you've given us a picture of the sums that were paid. The figures otherwise are a bit confusing.

MS RICHARDS: Yes.

SIR BRIAN LANGSTAFF: So thank you for that. And thank you for your patience, Lord Clarke, while that was explained.

LORD KENNETH HARRY CLARKE (continued)

Questions from MS RICHARDS (continued)

MS RICHARDS: Lord Clarke, I'm just going to pick up in relation to the HIV haemophilia investigation some aspects of your remaining involvement before you left office and transferred to a different Government post. I'm not proposing to go to the Court of Appeal judgment that was delivered in the autumn of 1990, but I think it's right that there was a hearing in front of a judge and then an appeal before the Court of Appeal about public interest immunity.

A. I can't help. That was after I'd left the Department.

Q. I don't think that was after you'd left the Department.

A. You must make that clear because, you know, I'm beginning to get -- allow the misreporting of what I've said, and attributing things to me in the press that are obviously being put by journalists who are sympathetic to the victims. But, you know, I have been attacked for the supposed inadequacy of the settlement which actually had nothing to do with me. I had long left the Department, and I was Secretary of State for Education by then.

Q. Lord Clarke, I'm not asking about the settlement. I'm asking very briefly about the issue of public interest immunity, which arose when you were in office.

A. Public interest in immunity, yes.

Q. If we look at your witness statement WITN0758012 --

A. It's coming up.

Q. It is. This is your witness statement, second witness statement. If we go to page 80, please, Soumik. Yes, paragraph 49.4. So we can see this is during your time in office:

"... Court of Appeal gave judgment for the plaintiffs on the [defendant's] application for public interest immunity ..."

Then there's reference to an interview that you gave. Then the second -- next paragraph says:

"I did not play any part, so far as I can see or remember, in the formulation of the claim for public interest immunity and I was not asked to sign the PII certificate in this case."

I draw attention to that, Lord Clarke, simply so that there is an understanding -- we can put the certificate up if necessary, I don't think it's necessary -- but the certificate shows Lord Clarke did not sign the PII certificate; it was signed by I think it's the Permanent Secretary but higher echelons --

A. Well, I think it was the Permanent Secretary. To this day, I don't know what documents we're talking about.

Q. So I make that point just to explain why I'm not going to be asking you further questions about public interest immunity.

I am, however, going to ask whether you want to clarify something you said yesterday. So yesterday, Lord Clarke, you said this in the context of talking about Donald Acheson. You said that:

"Donald wasn't the sort of bloke who was trying to cover up documents. There are no missing documents."

I just wanted to ask whether you wanted to clarify that. We know and indeed --

A. Well, that's my belief. Firstly, I make -- I had the highest regard for Donald Acheson, and one of the things about Donald was he was very well -- he was completely motivated in his job, he was a very conscientious man and he had a very strong commitment to public health, public safety, all that kind of thing and he introduced actually, you know, a much higher priority into the Department of actually concentrating on public health.

Q. I just want to ask you to clarify this --

A. As far as I'm aware, if secretly, for some curious reason, he wanted to hide documents, I remain again, to this day, utterly unaware of what documents we're talking about and amazed that anybody thinks anybody like him would have done it.

Q. The question or the issue I wanted you to clarify, Lord Clarke, is this: you know, I think, that there are a number of missing documents, in the sense that there are documents that have not been found, your own statement refers to that. I understand -- I understood the point you were seeking to make about Dr Acheson was that you were seeking to emphasise your belief that he was not part of any process of trying to conceal --

A. I suspect, like me, he had --

Q. -- is that right?

A. -- like every other senior person in the Department, he hadn't a clue what was being put in the archive. You're too busy dealing with events, moving on, doing your job. I've never encountered a senior civil servant or a minister who ever spent any time asking what is being archived. I suspect none of us -- and it is -- you know, it's an important thing that the departments do, the departments do it slightly differently. This Department did not keep the originals that I had when I had received them, where it's obvious, as soon as you look at them, that I'd read them.

So most of the documents I've never seen in my life before. I suspect Donald had no more idea than

I did, no more idea than the Permanent Secretary did, what some junior official was putting in the archive, and they err on the side of quantity. We have thousands -- well, you may be missing some documents, but part of -- this Inquiry has thousands and thousands and thousands of documents which we're working through.

Q. Is this a correct way to understand your evidence, Lord Clarke, and I'm asking this because I've been asked to --

A. I have nothing to do with what documents were kept and weren't. I'm amazed if Donald ever had the time to get round to finding out what was being archived.

Q. Is this correct -- if you listen to the question and then see whether this is a correct summary of your evidence -- you accept that there are documents, you acknowledge there are documents that are missing, but you don't --

A. Well, I mean, I don't know -- I mean, the only thing I can think of is my ministerial diaries.

Q. Well, there are a number of briefings, other documents that your own statement refers to as not having been made available to you, and that's because no one can find them.

A. **(Witness nodded)**

Q. Your point as I understood it yesterday was to attempt to emphasise that Donald Acheson would not have had, in your view, any connection with concealing --

A. I don't think any politician --

Q. -- is that right?

A. -- or senior civil servant has time to start -- they don't -- you couldn't conceivably spend part of every day going through hundreds of documents saying, "Archive that one, don't archive that one". It's -- there's some -- some bloke probably it's his full-time job. They all come flowing into his office somewhere and he tries to decide what future historians, future generations -- as it turns out, future inquiries -- might want to see. If you kept every document that circulated in a government department, as I've said yesterday, you'd need a tower block for every two or three years of supply. So somebody quite junior, I have to say -- I suspect, I don't know, I've never enquired into the archive system -- but I suspect somebody really quite junior does a year or so of the job of putting things in the archive.

Q. I'm going to ask you now to look at two documents: a press statement released in your name on the 20 September 1990 after the Court of Appeal judgment, and a transcript of an interview you gave on that day.

I'm going to draw your attention to certain parts of them and then I'm going to ask you a couple of questions about them.

So the press release is RFLT0000005.

We can see it's "Kenneth Clarke's statement on Court of Appeal judgment concerning haemophiliacs", 20 --

A. Remind me what this judgment was about. It was on this PII application, was it?

Q. It was, yes.

A. And which way did it go? Who won?

Q. Well, if we look at the documents, that might become clear. Some of the documents fell to go back for considerations that they should be disclosed.

So I'll read the whole document so that I'm not accused of being selective:

"It is an appalling tragedy that so many haemophiliacs were infected by HIV as a result of their NHS treatment. For this reason, the Government has quite uniquely paid the victims at least £20,000 each to help with their problems and we have paid more in cases of hardship. We have made it clear that we will review our expenditure of £34 million so far and top up the funds of the Macfarlane Trust if that becomes necessary.

"In my opinion, on the factual information before me at the moment, this tragedy was no one's fault. The doctors and staff gave the patients the best medical treatment available in the light of the medical knowledge at the time. The patients could have died then if they had not received that treatment. When the blight of AIDS first struck, haemophiliacs suffered the same appalling consequences throughout the western world.

"Today's judgment will enable the Judge to see a further batch of documents in addition to those already disclosed. I am advised that they do not contain anything which will reveal that anyone was at fault.

"It may be argued that we should pay compensation to the victims regardless of whether anyone in the Health Service or the Department of Health was negligent or to blame for the tragedy. I believe it would have very grave consequences for medicine in this country if compensation was paid whenever a patient who had been treated properly by his or her doctors later suffered awful side effects or died. We rely on the clinical judgment of the medical and other professions when patients are treated. This principle of only paying full

compensation when negligence is proved is not unique to the case of the haemophiliacs. It could arise over and over again whenever a patient suffers a harrowing experience after receiving treatment.

"In the USA, the practice of medicine is now dominated by these issues of compensation and their resources for health care are cut back as a result. That should never happen here.

"If at any stage I am advised that there is evidence that this tragedy was probably caused by the fault of someone in the NHS or in my Department or in one of its agencies, the Government will pay compensation for the victims of that error. If, as I believe, the NHS and the Department are blameless, we will maintain the payments to the Macfarlane Trust that we have already put in hand to give exceptional help to the victims and their families."

So that's the first document. I'm going to ask you to look at another --

A. Yes, I agree with all that. That remains my view today. In the United States, some of the treatments, just -- doctors won't give it. If they're not insured, they won't do it, or their insurers tell them not to, because, you know, there's a chance it will succeed, a chance it won't, and they know they're

going to be sued if it doesn't. And the practice of medicine in this country now, much more cautious than it was in the 1980s, as litigation has grown. Preventative medicine means that -- it does rather delay the treatment of patients. Doctors now give endless tests before they do things, there's far more screening and all the rest of it because they know they're going to be sued if later anything goes wrong, and they'll be accused of not having had an MMR test or something. It's -- so, a precautionary -- and precautionary -- cautionary medicine, sorry, is I think the description of extremely litigation-conscious practice of medicine, particularly in the States, particularly here.

In some specialities in the States I remember being told that the actual practitioner divests himself of all his assets, he's penniless, it's all in his wife's name because he can't insure properly and it's the only way he can stop being sued if he continues to practice in his difficult speciality where there are very considerable risks in the treatment.

Q. If we go to the second document, which is an interview that you gave on to World At One on the same day, DHSC0046936_078. You'll see "Transcript of interview

with Secretary of State, Thursday 20 September, 'World At One'", and it's in the context of the Court of Appeal having delivered their judgment.

I'm not going to read out the whole of this document --

A. This is like a classic --

Q. But I'm going to -- I'm sorry, Lord Clarke?

A. I say it's an absolute classic, isn't it?

I must say, I mean, I've been retired for a couple of years, and just getting used to this kind of journalism but it's just -- just bizarre.

Q. I'm --

A. Just looking at the questions.

Q. I'm just going to read out some extracts of this one and then ask my questions about the two documents.

So we can see your answer where you refer to it being a procedural sort of hearing and a technical argument, and then you say this:

"... in my opinion [this is the fourth line of your answer], as far as I am aware, those documents contain nothing which will help the haemophiliacs establish, what I believe to be their mistaken claim, this tragedy was the fault either of the health service or any of the doctors or the licensing agencies at the people against whom they brought the

claim."

Then if we go down to your next answer, you say:

"Had they struck it out at this stage the result would have been all that protracted suffering and so that will be caused if a long legal action results would of course have been saved. They are entitled to bring their claim. But on all the evidence ..."

I'm sorry, I've missed out an answer, Soumik, apologies.

If you leave it on screen as it is, that will be great.

So I'll go back to the first of your answers on screen.

"We're certainly not stringing out the legal proceedings and our reaction to this tragedy to the haemophiliacs has been to pay each of them at least £20,000 with more in cases of hardship and we have spent a great deal of money in trying to alleviate all the suffering that has occurred. They are persisting on bringing a legal action trying to demonstrate that it was fault that gave rise to this tragedy, try to get much bigger sums of compensation and, we are not able to concede that ..."

And then if we go to the next answer:

"Had they struck it out at this stage the result

would have been all that protracted suffering and so that will be caused if a long legal action results would of course have been saved. They are entitled to bring their claim. But on all the evidence and all the legal advice before me there is no negligence, it was nobody's fault and we cannot pay up very large sums of money in such circumstances. It would have very grave effects to the National Health Service and for the practice of medicine in this country."

Then if we go to the next long answer, pick it up about six lines down, you say:

"In this case, in my opinion, the people concerned were given the best medical treatment available - the same treatment they would have got from any other part of the world. Their lives were prolonged by that treatment, but unfortunately, and tragically, a side effect ensued with the result that many of them are now HIV positive and suffering from AIDS ..... If every time a patient is given the best medical treatment available and then that treatment goes wrong without anybody's fault after everybody has done their best then the National Health Service would become like the American system."

And you continue to discuss that.

Lord Clarke, the first question I want to ask

having regards to those two documents, so the press release given on 20 September and then the interview, was this part, as it were, of what we saw referred to as a possible strategy in the documents we looked at yesterday, of a public relations offensive, trying to --

A. I was invited to give an interview. I'm obviously explaining -- as I say, I'd had nothing to do, personally, with the PII, and I didn't -- I don't think I knew then. I don't think I ever knew exactly what documents the Permanent Secretary had claimed it for. But the way in which things work, the civil servants don't go out, it's the ministers, some minister's got to go out and explain the Department's position if you have, you know, something like this, where there's some media reporter wants to report it. So I was explaining the Department's position and actually what you've read out, I mean, I've read it, and I -- if it was all contemporary I would say the same things again.

It's just answering a criticism which the journalist is obviously determined to put. I mean, some of his questions are extraordinary. But as I say, I -- I forgive the journalist, he's obviously doing his best and he feels very great sympathy for

the victims, and he is obviously -- he's sort of -- kind of insisting this is all sort of trying to deny them some redress or something. But I hope -- I think it's all perfectly clear. There seems to be a -- there's one slip that I found a moment ago with the wrong word at one point but that may be a typing error in the transcript. But nothing serious. It doesn't matter.

I've done my best in this, and that was part of my job, I'm acting as the spokesman for the Department and trying to explain what these preliminary processes which the lawyers representing the Department had advised we should take, and which, on these preliminary stages, the plaintiffs had won and our lawyers had lost the argument -- but they're perfectly entitled to argue it -- but what actually it was about and what approach we were taking. And in particular, I keep stressing all the way through this, if there was any evidence showing negligence, if there was any evidence showing fault, we would pay full compensation, as we always do. And as we always did.

And I tried to explain the policy with that and the fact you can't just pay out compensation in all those cases where there's no fault on the part of the doctors, there's no part on the fault [sic] of the

Health Authority, and there's no fault on the part of the Department, and that -- that is the thing we're still maintaining, you know, that's still -- still the approach today, and I think any other approach would be quite impossible. You'd destroy the Health Service.

Q. Lord Clarke, my question is this: was this part of an attempt to turn the tide of public opinion and public sympathy away from those victims of what had happened --

A. No, it was an attempt to explain -- no, it's not -- it's not a particularly campaigning interview. I've just said what it was. This isn't public relations; this is the ordinary day-to-day business of the Government answering questions and accounting, through the press, to the public for something that has been queried. This would -- I don't think this would have any dramatic effect on public relations.

Q. It might --

A. There's too much public relations in politics today. It wasn't like that in the eighties.

Q. It might be thought, from some of your evidence yesterday, or it might be said from some of your evidence yesterday and some of the kind of thing that's said in this interview and elsewhere, that you

were being critical of the plaintiffs for bringing -- having the temerity to sue the Government --

A. Now you're altering what I've said. Where is it critical of the plaintiffs? It's not critical of the plaintiffs. Nonsense.

Q. Lord Clarke, I'm going to ask a question and it would be -- it'll be a more efficient use of your time and ours if you listen to the question --

A. Well, they're so long, and it's inaccurate. I actually said at one point in this they're perfectly entitled to bring the action.

Q. Were you, in your own thinking at the time, critical of the plaintiffs for having the temerity to sue the Government?

A. That's absolutely ludicrous. No, of course I wasn't.

Q. Then that's the answer. If we then pick up --

A. I was engaged in legal practice for years. I don't -- if I'm defending a plaintiff, sort of thing, I don't have contempt for the other side, it's just -- they're sometimes quite difficult to judge, and the judge eventually gives you a judgment and sorts out. Not -- it would be farcical to suggest that.

Q. If we then pick up the chronology of events in terms of your own direct involvement in the litigation, at

HMTR0000001_039, we can see this is an internal report to the Chief Secretary to the Treasury, so Norman Lamont at that time, dated 28 September 1990, and it's in anticipation of a discussion that you and Mr Lamont are going to have. So we can see it says:

"Mr Clarke has asked to discuss this subject with you on Monday at 6.30 pm. The immediate issue is whether or not DH [Department of Health] should signal to representatives of HIV-infected haemophiliacs a readiness to explore an out-of-court settlement."

If we go to page 3, and we look at the heading "Mr Clarke's dilemma", it says:

"DH say that the haemophiliacs' representatives, possibly sensing that their strength lies in the political rather than the legal case, have indicated in response to the Judge Ognall's statement that they would be willing to discuss an out-of-court settlement. We understand that Mr Clarke is instinctively disinclined to proceed down this road, while being aware that the Government is likely to encounter severe criticism whatever it does. He has not, however, made up his mind and would like to discuss the position with you, especially given the large potential financial implications."

Is it correct that you were instinctively

disinclined to proceed down the road of an out-of-court settlement, and if so, why?

A. We got there yesterday, yes. It was plain yesterday. Yes, I mean, it obviously was. The problem being that, you know, it is the real world of politics, of a public (unclear), where the Government is involved in litigation, a settlement involves agreeing a sum in full and final settlement of the plaintiff's claims. What tends to happen in these kind of cases is when you settle, you agree, as it were, you figuratively shake hands with the plaintiff, it immediately gets denounced as inadequate, despite the fact the plaintiffs have agreed to it and have accepted it as a full and final settlement, and it gets reopened.

Although I wasn't responsible for the -- I had gone by the time eventually the decision was taken to settle it, as we -- as we're sitting here, because that's exactly what happened. The people who claimed agreed that was it, that was the full and final settlement of their claim, I'm sure their plaintiffs' lawyers explained that to them. They then realised they couldn't take out another writ and try and get some more, so they tried other ways of campaigning.

I mean, I don't blame them. They're very hurt and aggrieved and they've suffered a tragic

experience, either themselves or their relatives. But, in the real world, if you're a minister, you have to -- particularly in this world, health -- you have to appreciate that you're not really, in wide terms, you're not going to win either way. You are going to be criticised whatever you do.

Q. Can we go to page 6 of the document.

A. That's put more clearly and in a little less exasperated tone, by the -- whatever you just read out.

Q. You can see the line to take, just halfway down the page, that's the line to take to --

A. This is the advice to -- I wouldn't see this.

Q. You wouldn't have seen --

A. This Norman Lamont's briefing --

Q. It is.

A. -- advising him how to handle the meeting with me.

Q. That's right and I'm not asking you about the detail of this, I want to --

A. I've not seen this.

Q. -- ask you about something on the next page -- well, you've seen it for the purposes of preparing your witness statement, Lord Clarke.

A. And they obviously were inclined to agree with what they thought I was going to say to them, which is what

I did, which was that there's no point in settling.

Q. Thank you, Soumik. What I want to ask you about is what is said at paragraph 12. I was just showing the previous page to put it in context in the document:

"Mr Clarke is understandably anxious to minimise the amount of paper written on this subject and to restrict circulation of any such paper. That is why I am not copying this minute widely."

Why were you anxious to minimise the amount of paper written --

A. Because another problem arises, it's worse today than it was then. If, in the end, we started negotiating with the other side about what is a suitable sum, what reflects the risks of the litigation, you know, strength of the case and all that, it's quite hopeless if -- when you discuss how much you might -- what you're going to offer, what you think the other side are doing -- it all starts leaking to the newspapers because you've got somebody on the inside who decides they want to help the other side.

If, you know -- I suppose lawyers -- if -- anybody who does any negotiating, once you enter into or you might enter into a negotiating process, the last thing you want, it's everybody in the office having a piece of paper telling them exactly where you

are and some idiot starts leaking it all, and you can't proceed, you're completely undermined. It wasn't to hide guilty incriminating documents or anything of this kind. And if you are going to have a -- and it didn't stop this briefing being written, but it perhaps wasn't circulated as widely as it otherwise would have been. People need to know. We obviously have to have documents. You obviously have to record what you're doing. But that's all that means. So let's take particular steps to make sure that we -- people who don't need to see it, don't need to see it, because the whole thing will be reduced to a farce if our discussions around negotiating positions start leaking, and it will be just completely undermined.

Q. The upshot of the meeting appears to be set out at HMTR0000001_042. Again, this is an internal Treasury document addressed to Mr Lamont:

"The position reached during and after the discussion with Mr Clarke can, I think, be summarised as follows.

"The Government has to choose between:

"-- trying to negotiate an out-of-court settlement, and

"-- letting the court case proceed."

I'm not going to ask you about the detail of what's set out in terms of advantages and disadvantages if we go to page 3, paragraphs 8 and 9:

"On the above analysis, the strategy of eschewing negotiation and letting the court case proceed looks to be clearly preferable, certainly from the Treasury point of view and probably from the point of view of the Government as a whole.

"You may like to run through the analysis quickly with Mr Clarke" --

A. Yeah, Norman and I seem to have wound up agreeing.

Q. The strategy, is this right to understand, at this point in time, as agreed between you and the chief secretary, is simply to defend the court case?

A. Yes, which would settle -- of course, if we got a judgment from the court when they would have had many more witnesses who -- people weren't dead, then, and it was much nearer the events. Had you had a court judgment, that would have given the most authoritative decision on was it the fault of the doctors or the Department or was it not? We wouldn't be -- obviously, we wouldn't be here today. There wouldn't be this -- this argument would have been resolved decades ago. Had it gone to court, had we had a judgment -- I mean, no doubt, somebody could

have -- some people could have gone to the Court of Appeal or *(unclear)* but where you've got a final judgment, that would have settled it. People do accept the authority of the courts. The courts would have decided: fault, no fault.

And, as it happens, with hindsight, I'm rather going back to my original view, it would have saved an awful lot of time, money and distress, and years and years of debate.

Q. Then, if we then move on towards the end of October to the position shortly before you leave office, or leave this office, HMTR0000002_002 --

A. Had we won the court case, I'm absolutely certain we would have given more money to the Macfarlane Trust. Again, that would have been, you know, to get across to the public that we were not, you know, triumphing in victory but the position had been resolved, we still felt sympathy, still give such financial help to alleviate the problems as we could.

Q. If we look at this document, it's dated 23 October 1990, again it's an internal Treasury document and it records as follows:

"The Chief Secretary spoke to the Secretary of State for Health over the telephone yesterday afternoon [so that's you and Norman Lamont].

"They agreed that there were no grounds for offering an out-of-court settlement. Department of Health lawyers had indicated that a settlement might be achievable at around £50 million, but once negotiations started it would be difficult to stick at this or any other figure.

"Mr Clarke suggested, however, that if the other side made an offer of £20 or £25 million, and DOH lawyers considered that it included a watertight guarantee that the writs would be dropped, this would represent a good settlement. The Chief Secretary expressed the view that a settlement at that level would be highly unlikely, and would certainly have to be entirely at the initiative of the other side. He felt that it would be far more satisfactory to win the case in court, and then make a moderately generous offer on an ex gratia basis."

A. It shows that, at the time, had we won, the Treasury -- and he was a Treasury cabinet minister at this stage, he's not Chancellor, he's chief secretary, I think, and he's the man in charge of Government spending, he controls the purse strings -- even the Treasury, if we won, were just expecting, as he put it, to make a moderately generous offer on an ex gratia basis.

That is -- Norman and I, that is what we, at this meeting, would have preferred to do. I mean, I -- it's -- I'm relying on the document but the more we go on, the more I am just not surprised. As it happens, my judgment today is it's a perfectly sensible position for the two of us to take up.

Q. Then just reading on for the sake of completeness:

"Mr Clarke agreed with the Chief Secretary that the Government lawyers should be instructed not to make an offer themselves, under any circumstances."

Over the page:

"Mr Clarke then commented that some of the cases against health authorities were very strong, and were in fact straightforward medical negligence cases. The Chief Secretary agreed with Mr Clarke that it would be important to present these as negligence cases, distinguishable from any others.

"The Chief Secretary and Mr Clarke agreed that they would not seek to raise the issue at Cabinet.

"Mr Clarke did not raise the PES issue."

Do you know what that's a reference to?

A. I can't remember. What does that mean?

Q. Is it fair to understand from this document, then, that this represents the position that you and Mr Lamont had reached by late October 1990?

A. Well, it obviously does, yes.

Q. Then, last document on the issue --

A. This is only about a month before I left the Department.

Q. I think it's actually just a week before you left the Department, probably.

A. It was the week before I left the Department?

Q. I think so. I might have got the date wrong.

Last document on the litigation, Lord Clarke. DHSC0046962_187. This is an internal Department of Health document "Present position on HIV/haemophilia litigation".

If we go over the page, bottom of the page, this is just to complete the picture, factually, Lord Clarke:

"Kenneth Clarke met counsel on 1 November to discuss this. The line was confirmed that there should be no offer from the Department. However, our Counsel would make known to the Plaintiffs that if they were to offer a settlement around £20 to £25 million plus costs this might be considered. Any settlement would have to be acceptable to all plaintiffs and end the litigation. No money has been agreed with Treasury for an out of court settlement, and this could be difficult to obtain as the prospects

for successfully defending the action are reasonable."

So that would appear to be your last involvement, Lord Clarke --

A. Yeah, I mean, at -- the background to all this was our lawyers, which is the most important thing, and I think I, as well -- I think my lawyers and I were reasonably confident that if it was fought through, we were going to win this. In my opinion, the approach being taken by the plaintiffs' lawyers makes it perfectly clear that the victims' lawyers also felt pretty certain they were going to lose if they insist on fighting this, which is why they were approaching us making offers to settle. So we didn't want to take too tough a line with them, although Norman and I thought the best thing was to sort out liability and stop the argument about whether there was fault or not, and then start giving them money on an ex gratia basis, because he, like me, I'm sure, felt the same humanitarian instincts as everybody else, sympathy for the victims of a dreadful tragedy.

Q. Now, according to the dates given in your statement, this would have been, in fact, your last day in the office at the Department of Health, 1 November and you then moved to the Department of Education.

A. Yeah, just to make it clear, it's true of the other

funny gaps, you know, the delays in response to documents. You just can't remember what political mayhem was taking place in the background. This -- this is about the time that Geoffrey Howe resigned from Margaret Thatcher's Government, and so Norman and I were still trying to get on with the business of the day and having a meeting, when all hell was let loose on the political world and Parliament, and so on, which obviously Norman and I, as members of the Government, also had to inhabit.

Q. Now, you were succeeded by William Waldegrave as Secretary of State for Health.

A. That's right.

Q. So you were then not the Government minister dealing with the process of the actual settlement.

A. I had nothing further to do with it, as far as I can recall. I mean William may have asked me what my opinion was, and where we'd got to but, from then on, it was nothing to do with me and I, you know, took no further part.

Q. You have, in part, anticipated what my question was going to be. As far as you can recall, did you have any discussions with William Waldegrave about it?

A. I'm sorry, I anticipated and answered. I can't remember having any discussions with William. Ask

William.

Q. If we go to, then, as the next document, JEVA --

A. I may have had discussions with William about the Department because he was taking on, you know, as all Secretary of States do, a huge raft of problems with the Department, but I, you know, doubt whether I'd have discussed this. He'd find out in due course, the lawyers would guide him, rather than my -- no point in my trying to bring him up to date on where we were in one of our cases of litigation because the Department of Health has a lot of litigation on at any given time.

Q. If we go to JEVA0000065, please, Soumik.

This is an extract from the first edition, I think, of your autobiography and I just want to ask you about the third paragraph, a change that was made to it. You say in the third paragraph, in this version:

"The haemophiliacs who spent the rest of their lives with this disease were eventually given compensation by John Major's government."

Then you go on to talk about the continuing campaign for more generous compensation for their suffering and to help them with the cost of their illness.

As I understand it, Lord Clarke, concern was expressed to you about the use of the word "compensation" because no compensation, no assessment of need or --

A. Oh, I had lawyers, I had lawyers -- the publishers had lawyers' letters, and so on. Quite what legal action they were contemplating we never discovered. I'm afraid the threat of legal action was a bit of a joke, but it is true, we collected it in the next -- I dictated this. This autobiography is mine, and I dictated this into a Dictaphone. You know, sessions about twice a week, two or three hours at a time, with a little note to make sure I kept some kind of order and didn't leave things out, and it was a slip. In the serious terms and precise terms in which this Inquiry and everything else had been conducted, I shouldn't have used "compensation", I should have said ex gratia payments. And when it was drawn to our attention we ignored the threat of legal action but the publishers and I agreed that we'd change it in the next edition, and the lawyers accepted that, and were content with that.

Q. I want to turn now to a separate issue. It's one that you address in your witness statement, paragraph 17.

A. I was writing that for the general leader. I was not

giving evidence in the law court or before any inquiries, so I'm afraid it was just a slip to call it compensation.

Q. If we just go to your witness statement, Lord Clarke, and we pick it up at page 13. You'll see a heading towards the bottom of the page, Lord Clarke, "Hepatitis C and screening tests".

Just to place this part of your statement in context, an important issue for consideration coinciding with your time as Secretary of State, was the question of whether there should be some form of testing, surrogate testing or screening testing, in relation to hepatitis C.

A. Yes.

Q. The purpose of my questions is going to be to explore with you the extent to which, and it appears to be a very limited extent, those issues crossed your desk as Secretary of State for Health. So if we go to page 15, please, Soumik, and pick it up at paragraph 17.2, you say:

"First, I've been advised that -- as the question indicates -- there is a difference between *surrogate* testing of donated blood for Hepatitis C ... and *screening* tests. The papers that I've been shown in relation to this issue, during the period in which

I was Secretary of State for Health, focus on screening tests."

You say you're not in a position to explain --

A. Yeah, I must admit, I must confess I don't, I still don't, at this moment, wholly understand what a surrogate test is. That's a medical question which you'll no doubt put to the medics.

Q. Yes. Is it right to understand, then, as far as you're aware, the question of surrogate testing was something that was never raised with you at all?

A. I don't remember it being raised with me and, as I said, as it happens, sitting here as I do now, I don't understand -- I mean, someone would have to explain to me what surrogate testing is.

Q. Now, in relation to the issue of screening tests, we can pick up -- you say at the bottom of the page you have had no independent memory of the issue. I'm just going to pick up with you the handful of documents that refer to it, that appear to have potentially come across ministerial desk, really just to try to understand the limited extent to which there was involvement by ministers in this issue.

A. Well, I won't repeat it again. It runs through all this evidence. I was not directly -- it wasn't one of my responsibilities. I was not directly responsible

for any of this. I only play such a prominent part in evidence because I'm -- nowadays have the misfortune to be slightly better known than any of the others and I'm the nearest to a B-list celebrity you've got. I don't think I ever got immersed in testing for, you know, hepatitis C. But I was aware that we were -- the subject was being handled, but it was handled by whoever was doing blood products.

Q. That may indeed be correct, Lord Clarke, the purpose of this is just to try to put out into the open and into the public domain the nature --

A. Well, we've had two and a half days of you asking me detailed questions about things which I was never in charge of.

Q. The purpose of these questions, Lord Clarke, is to examine the precise extent of your involvement, limited as it may have been --

A. Okay, I'm sorry, I'll stop --

Q. -- with an issue that you haven't been asked about.

A. I'll stop complaining about your questions.

Q. Thank you. WITN0758019.

A. As I say, I have no independent memory of the subject at all. I'm entirely reliant on the documents, as you are.

Q. That is understood.

So we can see, this is a minute dated 19 February 1990. We can see what's written on it in handwriting next to the CC, so it's CC "PS to PS(H)", "All Private Offices". So would it be right to understand that this would have gone to your private office, not necessarily as you have already explained --

A. Yes, it was all the other ministers, was Strachan -- no, I'm not sure Strachan Heppell was mine. Yes, that would have gone to all private offices.

Q. Yes.

A. As I said, right at the beginning of my evidence, that doesn't mean every minister would have seen it.

Q. Indeed.

A. Someone in the private office would have taken the decision whether his or her boss ought to see this.

Q. We can see it's primarily addressed to Dr Metters and then to the private secretary to the Parliamentary Under-Secretary of State in the House of Lords. Headed "Non-A, non-B Hepatitis in Blood" --

A. Who was that by this time?

Q. I think it might have been Baroness Hooper but I'll have to double-check.

A. I'm *(unclear)*.

Q. "This note seeks to bring Ministers up to date on the

current situation regarding testing for non-A, non-B hepatitis (often referred to as Hepatitis C) in donated blood. Ministers will be aware of the recent press interest in this topic, and a number of Parliamentary Questions that have been raised consequently."

We have the background:

"Since the middle of 1989 Ortho have been marketing a test as a method of identifying carriers of non-A, non-B hepatitis."

Then there's reference, a couple of lines further down, to the "Department's Advisory Committee on Virological Safety of Blood", which I asked you about yesterday, Lord Clarke:

"... discussed the possible routine use of the test in the [National Blood Transfusion Service] at its meetings in 1989, but decided that not enough was known about the meaning of the positive results that it produced, nor of its reliability. A pilot study, using the Ortho test, was initiated."

We then see the "Current Position" set out in paragraph 3:

"At the January meeting of the [Advisory Committee on the Virological Safety of Blood] members once again addressed the question of routine

introduction of the test. The Committee's decision was there was still insufficient scientific information about the test to advise its routine introduction."

Then there's a reference to an international hepatitis meeting, and paragraph 5 then says:

"Ministers will be kept informed of any further advice from the [Advisory]" --

A. This is obviously a note to make sure we were all up to speed with where we were.

Q. Yes.

A. No minister would have interfered with the expert Advisory Committee. That's entirely what they're there for.

Q. So in terms of what you would have expected as a ministerial response to this from whoever the appropriate minister was, it would have been really, simply, to note it and await an update?

A. Well, in case -- as I say, somebody like me and the Secretary of State, we were the ones in those days -- there was more control, the Government is going for message discipline nowadays -- but, in those days, we were constantly in the public eye because we were doing media interviews. I mean, it was part of our job, defending the Government against the -- and

I used to do a lot of it, but I think the Secretary of State sort of liked to shove me out there, which I didn't mind, and so I'd be interviewed frequently, radio, television, newspapers, and you needed to be kept up to date with this because, whatever you had been told you were going to be interviewed about when you accepted the invitation, once you were there, the interviewer -- you know, the Today Programme I used to do a lot, about twice a week, I'll bet, at this time, once you were there they'd ask you a question or two about what they'd asked you to come in about and then, well, you just knew, if you've got the slightest sense, they'd ask you about anything that was in the Department's field.

That's one reason why you did have to be kept up to date with what was going on because if they raised something that you weren't actually doing, I wouldn't sit on the Today Programme and say, "Sorry", as I do to you, saying, "That's not my responsibility, you must, you know, ask another minister" -- I would answer for the Department. You had to keep up to speed. You had to be aware, at least, of what was going on on other fronts. Hence to me, and to the Secretary of State, this was usual because, at any stage, someone might shout a question at you or raise

it in Parliament, and you would be expected to give some sort of response on behalf of the Department and the Government.

Q. If we go to what appears to be then the next update, it is at NHBT0000061_130. This is dated 1 May 1990, again it's to Dr Metters and to the private office of the Parliamentary Under-Secretary of State in the House of Lords. It's copied -- sorry, if we just go to who it's cc'd to -- it doesn't look from that, as I read it, that it was copied to your private office; is that correct?

A. No, because I wasn't dealing with it.

Q. No criticism implied in the question, Lord Clarke. It's a question of fact. We can see, and I'm just drawing attention to this in light of some of the earlier questions I asked about interaction with the devolved administrations. It does appear to be copied to someone from the Scottish Home & Health Department, the Welsh Office and the Northern Irish Office. Then if we just look at the second paragraph, then I'm going to ask you a question.

Sorry, in fact, Soumik, can we just look at the first paragraph, my apologies:

"Minister may recall that the question whether to screen all blood donations for hepatitis C virus

has been under discussion in the Advisory Committee on the Virological Safety of Blood. This note is to advise Minister of developments.

"In France, Belgium, Luxembourg and Finland screening has recently been introduced for all donations and in Italy the screening is voluntary. However at its meeting on 24 April, our Committee reaffirmed its view that the introduction of routine screening would not yet be justified. The new tests developed in the USA have not been approve by the [FDA] and there are still unresolved difficulties concerning the tests. The Committee has advised that a pilot study should be carried out to learn more about the significance of a positive reaction to the test and the extent to which it predicts infectivity which could be transmitted in blood."

Then there's reference to a working party, another meeting of the ACVSB and the Department will be asked to provide funds for the study.

Now, Lord Clarke, I'm conscious this didn't come to your private office. But my question is about what your expectation would be of the Minister to whom this did go. Would you have expected the Minister to, again simply note that and await further updates or to start challenging and asking questions?

A. I think anybody with common sense would have noted and wait for the next stage in this extremely expert committee's advice. It happens today. I mean, I won't start making comparisons with the Covid again. You don't start using vaccination until immunologists and other scientists on your Advisory Committee confirm that it's safe and it works, and that's true today. It's true in any well-run healthcare system. It was true then. And the tests that we use for Covid today are the ones that have gone through the appropriate system. I'm sure there's another expert committee of virologists, with an equally long acronym, which goes through the process, which unfortunately can take a few months, of getting the data and actually being confident and sure that, firstly, it works and makes a difference and gives you accurate results, and that it's safe.

Now, no minister in their right mind interferes with that. You don't start second-guessing that. You don't say, "The Daily Mail said yesterday we were left behind". You wait until the virologists and the experts, who are amongst the best in the world tell you "This is now right".

I mean, I don't know whether this would go to the licensing committee, the Safety of Medicines

Committee, and all that kind of thing. There's a whole process. It's not political. It's not Civil Service government. It's scientific and it's medical. And in Covid, there are vaccines approved here which have gone through that process. We don't use some of the vaccines that other countries, China, Russia, use, which obviously our expert committees would, you know -- don't think they've gone through the full process that we expect before we start using anything of that kind.

And that's -- I would expect that the Minister to note this, but not remotely to -- unless something funny appeared to be happening in terms of process -- the Minister has got to wait, if he or she is being responsible, for the final advice of the Advisory Committee which had been set up for the purpose of telling everybody where we are.

Q. Lord Clarke, vaccinations might not be said to be a particularly apt analogy because this is not about giving treatment or a drug or a vaccination to patients --

A. It's testing.

Q. -- it's about screening blood.

A. Well, in that case, I should have stuck to the Test and Trace system. We have various types of test we're

using for Covid and they've all gone through the same process.

Q. It might also be said --

A. So you're quite right I was inaccurate to talk about the vaccine. Tests for Covid, exactly the same system prevails today, and does in every well-run, well-governed, sensible, developed country in the world.

Q. It might be said that there are echoes here of what we explored yesterday in relation to the introduction of screening for HIV, in other words other countries ahead of the UK in terms of the introduction of screening --

A. It might be said. I know you have to put these questions. It might be said. But frankly, I mean, you know -- let's go to Covid, test and tracing. The Chinese may be doing it differently, so do you say, "Oh, the Department of Health is obviously negligent, let's do what the Chinese do"? No, we don't do that. There's no point in -- some -- our medics are some of the best in the world. We were world -- amongst -- I mean, I don't want to stupidly, you know, overdo it, but we were amongst -- we have amongst the best -- we have the -- clinical standards in the world. Scientific expertise in some of these subjects -- as

it happens, virology is one where we're very, very strong, but nobody has got a -- hardly anybody has got a better system than us. So a journalist might say, "Oh, we've been left behind", but that's not a responsible way to take the decision. And if it went wrong, and you were before a public inquiry, if you told the counsel to the Inquiry, "Oh, we did it because the Chinese were doing it", I'm afraid I don't think you'd get very far. I don't think you'd be treated with very great patience.

Q. I take it, but perhaps you can confirm --

A. You are, you know --

Q. I take it from your answer, Lord Clarke, that you are -- this implies no criticism -- that you are unaware of the subsequent judgment of Mr Justice Burton in the case of *A v The National Blood Authority* which held --

A. I am completely unaware.

Q. -- that screening should have been introduced?

A. I've never heard of the case. Is it -- are you about to tell me there is a case which is --

Q. There is indeed --

A. What happened there? Well, tell me -- now you tell me about it.

Q. I'm not going to --

A. Tell me what was said.

Q. It's a very lengthy judgment. I'm very happy to provide you with my copy, Lord Clarke, and you can take it away.

A. I'm sure you're anxious to save time, as you have been throughout. You're not going to tell me what it said?

Q. I'm --

A. You're just hinting to me in a sinister way something is said that you think contradicts what I've just said to you.

Q. Lord Clarke, my question was whether you were aware of the judgment, and the answer is that clearly you were not --

A. No, I'm not, and I --

Q. Can we go back, then, to the question of what you --

A. -- you may gather, if you wish to make anything of it, you'd better tell me what the judgment is.

SIR BRIAN LANGSTAFF: May I just intervene gently in this discussion, this chat between the two of you.

You were saying that it isn't the practice here -- you make a big point -- to rely on what other countries are doing, because we have perfectly good, in fact eminent doctors ourselves.

Can we just have the document back, please, Soumik.

A. I mean, we inform ourselves of --

SIR BRIAN LANGSTAFF: Could we just have the section back? Thank you.

If we can just have a look at what was being said. I appreciate this document didn't come to you, but five lines down, in the second paragraph:

"The new tests developed in the USA have not been approved by the Food and Drugs Administration ..."

That seems to be relying upon what the Americans were doing. You wouldn't have expected that, would you?

A. Well, it's relevant if it's not been approved by the FDA. It probably explains why it's not been approved by ours either.

SIR BRIAN LANGSTAFF: So this was in part, at any rate, relying or --

A. In the end --

SIR BRIAN LANGSTAFF: -- the --

A. In the end -- and I think, 99 -- more than that -- out of 100 -- in the end, we rely on -- we set up our -- we have our own licensing, our own safety of medicines system, our own advisory committees, and we rely on them.

SIR BRIAN LANGSTAFF: And your point is that's --

A. Although of course you keep yourself informed of where we are in other -- like these countries that are cited here -- comparable countries that also have excellent healthcare systems.

SIR BRIAN LANGSTAFF: Thank you.

MS RICHARDS: If we just move to the next update, I'm just going to draw it to your attention before I ask you a question about the document after, if I may, but so that no one suggests that I'm not showing you the material, Lord Clarke, NHBT0000061_137. This is dated 11 May 1990. This does go to your office, we can see that from the top left-hand corner. "Hepatitis and blood products". It refers to the press carrying two stories about hepatitis and blood products.

A. But this is actually -- yes, I was Secretary of State so it's gone to me, this.

Q. Yes, it has. It is predominantly dealing with a suspect hepatitis B contamination at the Bio Products Laboratory, as BPL is now called. I'm not asking you about that.

If we go over the page --

A. Oh, is this the one where I was annoyed because the Blood Products Laboratory hadn't told us?

Q. Yes.

A. We found out about this slip through the newspapers.

Q. That is indeed the one. If we look at paragraphs 5 and 6, we can see reference then to a Lancet article on hepatitis C.

"This shows, as expected, high rates of positivity with a recently developed test for hepatitis C in recipients of blood products. Before heat-treatment of blood products was instituted in 1985, transmission of non-A non-B hepatitis to haemophiliacs was commonplace and these findings reflect past infections."

Then it talks about heat treatment through NHS8Y Factor VIII.

Then paragraph 6 continues:

"But there remains the question of whether the [National Blood Transfusion Service] should as an additional measure screen donations for hepatitis C to protect transfusion recipients. This now being done I Japan, Belgium, Luxembourg, Finland and very recently in the USA. The Department's advisory committee on Virological Safety of Blood, under Dr Metters, have been considering the available evidence, in particular on the significance of a positive with this new test. The committee recommend further work on UK donors before a decision can be made."

Then we have "The line to take", the first is in relation to the BPL hepatitis B issue and then the second is on hepatitis C, so this is your suggested line to take -- sorry, the line to take suggested to you.

"The Department considers that there is at present insufficient scientific information about this test. The matter of testing blood donations for hepatitis C is being kept under review."

Lord Clarke, given as you've told us on a number of occasions you regarded it as part of the responsibility of a minister to challenge, to test the advice that you're being given, whether by experts or otherwise, do you think at this point in time, knowing that now the States was using testing as well as the other first world countries there identified, that you would have wanted to understand, if this had actually come across your desk and not just reached your private office, why the UK was not yet introducing the tests?

A. Well, it explains why. Because we have an Advisory Committee which doesn't think we should.

Q. So you'd have just accepted that, do you think, and not probed further?

A. I assume I did. I mean, when I say you "challenge",

that doesn't mean you spend -- every time you get a clinical opinion from the world's experts, you say, "I wish to challenge this", you know, "Tell me why other people are doing something different from us?"

Occasionally -- I mean, you know, sometimes medical opinions merge with the -- also the administrative decisions and so on, which you can feel some confidence on, but, you know, I don't -- nine times out of ten, there's no point in a non-clinician, with no expertise on the subject at all, spending his entire time challenging, cross-examining, the experts who are giving him advice.

Q. Then if we go to the final document to show you on this subject, NHBT0 --

A. Well, how did it turn out? Were they wrong?

Q. Well, that's for the Chair to determine, Lord Clarke.

A. Well, one thing it confirms is, so far as haemophiliacs are concerned -- I accept you're considering infected blood as a whole -- the problem had largely been solved five years before, as I've said several times throughout this. It was heat treatment that solved it in the end. Obviously it's relevant to explore all the things we're exploring, but what turned out to save such haemophiliacs not infected from further infections, what turned out to

make even American Factor VIII safe was heat treatment. And that -- we were doing that from 1985 onwards, and this is several years later.

Q. Have you ever been aware, Lord Clarke, that thousands of people -- precise numbers hopefully to be established or some greater degree of precision to be established in due course -- were infected with hepatitis C through blood transfusions?

A. I -- it's a -- it's a risk still with blood transfusions. Though, they do -- of course we test nowadays. Yes. Hepatitis C continues to this day to be, I think -- I mean, again, I speak as a layman. You must -- these questions are all best put to some medic, but my understanding is hepatitis C remains something you have to be very aware of in hospitals today.

Q. Then if we look at the final document, NHBT0000189_201, please, Soumik.

This is dated 7 August 1990. It appears from the left-hand -- top of the page it's going to the private office of the Parliamentary Under-Secretary of State in the House of Lords and not, I think, if we look at who it is copied to, to your office. Does that look right?

A. Yeah, because she was dealing with it.

Q. Then we will see it says:

"1. PS(L) [Parliamentary Under-Secretary of State in the House of Lords] will wish to know that at its July meeting the ACVSB advised in principle that all blood donations should be screened for hepatitis C virus. A full submission setting out the case for screening, the financial implications and results of a cost benefit study will be provided shortly.

"2. As a first step the ACVSB has recommended a pilot study to evaluate the two available screening tests and supplementary tests which would be used to discriminate between infectious and non-infectious positive reactions to the initial screening test. This would give the NBTS experience of using the tests together and will indicate if there are particular advantages in using one or other of the initial screening tests. Preparations for the evaluation are underway and the results are expected to be available in October for consideration by the ACVSB.

"3. The screening of blood donations would cost [an] estimated £5 to £6 million a year. The question of how this would be funded will have to be considered in the full submission."

Again, Lord Clarke, I am conscious in asking this question that there is no evidence to suggest

that this came to your attention.

A. I had nothing to do with this.

Q. So my question is a more general one. Would you have expected the Parliamentary Under-Secretary of State, so the minister who was dealing with this and sent this, again simply to note this and await a further update, or to start asking questions, now that we have both evidence from abroad and the ACVSB, as to whether things could be done more quickly?

A. Well, it's -- I mean -- I'll sit here and off-the-cuff advise how I think the Parliamentary Under-Secretary of State in the Lords should have reacted to a document which I've never seen in my life before -- I don't -- I'm not going to give some instant, you know, firm authoritative view. I can't see anything wrong with -- the submission seems to speak for itself. It's all frightfully clear. If it had come to me, I suspect I would have put on "Content" or "Noted", signed it "Ken", and moved on to the next document in the box.

Q. Just to say, Lord Clarke, you say a document you've never seen before; it is actually referred to in your witness statement.

A. Oh, well, so somebody helping me putting the witness together pointed it out to me and I've forgotten it.

I'm sorry. It's the second time I've seen it in my life.

Q. Then you say in your witness statement, and I don't have a question, Lord Clarke, I just want to correct something as a matter of record, you say in your witness statement:

"I have been informed that a Ministerial submission was eventually sent in December 1990 after I had left the Department of Health."

Sir, my current understanding -- but we'll check this up and pick this up with other witnesses or through presentations as appropriate -- is that it was January 1991 that the submission referred to was sent. We'll double check that.

And it's right that decisions were then taken after Lord Clarke left office so I'm not going to ask any further questions about that issue.

A. I'm sorry I'm so exasperated, but, you know, this whole story started with newspapers reporting me and attacking me for decisions taken a long time after I'd left office, so nothing to do with me at all.

MS RICHARDS: Sir, I note the time. I've got a very, very small number of my own questions left and then a larger number of questions suggested by Core Participants to field and advance, so if we could take

a break now --

SIR BRIAN LANGSTAFF: Yes. Well, we'll take a break until ten to 12, shall we?

MS RICHARDS: Thank you.

SIR BRIAN LANGSTAFF: Ten to 12.

(11.23 am)

(A short break)

(11.54 am)

MS RICHARDS: Lord Clarke, you've said on a number of occasions that your involvement in, as Minister of State for Health in the period '82 to '85 and the issues in which the Inquiry is investigating was minimal. I just wanted to see if I --

A. I haven't said minimal but what I've said -- everybody alters what I say, I guess, in the reporting of it. What I said was I was never the minister directly responsible for the subject.

Q. If I can just go through with you various issues and ascertain that you had -- whether or not you had involvement in them, really by way of summary. So in relation to the production of the donor leaflet in 1983, you were involved in that?

A. I didn't want that(?). I intervened then and involved myself, as I explained, because I was worried that we might destroy trust in the Blood Transfusion Service

if we did it -- you know, if we got the tone wrong and overdid it. Not so much us, if we spun things into the newspapers, who were being sensational, I didn't want to have an adverse effect on the supply of donors or, even worse, to have patients lose confidence in the safety of blood transfusions they were getting.

Q. You were involved in the saga of the revised donor leaflet 1984 to 1985, again we've explored --

A. Yes, I obviously intervened. I wasn't in charge of it but I intervened because I wanted to check that we weren't doing anything that would accidentally cause problems to the Blood Transfusion Service.

Q. In relation to the Council of Europe recommendations, those certainly came across your desk and you made some contribution --

A. Yes, but they were a footnote matter. If they came across my desk, I don't remember it. I'm sure I got copied in.

Q. In terms of the redevelopment of BPL, your involvement was, I think, as follows: you gave various public statements in which you updated or *(unclear: overspeaking)* in Parliament.

A. I did answer because of the -- on behalf of other ministers in the House of Commons sometimes.

Q. You became involved in the financial side in relation

to the costs --

A. I got concerned about the cost control. That was my only role with the Blood Products Laboratory and it was a very brief intervention because the Permanent Secretary, once he'd found out that the costs were going up rather rapidly, took over and no doubt sorted it out.

Q. You were involved in some parts of the consideration given to the introduction of HIV screening into the blood supply, and we looked at that yesterday.

A. I was aware of it but I don't recall I did anything. Did I take --

Q. I don't want to go over the same ground that --

A. I don't think I did any action on it. I don't think anything I did made any difference to testing.

Q. You will recall there was the decision about central funding or Regional Health Authority funding?

A. Oh, where we got the money from, several things. I was involved in that, yeah.

Q. You raised questions about whether, in your challenging role, as it were, whether there was a need for it.

A. I asked one question in what is it, 30,000 documents? There's a sentence saying one of the questions I asked was "Do we need both?" and presumably I was told yes.

Q. On the issue of public articulation of the Government's line to take of "no conclusive proof" you were involved in that on the two occasions --

A. Line to take notice of?

Q. "No conclusive proof", "no conclusive evidence". You were involved in relation to that?

A. Yes, I'd -- the reason I'm exasperated is because The Times this morning has a headline saying I said something about that which I did not say. I didn't say "no conclusive proof" meant safe. "No conclusive proof" says there was a possibility, it might even be a probability, but we could not be certain and sure. "No conclusive proof" was not the same as saying it's safe. The whole reason for putting a leaflet out, if we had doubts about the safety of taking blood from homosexuals. What's got me in a bad mood this morning is The Times has a headline saying I said something which I didn't. I mean, it bears no relation to what I said yesterday and I'm sure you'll agree we took long enough over it yesterday. They could have listened and got it, you know, vaguely right.

Q. Then on the question of banning or restricting the importation of concentrates, the evidence would suggest that neither you nor any other minister, including the responsible minister, were asked to take

any decisions in relation to that?

A. The banning of?

Q. The banning or restriction of American Factor VIII. That never came across, it would appear, your desk or --

A. No, I mean, that's presumably -- most of your questions, I assume, are being at the doctors who treat patients. That's what I hope you're spending most of your time on because I am sure they can explain the decision they took on the balance of risk not to stop prescribing Factor VIII. I mean, they're far more important to all of this than ministers.

Q. Rest assured, Lord Clarke, we've spent a considerable period of time questioning doctors.

If we go, then, to your witness statement -- let me just check which one. Yes, if we go to your second witness statement -- Soumik, that's WITN -- thank you, you don't need to be asked. If we go to page 93. You were asked to, as it were, reflect on the Government's response to the risks posed by infected blood and blood products, and in paragraph 70.2, you say:

"... as a Department, I believe we acted as swiftly and as efficiently as we were able, given the clinical and legal advice made available to us."

Does that remain your view, Lord Clarke?

A. Yes.
Q. If we go over the page to paragraph 71.5, you say:
"Finally, I have been asked whether there are any lessons to be drawn from the infected blood crisis which are applicable today."
Then you answer it, as I understand it, in the followed paragraphs, by saying:
"Whilst I would hope that a comparable crisis never occurs again and lessons have been learned in relation to blood products, looking back at my time in office I believe the Government and Department of Health at the time acted as best they could given the circumstances. Once we were made aware of the risks associated with imported blood products, officials acted expeditiously to neutralise the risk through heat treatment and sourcing other products, and to provide [evidence] on transmission.
"No doubt comparisons will be drawn between the infected blood crisis and the Covid-19 pandemic, and more specifically, the way in which the governments of the time dealt with the respective risks they faced."
Then you say you can't speak with any authority in relation to the present Government's decision making.
Is it right to understand, then, that in terms

of your own perspective looking back, you have not identified any lessons to be learnt from the infected blood crisis?
A. No, I haven't. I mean, I've obviously improved my knowledge better now than it was two and a half days ago, as I've been taken through all these documents. Again, so I'm all the time discovering more about what the Department actually did, or being reminded. I mean we've now read for the second or third time some of these documents, which I hadn't ever seen in my life before, most of them.
I don't see -- but if this was a normal legal proceeding, we would have pleadings and that would have involved setting out what it was claimed the Department should have done that it didn't do, what the basis of any criticism or claim was. As far as I'm aware, two and a half days, no one has raised any allegation that anybody failed to do anything or anything like that but, fair do -- I, or the person who took the decision, or the doctor concerned, no doubt will answer it. I can't answer for everything that happened because I wasn't involved in most of it, during the time I was there and the key years when I was Minister of State for Health. I'm not the right person to ask most of these questions.

Q. If we look at the top of the -- oh it's there, actually, on the screen. Where you say, in that sentence at the top of the screen, that officials acted expeditiously, and then if we skip over the next bit, "to provide education on transmission" --
A. Sorry --
Q. -- what are you --
A. -- where is this?
Q. It's the top, hopefully the top of the screen:
"Once we were made aware of the risks associated with imported blood products, officials acted expeditiously to neutralise the risk through heat treatment and sourcing other products ..."
I'm not asking you about that, Lord Clarke:
"... and to provide education on transmission."
To what are you there referring? What education on transmission are you talking about?
A. I'm not sure, actually, quite honestly. That is an odd way of putting it, isn't it? I mean, it's on AIDS we gave education on transmission, which again is an odd phrase I've chosen there. Obviously, there was a big AIDS campaign, which Norman Fowler will tell you about, which was making it clear that both heterosexuals and homosexuals should seek to protect themselves and that it was largely transmitted by

sexual transmission, and in the -- you know -- I've left out what we also did, which we did spend some time on, which the leaflet is relevant to, we did stop. We tried to minimise the risk of the blood we were collecting and we stopped, tried to stop having blood donated by homosexuals, rather sweepingly, all homosexuals. We don't do that any more. Nowadays, we do take blood from homosexuals.
Q. If we go back to page 93, paragraph 70.2, second sentence, where you say:
"... as a Department, I believe we acted as swiftly and efficiently as we were able, given the clinical and legal advice made available to us."
Lord Clarke, how is it that you are able to reach that conclusion, given the following three factors: (1) your repeated assertion that you were not the minister responsible; (2) your lack of independent memory now of the events and decisions in question; and (3) the fact that you're unfamiliar with most or much of the documentation?
A. Well, insofar as -- I mean, the things that I've been made aware of, the documents about the evidence, I agree. I mean, that's a perfectly fair question. But you asked me what my opinion is and, insofar as I've been involved, and involved in the follow-up and

the inquiries, and sometimes involved by the campaigning, I've not so far had anything revealed to me which says that the Department did not act efficiently, and everything -- the whole -- everything depends -- it's true of all these inquiries which we now set up so regularly -- with hindsight, of course you can see things that we would do and would have done had we known the eventual outcome. What I'm addressing in this -- this was a response to questions, all this. I was being asked to answer the very things which your question now suggests I shouldn't answer.

The questions, given the medical knowledge at the time, did anyone behave carelessly or negligently? And all I can say personally, in areas that I've now seen or been involved in, no, I don't think anybody -- I can't see anything where I think anybody in the Department should have acted differently.

And anyway, as I keep saying, the Department is not the principal player here and I think it's useful. The people who took the key decisions were the haemophilia specialists giving the treatments. It was a clinical issue. It was a balance of risk. And you must ask the haemophilia consultants why they stopped giving Factor VIII when they did, but not earlier.

Now, what little I know about that, and every time I touch on a clinical opinion, I say my own clinical opinion is worthless, but I think it was balance of risk, and I understand why they did that, because they obviously did not realise that -- I think the score now is almost 3,000 people were eventually, sadly, going to die. If they'd known that, they'd have stopped Factor VIII straight away.

I mean -- and, as I said, they and the ministers would have faced a storm of abuse and campaigning and complaint that they'd stopped giving this wonder treatment which so improved the quality of life of haemophiliacs, but with hindsight, that would have been justified because they would have saved thousands of lives.

Q. You've referred to medical knowledge at the time, Lord Clarke. Would this be a fair or unfair comment: that your grasp at the time of the contemporaneous medical knowledge was limited?

A. Yeah, as I say, my own clinical opinions are worthless. What I'm talking about is the Advisory Committees, the experts, the -- what any health ministry in any developed country can do, and what the Department of Health does, is it draws on the best advice available from the medical profession. That's

what all these expert advisory committees are for.

Again, following Covid, I imagine there are countless doctors, from academics and *(unclear)*, are called in to give advice, and it's all pooled, and they don't all agree with each other, but they're -- the ministers today say what they do, what we all did in the 1980s: act in the light of the best scientific and medical advice we can obtain.

And I've not been shown anything which tells me that the world-class medics giving us that advice got it wrong in the light of what they knew at the time. They just did not predict -- I think probably what no one predicted was just how infected and contaminated the American supplies of Factor VIII were. That's what caused this horrific sort of death and, you know, illness rate that the haemophiliacs in particular suffered. And we -- you know, I don't know, I know less about the hepatitis and the infections from the blood transfusion -- we haven't covered that very much -- but, I mean, there's the incidence of that. Again, we acted once we had a test that worked, in taking samples of the donor's blood. But you have to have a test that's safe and which works first. And that's not a political question. It's nothing to do with politicians like me. That's a question for

scientists and medics. And you must call the scientists and the medics and ask them to explain, the ones that are still alive, why they came to the judgment they did. I'm sure they'll be quite satisfactorily able to do so. You haven't shaken my confidence in the medical and scientific advice we were receiving in the slightest.

Q. Lord Clarke, I don't want to -- in my next question, I don't want to ask you to go into any of the discussions that may have taken place between you and your legal team which are what's called, as you will know as a lawyer, privileged.

A. Yes, as we both know.

Q. But can I ask you this: when you signed your statements, had you personally read all of the many documents sent to you and referred to in your statement, or were you relying on summaries of the documents as set out in your witness statement?

A. Ooh, I read a lot. I mean, some cases -- to be fair, what happened was -- and I can't give you, as you say, any particular detail but we didn't do -- I mean, I assure you, the people advising me are reputable, are very good lawyers. We didn't break any conduct, rules or anything of that kind.

Q. No doubt --

A. They weren't schooling me. I explained to them what I explained to you about my involvement, and my first inclination was to answer the vast majority of the questions, "I can't remember", "I don't think I was involved". But they persuaded me, and I think they were right, to be as helpful as I could be. So they -- they -- certainly went through the documents, and they extracted documents which they thought were relevant to the questions, partly to see if it prompted my memory and partly to remind me that I had been involved in things like the drafting of these leaflets, which has loomed so large in our discussions. And then, to be helpful, we set out references to the documents. We quote them occasionally.

But as with every document, going back to my time as minister, every time I answered a PQ, every time I replied to a letter, by the time I put my name to it, I agree with that. That's my answer. It may have been drafted for me by somebody else but I would alter it if I didn't like it. We spent hours going over it so I think they generally got the gist of what it was I wanted to say. But what we now have is my -- it's my answer. But the initial draft of the replies and the research going through the documents, that was

done by the Government legal team which had been allocated to me to advise me on all this.

But in the end, I read everything I felt I had to read so that I felt confident that I could approve it, and say this is my personal statement.

Q. You've queried on I think more than one occasion the relevance of questions you were being asked and why you were being asked questions. In both of the detailed letters sent to you by the Inquiry setting out lists of questions, you were sent or provided with a link to or sent a copy of the Inquiry's terms of reference. Did you ever read the Inquiry's terms of reference?

A. I'm not sure I ever did. I mean, I did answer quite a lot of it. There were quite a lot of questions. There were hundreds of questions. There were questions I just wouldn't reply to. I mean, there were a lot of questions I just said, "I can't help on this, it's nothing to do with me."

So far this morning, I mean, the questioning we've had for the first hour was entirely on the subject matter which I had nothing to do with the eventual decision on. Absolutely nothing to do with it. Settlement of the legal action. By the time it was settled, I mean the negotiations, the

settlement -- had nothing to do with me. I wasn't involved. And if I knew what had happened, it was because I read in the newspapers the outcome.

Q. And that is why --

A. We've spent most of this morning --

Q. And that is why indeed, Lord Clarke --

A. -- with you questioning me about that.

Q. And that is why, indeed, Lord Clarke, I haven't asked you a single question about the settlement of the legal action. I'm going to turn now --

A. Precisely, but you -- the background, who said what to whom about whether we might settle, all this, we've spent yet another hour on that. It doesn't matter. The preliminaries going on between me and Norman Lamont before the real negotiations started are -- it's for the Inquiry to decide, not me, I must admit -- but I cannot see what the -- what it's got to do with anything when you look -- put it in against the big issue of this Inquiry, which is what lessons are to be learned and what could perhaps be done in future minimising the risk of the human tragedy, the illness and death, this disease causes. We're at 12 o'clock now, and I've spent all morning not being asked about anything I was responsible for.

Q. That that is your view, Lord Clarke, is clear.

I'm going to now ask you a number of questions that I've been asked to ask of you by Core Participants to the Inquiry.

A. Sorry?

Q. I am now going to be asking you a number of questions that I've been asked to ask you by the Core Participants of --

A. Yes, I understand that, I understand that process, yes.

Q. So you may not be --

A. I'll stop complaining to you about the questions.

Q. That would be of enormous assistance.

A. [Laughs]. Right.

Q. It may be you can't answer some of them but I am going to ask them.

The first relates to Northern Ireland. What was the structure in place for the conveyance of Department of Health decisions in relation to blood products or indeed other medical matters to Northern Ireland?

A. I don't know.

Q. I think it will probably follow that you can't answer the second question but, for the sake of clarity, I'm going to ask it. Do you know who were the individuals who would have been involved in relation to providing

information to or receiving information at Northern Ireland?
A. No. Amongst my 8,000 officials or 6,000 officials, I just don't know who did that.
Q. During the -- so, because these questions come from number of sources, Lord Clarke, they're getting --
A. I do understand that.
Q. So they're going to dot around from topic to topic rather than follow a single topic --
A. No, no, I understand that.
Q. -- at any one time.
A. I quite accept that.
Q. During the HIV litigation process, did you ever have any discussions about the potential for claims arising in respect of infection with non-A, non-B hepatitis, or hepatitis C as it became known?
A. I don't think so. But as I say, I was never involved in the actual negotiations. They started after I'd left.
Q. You've referred in the context of your evidence about the donor, AIDS donor leaflets. You've referred on a number of occasions to "scaremongering press coverage" as a factor for both your involvement and having to take time and care to get the wording of the leaflet and associated publicity right. Do you know

whether anyone within the Department thought about talking to responsible newspapers, the BBC, for example, to seek their help in promoting the Government's positive public health message?
A. Well, the press office would do that sort of thing, and I'm sure the press office were doing their best. I mean -- and I can't remember the BBC -- I don't know what the BBC did. It was -- I'm afraid the tabloid press -- I can't name individual newspapers -- but, I mean, there are -- I mean, obviously I can't remember now what they said, but we've sighted in the documents which cropped up -- "Gay blood kills patients" was the way -- now, you and I'm sure everybody would agree, that is a rather stark summary of what the leaflet said or anybody else has ever said. It was -- in those days, a lot of the public were very prejudiced against homosexuals. It was deeply disapproved of, and it was -- most homosexuals didn't come out. It was a deep sense of guilt and shame they were made to feel for being homosexual, so it was partly tabloid newspaper attacks on homosexuals, and scaremongering. And we couldn't control it. It's a free press. I am -- die in the last ditch to defend a free press, but they can irritate you all the time. And we had to try to

present it so that we minimised that kind of tone because, as I keep saying, I did not want donors starting to be worried about coming forward, did not want members of the public frightened to have that operation they needed because they'd got -- gays were giving blood that was going to kill them or give them an illness if they had the operation.
Q. Do you accept more broadly in terms of the provision of information to the public that sometimes the Government has a responsibility to communicate to the public uncertainty about a public health threat?
A. That's what we did.
Q. Do you accept that where there is scientific uncertainty, the public, and in particular any cohort of patients who may be particularly affected, needs to be told what is known for sure, what is considered likely, and what is thought to be possible?
A. Well, we've seen the words that were actually used. I mean, everybody gets excited by taking three words out of what we said: "No conclusive proof". I'm sorry to keep repeating myself as the questions are so -- not from you -- but that -- a great deal is made about "no conclusive proof". What does that mean? Quite clear, particularly in context of the leaflets we were issuing and the things we were saying. That means

there's a very strong possibility that people are getting it, as it -- time goes by, it may even been a probability. We're not certain. We're not sure. I suppose that is the form of words I'm using now. I can't remember whether that form of words was used at the time but that is the kind of message we were trying to get out.

Because it was a new disease, because it was a new problem, that's how these tragedies occur. There was genuine uncertainty. Nobody was -- nobody was -- none of the -- the best medics you could find weren't certain what the position was. That only eventually became clear as you got more data, as the numbers began to pile up.
Q. Is the answer to my question "yes"?
A. [Laughs]. I've spoken for so long I've forgotten exactly what the question --
Q. The question was this -- and I'm not asking you again about the specific line to take or what was said in the leaflets -- it's the general principle: do you accept that where there is scientific uncertainty, the public, and in particular cohorts of patients who may be most directly affected, need to be told what is known for sure, what is thought to be likely, and what is recognised as a possibility?

A. If you could do that, yes, that's one way of doing it. Yes, that's a suggested way of drafting it. I don't think anything was known for sure.

Q. During the months or the period of time when the leaflets were under consideration, the aim of which was, in part, to prevent the NHS blood from not being contaminated with AIDS, did you ever challenge the Department's medical advisers to tell you what the plan would be for treating people with haemophilia if the NHS Factor VIII turned out to be contaminated with AIDS?

A. My recollection is the advice we were given was that there was no way we could be so -- we could replace the American. We would not be self-sufficient. The reason we -- I mean, as soon as we -- concerns were started to be expressed about the American blood donors, I'm sure we would have switched to another supplier. Well, I know we would have switched to another supply of Factor VIII, if such a thing was available.

Now, I'm quite sure the background to everything we've been talking about was the advice to us, and I've no reason to doubt that it was correct, was that we needed Factor VIII in order to meet the demand from the doctors who wanted to prescribe it to their

patients.

Q. Sorry, my question was slightly different from that. Did you ever say to the medical advisers, and if you didn't, do you think you should have done, what will happen in terms of the --

A. I was told --

Q. Sorry, Lord Clarke, can I ask the question? What would happen in terms of the treatment of people with haemophilia? What are the possible range of alternatives if the domestic supply --

A. Well, I was concerned --

(Unclear: overspeaking)

A. -- I was left with the impression there was no effective alternative. As I've repeatedly said -- you've asked me this question many times -- I was left with the firm impression -- this must have been the medical advice I was given -- that you would shorten the life expectancy of the haemophiliacs and the quality of their life would deteriorate and that they would be bitterly resistant to doing that. Indeed, as we've seen, The Haemophilia Society for some reason got involved and was opposed to stopping Factor VIII, even in the light of what was emerging about the American supply.

SIR BRIAN LANGSTAFF: Did you manage to ask the whole of

your question there?

MS RICHARDS: I think sufficiently.

SIR BRIAN LANGSTAFF: It would help, I think, if neither of you talks over the other.

A. **(Laughter)** Okay.

MS RICHARDS: In relation to the AIDS leaflet, and I'm not talking again about the process by which it was drafted or its precise content --

A. The content of it?

Q. -- or its content. But one of the matters mentioned in the leaflet is about blood donors who tested positive being given counselling. Was consideration ever given by the Department during your time there to the provision of counselling to people with haemophilia who were infected?

A. I don't know. I don't know.

Q. In your evidence yesterday, you said this, you said that:

"A Government department facing litigation should, other things being equal, take the advice of counsel or its lawyers, and pursue it, unless there's something particularly unpleasant about the course of action you're being urged to take."

You gave that answer in the context of being asked about decisions on which arguments to run in the

defence of the haemophilia litigation.

Given the circumstances of the HIV/haemophilia claim, and the circumstances of those bringing it, was it not unpleasant to rely on technical legal points on the duty of care and limitation.

A. No, because the future liability of the Government, the Health Service and the doctors, would be affected if we established a precedent for not using a legal defence which was open to you. I mean, the law is the law, and I don't think it was -- I know -- I just think if counsel thought there was a reasonable prospect of success by arguing, a valid legal point should be argued. I don't think anything unpleasant was done, as far as I'm aware, in the litigation, so far as HIV was concerned.

Q. Was consideration -- this goes back to the AIDS leaflet -- was consideration ever given to making the leaflet, which contained information of relevance not just to donors but potentially to people who would receive blood or blood products, to making the leaflet available to patients with haemophilia?

A. I don't think so. I don't know. I'm not aware of any -- it didn't seem to arise, but --

Q. Did you ever question or challenge the assertion --

A. The leaflet was aimed at donors.

Q. I understand that was who it was aimed at. It was just a question about whether consideration was given to its use more broadly. I think you've answered that.

Did you ever question or challenge the assertion or belief that people would die without Factor VIII concentrate?

A. No, it wasn't as simple as that. No, I didn't. Again, I'm in no position to start challenging the legal advice from people who were regarded as experts in the field.

Q. I think you mean clinical advice, rather than the legal advice.

A. Yes, well, clinical expert advice, which is true of other expert advice you get. You don't substitute yourself for your expert. No, I did not challenge it.

Q. Did you ever ask --

A. Well, I think it -- well, I've got it in my head -- I mean, it's trying to remember what I was advised and what I thought almost 40 years ago. It has made a huge difference to the life expectancy, which means some haemophiliacs presumably, therefore, would indeed die earlier than they would otherwise die if you stopped giving them Factor VIII as a prophylactic.

Q. Did you ever ask what treatment was provided to

haemophiliacs prior to the advent of Factor VIII concentrates and whether that treatment was still available?

A. No, I know nothing about that at all.

Q. Did -- and this is in the context of considerations of financial redress, compensation, ex gratia payments, however you want to term them -- did the Government ever seek or consider seeking redress from the pharmaceutical companies that had supplied the contaminated blood products?

A. I don't know. I think somewhere in the documents there's some dispute with some company where we rejected this, or did have contaminated supplies and rejected it, didn't we? But I don't think I knew anything about that at the time. It's just something I glanced in the document.

Q. Yes, that's a slightly separate issue.

A. Yes, that's just something -- it's nothing to do with me. I don't know, is the answer.

Q. In terms of public inquiries, you have said, I think, as well as you're making, I think, your views known more generally about the merits of public inquiries, you've said that you didn't have public inquiries when you were Secretary of State for Health. It's been pointed out to me, and I've been asked to point out to

you, that there were a number of public inquiries during the 1980s --

A. There would occasionally be one -- I mean, where a bridge collapses, and I'm sure there are --

Q. Yes, but --

A. But what I say was this sort of public inquiry, which is a response to newspaper and other campaigning, and is, you know, being dealt with by a Government as referred to, and these inquiries that take years and years, and come back later, that has all developed since my day, we didn't do that.

I once acted as counsel to a health inquiry when I was in practice. It was an inquiry into the failure and collapse of the Solihull Health Authority and it demonstrated to me then, as I was doing what you're doing -- I was counsel to the tribunal -- and the whole management system had collapsed, and that's before I became a minister, revealed to me how useless this consensus management system was and what the dangers -- that took two weeks, and had two or three conclusions, and that was all over.

Q. By way of example only, the Piper Alpha Inquiry was established a week after the disaster by the Secretary of State for Energy. You said in the course of your evidence, and I think speaking not with hindsight

completely, but this was a tragedy that hit thousands of people. Why did you not order a public inquiry?

A. Well, because nobody that raised anything that seemed to add to the sum of knowledge we already had. I don't know, there just wasn't pressure for inquiries in those days. I don't think anybody ever asked for a public inquiry, and they're being called more and more frequently now. This is unique, this particular one, because this is the first time we've had one, I think -- and you'll immediately find an example and prove me wrong, but this is just a personal opinion -- I've never known one set up to enquire into events between 30 and 40 years ago when a high proportion of the key players are actually dead, that is the people who took the decisions.

Q. I'm going to resist the temptation to comment, Lord Clarke.

A. It's my privilege when I give answers, yes.

Q. In terms of ordering or contemplating a public inquiry, at least when you were Secretary of State for Health or indeed when you were a member of the Government over the period of time that followed, was there a reluctance or reticence to order an inquiry which would examine the Government's own actions or inactions?

A. No, I don't think anybody asked us to call an inquiry or if they did, I don't think anybody then thought it was suitable, what are we going to enquire into and what are we going to find out that we don't know already? As I've said, the words there have been two inquiries, there was a Scottish one, I'm not sure if it was set up by the Scottish Government, I can't remember who held them now. There were two --

Q. Lord Penrose and Lord Archer.

A. They both approached me and I would have given evidence if they had asked but neither of them, in the end, thought it was necessary for me to give evidence and I never gave evidence. But they were -- I really don't remember, so you'll immediately correct me if I answer -- exactly what their status was and exactly who set them up but there were two independent inquiries which came to the conclusion that they couldn't find any fault anywhere.

Q. I am not going to debate with you, Lord Clarke --

A. I am --

Q. *(Unclear: overspeaking)*

A. -- quite likely to be wrong, I'm making -- and you're quite right to correct me. I'm sitting here, off the cuff, giving my recollection of events which I was aware of 20 years ago, so I may well have garbled

that, I apologise.

Q. You talked in the course of your evidence about AIDS taking you by surprise. Given the risks of viral transmission, in particular hepatitis B and non-A, non-B hepatitis, and the -- it was a well-known consequence of the use of blood that there might be viral transmission, why did a new virus take you by surprise as an issue with blood products?

A. Well, I'm sure it took me by surprise --

Q. The Department.

A. It -- well, what, until it turns up, you don't know what the new one is. And HIV/AIDS was unfortunately quite spectacular, a new condition which turned up. As you say, it's a constant problem. I don't know how far heat treatment has totally eliminated it. The great medical breakthrough at the time was the beginning -- was heat treatment, which, had that happened five years earlier, would have saved very many lives. I think hepatitis is not the problem it was, is it? I know it's not vanished, hepatitis, but I think heat treatment has done a great deal to reduce that.

Q. Were you -- doing the best you can, Lord Clarke, in the period '82 to '85 when you were Minister of State for Health, do you think you were aware that viral

hepatitis could be rapidly fatal or cause long-term liver damage?

A. Probably. I knew hepatitis B and C were serious diseases, yes. I mean, as a layman, I think I knew that.

Q. In terms of the circumstances in which matters did or did not get drawn to ministerial attention by civil servants, would it be fair, looking at the events with which your evidence has been concerned, to say that ministers mainly became involved in matters, either when they involved the possibility of adverse public reaction or press comment, or when they involved issues of significant public expenditure?

A. Well, when the Government is taking a decision the minister is asked to clear it but if it's -- it entirely depends on the advice of, say a clinical committee. Obviously, the minister just checks this, and doesn't see anything wrong with this, and clears it. The ministers get involved when some ministerial knowledge or decision seems to be required, and that's a judgment made by the officials who put up the submissions. It is true that in the health service cost, how we're going to pay for it, is something that the ministers usually get involved in. And it was my fate when I was, you know, my -- my unlucky role in

life, when I happened to be Minister of State that, actually, dealing with -- trying to, you know, look out of -- keep within budget and deliver as many of our priorities as possible, I often did get involved when it came to the bit of how exactly we were going to pay for this.

Again, I'd be advised, there'd be expert officials who would put proposals to me, but that's the kind of thing where I'd get drawn in, and it's in this case I obviously got drawn in once or twice on that basis. It's mainly how do we pay for it, because there's no choice in spending money on this. We had to spend the money.

Q. You --

A. Where do we find it from? I used to get involved in.

Q. You said in your evidence on Tuesday, I think, an answer to the effect that the Blood Transfusion Service, you described it as a relatively calm area, an oasis of calm, or words to that effect -- and a low priority and hence given to the Parliamentary Under-Secretary of State in the Lords. Given the importance of the Blood Transfusion Service to national health and the knowledge that it could transmit deadly viruses, why was the blood transfusion system treated as a low priority in terms of

ministerial responsibility?
A. Because the safety -- I mean, obviously as you say, the safety, as with most healthcare, safety was paramount. It wasn't, again as I keep saying -- it wasn't for ministers. That required clinical management on the ground to deliver it as safe as possible. It was, compared with most of the Health Service, it was a smooth running, uncontroversial, unchanging, most of the time, part of the service. So -- well, they had to be given the highest priority for whoever was managing it. As far as the medics responsible for it were concerned, it very rarely provoked any need for ministerial intervention. It could be just left to run on its own by the people who knew what they were doing, and this obviously rapidly changed from being that, and we had a real, real crisis in the blood products, but no one saw it coming.
Q. You'll recall, Lord Clarke, in relation to -- at the time that the AIDS leaflet was being considered, one of the other questions or issues that arose was the possibility of questioning people about -- donors about their personal life, their sex life, or sexual practices.
How would asking people about their sexual

practices, in order to prevent those deemed to be at high risk of AIDS from donating blood, be -- and then this is a quote from your evidence -- "being homophobic for the sake of it", as you suggested it might have been?
A. Well, it would give the impression we were getting homophobic. We had to be clear what we were doing. As I said, again, it's nearly 40 years ago, and our culture is totally changed on this subject. I'm sure we had, you know, the same proportion of the population were homophobic [sic], and straight then, as is now. For a high proportion of homosexuals in the 1980s it was a dark secret, unknown to anybody but their own family and the people they were emotionally involved with. It was not a subject that they would cheerily go along to be a blood donor and then want to sit down and have some official start quizzing them about their sexual predilections.
And it would arouse fears. I mean -- no one doubted that we needed to put this leaflet out. No one challenged -- no one was challenging that we needed to stop taking gay blood. It was how you went about it where you had to be sensitive, and if every blood donor was going to be sat down and be challenged "Are you secretly gay?", you know, in the climate of

the 1980s that would have been rather daunting. It was just a question of handling a very, very difficult issue as sensitively as possible.
Q. What assessment, if any, was done of the likely impact on the level of blood donation of greater questioning about sexual practices?
A. I don't know. I don't think we -- we probably didn't even know quite how many would turn out to be gay and how many donors we'd lose.
Q. Was consideration given, as far as you can recall, to the possibility of taking other measures, like public education or encouraging additional low-risk donors who might not otherwise have donated?
A. I don't know. I think the very fact of producing the leaflet was -- I mean, that gave the message, it was quite a drastic step to take, to suddenly start rejecting perfectly law abiding, you know, normal, responsible citizens because of their sexual predilections.
That, in itself, flagged up, I think, that we were taking a serious problem seriously. What other methods of -- and, again, the problem with disseminating information was to avoid it being taken up, causing silly panic.
Q. Who was it, do you think, if you're able to recall,

who told you or provided you with information about the life expectancy of haemophiliacs?
A. Oh, I can't remember who said what after all these years. No, I can't remember it.
Q. Who is it --
A. I mean, my guess is the Chief Medical Officer but it might be somebody who was working for him.
Q. In terms of your understanding that Factor VIII --
A. I mean, is that wrong? I mean, to this day, I mean, I keep repeating it because I still believe that no one has ever told me that's not correct.
Q. Not for me to answer the questions, Lord Clarke, on an issue upon which the Chair has --
A. Well, you -- you cheerily allowed me to keep answering what was -- I was advised at the time, and, as far as I'm aware, but I've obviously not done any research on it, continues to be the case. I don't know.
Q. The Chair has the benefit of a range of evidence on the topic and will no doubt make findings in due course.
A. You're not going to tell me what the up-to-date medical advice is?
Q. I'm not, no.
A. All right then.
Q. But there's plenty of material available publicly,

Lord Clarke --
A. In that case I shall continue to believe that it reduces their life expectancy.
Q. -- and I'm sure you can ask --
SIR BRIAN LANGSTAFF: Can we move on to the next question, please?
MS RICHARDS: Yes. Who told you, and maybe it's the same answer, Lord Clarke, or where did you get your understanding that Factor VIII was a wonder treatment?
A. I -- again, I can't remember who told me that, and I'm probably using my own words, but it had rapidly -- I think -- and I don't know what happened in the 1970s so, again, I begin this by saying you'll probably correct me, after all this time, if I haven't remembered totally accurately. But I think my vague understanding was that it had been introduced in the 1970s, that it had started being used as a prophylactic in the late 1970s, and had -- as I think I've said several times -- had hugely improved the quality of life of most haemophiliacs, and, you know, had been extremely beneficial in alleviating some of the consequences of this, you know, very, very serious and appalling health condition.

That's what I believed had happened, and any suggestion that we might stop importing blood products

or stop giving them would be quite tricky for the doctors to take, but I am sure they didn't mind that. The fact was that the advice was that we should not -- the doctors should -- were going to carry on using it, because of the consequences of not outweighed the worrying possibility that some people might be infected with AIDS.
Q. Lord Clarke, you've told us both in your written statement and your oral evidence, that, both in your capacity as Minister of State for Health and when you were Secretary of State for Health, your primary focus or one of your primary focuses, was on making changes to the National Health Service which delivered better outcomes for patients. Did the extent to which patients could or should be engaged and involved in decisions about them and their treatment form part of that work?
A. No, I guess, as I say -- but I was talking about -- there were mainly changes to the structure of the Health Service. So you'd have to know something -- so it wouldn't involve the average patient in changes to the management of the healthcare system, which is a hugely complex and complicated issue, and always controversial, and remains so to this day.

Although the reforms I introduced were followed

by subsequent governments and have never yet been dropped. I mean, the Blair Government developed my health reforms, took them much -- you know, it was exactly the same basis they did -- they just -- they just completed the job of implementing the reforms.

Where the patient involvement is absolutely crucial -- it's taken more seriously today even than it was then, but it was key to medics then -- was patient consent to the treatment. And in my opinion, with a good doctor, that means informed consent. So you explain to the patient what the pros and cons are, and the risks. It's the doctor who informs the patient as to -- before getting the patient's informed consent that enables the treatment to go ahead.

Now, I say, for a variety of reasons, I think that is now taken further by doctors than it always was in the 1980s. Some of -- some of the old veteran grand consultants -- I won't go on -- I mean, I think probably didn't take this quite as far as their successors would nowadays.
Q. Just going back to your description of the blood products area of responsibility as an "oasis of calm", did the Department take its eye off the ball when it came to the safety of blood products because of this perception?

A. Because of?
Q. Because of the perception that it was an "oasis of calm", a low priority area?
A. No. Once we started getting worried about the source of our blood products, it was no longer an area of calm. That's why people like me started getting involved in it, I mean -- you know, on the fringes of it and parts of it, and -- no, no, plainly obviously -- no, it ceased. As Simon Glenarthur I'm sure will have told you, it was not an oasis of calm in his time. It was certainly a very, very, you know, problematic area.
Q. At the point --
A. But we never -- I don't think we'd had anything like that in blood transfusion in history before but I don't know. I mean, you'll find something in the fifties which I don't know about.
Q. At the point in time at which it became apparent that there was a -- it was no longer an oasis of calm, did you consider transferring responsibility for this area of ministerial activity to somebody more senior?
A. No, I don't think I did. Because, as I say, we did have that -- a touch base meeting at least once with Simon. I had the utmost confidence in Simon. And he tried out on me, and I gather John Patten as well, the

one that he definitely recalls, and that -- it all falls into place exactly as I recall it.

I mean, I had every confidence in Simon. Had I had a Parly Sec who was very green, inexperienced or I thought slightly out of their depth on all this or was getting -- you know, couldn't handle it, was getting a bit stressed by it, all the rest of it, I couldn't take -- move responsibilities. But I might have suggested to my -- our mutual boss, Norman Fowler, "Do you think we should get Simon out of this?" But I hasten to add, at no stage did I lose my trust and confidence in Simon. And I sit here today, having had to go through, you know, the process of -- all this process of improving my knowledge of the thing vastly beyond any I've ever had before -- as far as the documents can give you that knowledge -- I continue to think -- I don't see what Simon is supposed to have done wrong. He was perfectly capable of handling it, and he -- the one thing you can't accuse him of being -- he's not as combative as I am, he's a very calm -- you know, he's a very, very responsible man. He has very high standards. He takes his responsibilities seriously. He is an intelligent man. I think his judgment was very sound. And I -- as I sit here today, nothing I've read or

MS RICHARDS: Yes, if I could just read them.

THE WITNESS: You may be relieved by that.

(Pause)

MS RICHARDS: It's going to take me five minutes or so, sir.

SIR BRIAN LANGSTAFF: Take you five minutes or so.

THE WITNESS: No rush. I mean, would you prefer to take a break?

MS RICHARDS: I don't mind at all.

THE WITNESS: If you prefer us to go away and take a break, I'm not objecting to it.

SIR BRIAN LANGSTAFF: Can I suggest this: what we'll do is we'll take a short break. You're very welcome to use the room here, Lord Clarke, in the meantime, because I think it will be, what, a quarter of an hour?

MS RICHARDS: Not as long as that.

SIR BRIAN LANGSTAFF: Ten minutes?

MS RICHARDS: Ten minutes is ample.

SIR BRIAN LANGSTAFF: Okay. Well, let's take a break and come back at 1 o'clock in the expectation that questions are going to be fairly short. If they're not, then we'll pass the message through to everyone that they can have a lunch. So let's do that. Ten minutes.

(12.51 pm)

heard has shaken my confidence that Simon was handling it as well as anyone could handle it, given all the clinical and other uncertainties that surrounded the problem.

MS RICHARDS: Sir, I think since the break there may have been some further questions suggested to me that I haven't had an opportunity to look at. It may not take very long, but I don't yet know. So I'm in your hands as to whether we take lunch and come back afterwards or we just take a very short break now?

SIR BRIAN LANGSTAFF: Well, I think --

MS RICHARDS: You may have questions, sir, and I haven't yet checked with Ms Grey whether she has.

SIR BRIAN LANGSTAFF: I shall ask Lord Clarke whether he would rather, as it were, soldier on in the expectation --

THE WITNESS: I've been quite happy to soldier on since we started. So I think another long half hour break -- I'll just sit here, if you like. I quite understand that counsel has to take a few moments to do this. It depends how long she thinks it's going to take.

SIR BRIAN LANGSTAFF: Shall we see how long she thinks it may take for her to consider the --

THE WITNESS: I'll shut up for ten minutes, if you like, and just sit here.

(A short break)

(1.03 pm)

MS RICHARDS: Sir, I've one further question I'm proposing to ask from those suggested to me.

Lord Clarke, it's this: you made observations in your evidence, I think yesterday, which were suggestive that you saw the Inquiry as a vehicle for campaigners to advance compensation claims. Do you accept that you have no knowledge whatsoever of the motivations either of campaigners or of the multiple infected and affected people, many of whom would no doubt say, if you were to ask them, that they are fighting for truth and accountability?

A. I think that's a -- I hope that's a slight parody of what I said yesterday, but obviously I'm not attacking -- not attacking the motivation of the people involved. I mean, the victims and their relatives have my sympathy and support, but, you know, one of the things that's been referred here is -- well, it's been your terms of reference, like you told me yesterday, as to whether more compensation should be given, because more compensation, as I understand it, was being sought, perhaps by lawyers acting on behalf of the victims, from the Government, and the -- and someone in Theresa May's Government decided to

transfer the decision on whether or not to give any more money to this Inquiry.

But, I mean, I am not traducing -- you know, trying to traduce or undermine the motives of any of the people coming -- I do understand. I am sorry that, you know, 30, 40 years later they're having such difficulties in living with the consequences for them and their families of the tragedy. And campaigning, I suspect, is something of an outlet for their feelings about this disaster that struck them or someone they've lost.

MS RICHARDS: Sir, that's the last question I have. I think there may be an application to be made by a representative of some of the Core Participants under Rule 10 to be permitted to ask a question of Lord Clarke directly.

SIR BRIAN LANGSTAFF: Yes, I think in that case, I think what we should do is invite Lord Clarke to have lunch, I will determine the application, hear it, determine it, whatever it is, and we'll come back with Lord Clarke -- I'm sorry for the delay -- at ten past two.

THE WITNESS: Can I make a submission on it? One or two items have been submitted to me for comment. They haven't been raised in the hearing, for me to comment

on things been said. At least one of them, I personally thought, was mere abuse, rather than an Inquiry after the truth. I don't mind, I mean, anybody asking a civilised and relevant question. It's entirely for you -- nothing to do with me anyway. It's entirely a matter for the Chair to decide. But I don't -- don't allow someone to go for a publicity stunt or start hurling mere abuse at me. I'm sure I'm quite unnecessarily making this point.

MS RICHARDS: Lord --

THE WITNESS: One of the letters sent to me which I was asked to respond to, I mean I personally put it in the category of abuse.

SIR BRIAN LANGSTAFF: I have no idea what is in any letters sent to you. I don't ask.

THE WITNESS: No, it was certainly put to me by the Inquiry, I would have put it in the wastepaper basket.

SIR BRIAN LANGSTAFF: There is a process under the Inquiry rules by which somebody may ask --

THE WITNESS: Oh, yeah, otherwise --

SIR BRIAN LANGSTAFF: -- a question.

THE WITNESS: I'm saying too much again. It's entirely a matter for you, Chair, and I shall respect your decision.

SIR BRIAN LANGSTAFF: The way we'll deal with it, as

I say, is -- and Lord Clarke, if you would wish -- if you would please withdraw, it's not necessary for you to hear whatever the application may be. So if you would withdraw, and --

THE WITNESS: I'll withdraw, yes, whilst the application is made, yes.

SIR BRIAN LANGSTAFF: Absolutely. Ten past two, I think, because it may take -- I don't know how long it'll be, so we'll take an early lunch, I'm afraid.

Application

MS RICHARDS: So I'm really sorry about this.

I'm afraid Mr Stein's application didn't get recorded or transcribed. What I'm going to suggest, in the interests of maximum transparency, is he repeats it.

SIR BRIAN LANGSTAFF: That is not necessary, because I will say, in whatever judgment I give, what the essence of the application is.

MS RICHARDS: Yes, I think the problem that has arisen is the one occasion where this happened before was where we had a witness who was remote and who would have been able to follow the application remotely and hence we switched off the live stream when the issue was potentially going to be considered. It doesn't arise with this witness, who is in the building and with no

access to following it, so -- but I think that's how it has come about.

Sir, in that case, if we have the recording I hope back on, if we have it back on --

SIR BRIAN LANGSTAFF: Well, it's not up on my computer yet.

MS RICHARDS: Can we check whether the transcribers are transcribing?

(Pause)

Sir, I can understand why Mr Stein's preference would be just to repeat what was a very short application, because otherwise those hearing will not have heard -- who include, of course, a number of his clients on whose instructions he is making this application --

MR STEIN: The bald point, if I may put it this way is that Ms Grey will make her submissions without the ability for my own clients who are not here.

SIR BRIAN LANGSTAFF: I understand. Very well.

Mr Stein, we're back on.

MR STEIN: I'm just *(unclear)* my laptop.

Sir, I'm very grateful for the opportunity to make an application on behalf of the client group that I represent to ask a question, or have counsel to the Inquiry ask a question in relation to -- of

Lord Clarke. The topic area that we will be seeking to have the question put forward is as follows, that many of the infected and affected people who I represent have strong views as to what Lord Clarke has said, and the way that he has presented himself before this Inquiry.

Therefore we are instructed and asked to raise with you, sir, so that you can consider this application to ask Lord Clarke for his comment on the following: that Lord Clarke has presented himself in a way that has shown arrogance and --

SIR BRIAN LANGSTAFF: I think the way you put it before, so that those who are watching know that this is the second run through the same submission, it's been allowed to be repeated because those online were unable to see it, in an abundance of caution, the live stream was switched off, those may now know that the submission was made, and the question which you invited me to consider should be put to Lord Clarke was in these terms --

MR STEIN: Yes, sir.

SIR BRIAN LANGSTAFF: That many people found him to be arrogant, pompous, and contemptuous of people who have suffered so much in this scandal and, therefore, seek his comment on whether he agrees with that

description.

MR STEIN: Yes, sir, we do ask that. The reasons why we suggest that it is important for this Inquiry to hear the question as to the way that he has presented himself, is, sir, so that you can understand and can consider his comment on that question. That will assist you in looking at his credibility, as to the way he has put himself before this Inquiry, the answers that he has given before this Inquiry, whether this is an individual who is capable of insight, in the way that he has handled matters that connect to this Inquiry, and finally, on a point that's been raised to me, whether this individual, Lord Clarke, has contributed because of his thoughts and presentation, to the delays in considering this matter before a public inquiry.

In other words, does Lord Clarke understand that his attitudes potentially have contributed to the lengthening of accountability before this Inquiry?

Sir, as you said, this a repeat essentially of our earlier application that, for technical reasons, wasn't broadcast.

SIR BRIAN LANGSTAFF: Thank you. Just before we realised that the live stream wasn't working, I'd invited Ms Grey, on behalf of Lord Clarke, as his legal

representative, this being heard in his absence, to respond to the application.

Ms Grey?

MS GREY: Sir, thank you very much for that opportunity, as you, and indeed everyone in this room will appreciate, I'm in a slightly difficult position because I do not have and have not sought Lord Clarke's own instructions on this matter. In the light of that, I'm going to confine my comments to really making two propositions or putting before you two propositions for your consideration. The first, very shortly, is simply that Lord Clarke is being asked to comment on how others perceive him. The second is that it would normally be a matter for you, as Chair, to assess directly, having of course heard from Mr Clarke at length, his presentation and how that may affect his evidence.

Of course, arising out of that, I would simply invite you to reflect on the extent to which Mr Stein's suggested question, whether asked by him or by Ms Richards, will assist you in coming to conclusions on the matters relevant to your terms of reference.

I'd invite you to reflect on those matters, sir, but I don't make any further submissions one way or

the other. I will leave it to the Inquiry to determine this application, of course having heard, if you think it fit, from counsel to the Inquiry first.

SIR BRIAN LANGSTAFF: Thank you.

MS RICHARDS: Sir, it is very much a matter for you whether you would be assisted by having the question asked and answered. On the one hand it could be said that it's a submission and a submission that might be made to you in due course.

On the other, it could be said that by putting the matter to Lord Clarke at this stage it allows him to respond it to now rather than potentially further down of the line through the Rule 13 criticism process.

It's very much, however, a matter for you as to whether you would be assisted by having his answer to it.

If you are, then I have no objection whatsoever to asking the question myself. It was because it was an unusual question and one which is based upon a particular set of instructions from a group of Core Participants that it seemed proper that it was an application made by Mr Stein. But if you want to hear the question and answer, and I do understand entirely why Mr Stein's clients have articulated their

position to him in the way they have, then it's a question that can be put by me or by Mr Stein or indeed by you, it's really very much whether you want to hear the answer, sir.

SIR BRIAN LANGSTAFF: Thank you.

Anything more, Mr Stein?

MR STEIN: Sir, only this: that inquiries have a much wider remit than simply the terms of reference. They are there to also consider publicly whether those groups that have been wronged have been able to have their grievances properly aired. There is a wider purpose than simply getting to the truth.

I agree with my learned friend Ms Richards that here we have a situation whereby we would be seeking at a later stage to make these submissions about the presentation of Lord Clarke before this Inquiry. And so in that sense it seems fair to both those who I represent and also arguably to Lord Clarke that this be put before him now for his comment and for his answer.

SIR BRIAN LANGSTAFF: Thank you.

MR STEIN: On that, I have nothing further unless, of course, I can assist.

SIR BRIAN LANGSTAFF: No. Thank you.

individual who is concerned with passages of evidence, passages of time with which this Inquiry was concerned. So I've come to the conclusion that I would not be assisted by asking this question. It does not stop those who wish to submit in due course that I should make a specific finding to that effect or should take that into account, their view. In doing so, I will listen to that submission if and when it is made.

But I do not think that it is helpful to ask someone if they are arrogant, pompous, and contemptuous of others.

MS RICHARDS: Sir, we have reached the stage, then, where there are no further questions from me. But of course you may have some questions, and we will afford Lord Clarke the customary courtesy we afford all witnesses of seeing if they have anything that they wish to add.

SIR BRIAN LANGSTAFF: Yes.

MS RICHARDS: So we will need to pick that up, then, at 2.10, if that gives enough time for everyone to have lunch.

SIR BRIAN LANGSTAFF: Shall we aim for 2.10, if any person is late in coming back, we shall simply delay in starting. But I'm not inviting you to take too long

RULING

SIR BRIAN LANGSTAFF: I have been faced with an application, the basis for which I shall simply say I well understand, that the following question should be put to Lord Clarke: that many people found him to be arrogant, pompous and contemptuous of people who have suffered so much in this scandal and therefore seek his comments upon whether he agrees with this description. The question, in its essentials, is whether he agrees that he is arrogant, pompous and contemptuous of people who have suffered so much.

I do not think that his views upon whether his personality is of that nature or not, which is really a matter of perception for those who are looking at him, his own views will assist me one way or the other. It is said they might give some insight, that may be. But I do not think that will help me to resolve the issues. Those who have seen him online in this Inquiry will form their own views as to what I should make of him. I hope you will trust me to be able to make my own assessment.

Part of the job of this Inquiry, in working out what happened and why, is to look at all the evidence from whichever source it comes, and part of that evidence is the identity and character of the

over it. **(Laughter)** But if you can, please, ten past two.

(1.29 pm)

(The Luncheon Adjournment)

(2.10 pm)

MS RICHARDS: Sir, I've no further questions. I think it's now -- and I don't believe Ms Grey has any questions, so, it's, sir, whether you have any questions for Lord Clarke.

Questions from SIR BRIAN LANGSTAFF

SIR BRIAN LANGSTAFF: I do, yes. Just one. Really, I want to borrow from the expertise which you've had over years in Parliament, in a number of ministerial posts. It's often said that an emerging potential threat to public health needs to be dealt with speedily.

You're nodding.

What structures do you think are best capable of dealing with such a threat quickly?

A. What, who?

SIR BRIAN LANGSTAFF: What structures?

A. Structures?

SIR BRIAN LANGSTAFF: What organisation?

A. Well, you need a small decision-making team and somebody needs to take clear responsibility for taking

decisions, and do what they can to do things and, you know, sometimes step in and really just insist that we've got to take a decision. That's the ideal set-up. It can be very difficult when the subject is a highly specialised one.

I mean, I -- ha. You put it -- described it -- I kept trying to think, you see, in terms of this -- very difficult to think of an exact equivalent to this. If I could think of an example of a speedy response, the one that keeps leaping to mind, inevitably because it's driven us all up the wall with its dominance for us all at the moment is Covid. And, with hindsight, I suspect some Inquiry is going to take years arguing that a lot of things should have been done quicker straight away when they happened, and I think there were people at certain stages pressing impatiently to get on.

And they did approve some things provisionally, and I think some things have been licensed now without going through the full process but, provisionally, subject to being withdrawn if anything that goes wrong, but it's difficult to know what structure.

The one delay that I do think, you know, is plain, looking at it, is fortunately it wasn't the first one. We'd already put out -- the request was

out there for all gays not to give blood but the second one, the stronger worded one, it obviously took too long and it does seem to me, so far as I can judge, and it's very difficult at this distance of time, is because too many bits of the Department were allowed to get in. It kept being really cleared and then somebody else wanted to have a look at it, and they all had a good argument for taking a look at it.

It was difficult to know what structure. One person, clearly in charge, perhaps should have drawn a line after a bit but, again, isn't that easy to say in 2021 rather than at some time when some groups had rather serious doubts about parts of the content.

I'm rather rambling around, not really answering your question, I'm afraid.

SIR BRIAN LANGSTAFF: Well, what I think you've said, so far, is that the optimum, perhaps, is a small group with a decision-maker who has executive power.

A. Yes, somebody in power. Somebody -- because a lot depends on whether people are capable of taking decisions. The temperament of individual people, you can have people with very considerable talents, but are very bad at decision making and always want to put it off and think about it a bit more or always want more information, and just delay a little longer.

Other people are too impetuous, and come to -- to everything that comes up, there's an instant decision making, and then their apparatchiks and the people who work for them have to come rushing in and to try to persuade them to "Sit down, let's have a talk about this, you know, shouldn't we just consult X, Y and Z before we charge in?"

So it's very difficult. I'm not -- it's obviously not my scene to lay down some ideal management structure and ideal temperament for doing it quickly.

SIR BRIAN LANGSTAFF: Well, you --

A. In this particular case, the delays largely were waiting for expert bodies to give advice, and it's -- speeding them up is quite tricky, but probably because scientific problems, you've got to have the research, you've got to have the data, you've got to have the samples. Sometimes you're just waiting for adequate information to pile up and come in. You're waiting to discover the full -- the true nature of what you're dealing with, and waiting to try out various ways that might cure it or respond to it, or minimise the risk, and so on.

SIR BRIAN LANGSTAFF: I suppose the danger is that that process of waiting for a better degree of certainty

defeats a lot of the object --

A. Unfortunately, yes, people are suffering all the time whilst you're hoping that, you know, you're going to get something demonstrably emerging that tells you what's happening, and tells you what the best answer is.

SIR BRIAN LANGSTAFF: Well, if you take --

A. As it happens, again, subject to -- and certainly me and my -- this is just one witness's reaction to the documents -- salvation, in the end, came with heat treatment. Now whether anybody saw that coming, that that was going to be the big -- I didn't, I didn't entirely -- but that was it; that transformed everything. We got very little information about -- I quite -- I have no idea where that was devised, who was working on it -- in my documents, maybe I've just not got to the right bit of the documents, who it was came -- you know, which team came back and said, "We find if you subject this plasma to heat treatment" -- pasteurisation I think they sometimes called it at the time -- "it seems to kill off the unattractive -- you know, the dangerous elements of" -- I think hepatitis -- ignore me if I'm wrong -- "hepatitis as well as AIDS", suddenly the world was transformed, from -- once they started heat treating the blood products,

and once they could heat treat the lot, that was practically the end of any problem.

And funnily enough, it features less in the documents than practically anything else. By the time we had got self-sufficiency and no longer importing American blood products -- it was a very good thing to do: it put everything on a really sound and secure basis for the future, but actually it didn't make that much difference. We'd fortunately already got there, because even the American products now were vastly safer, probably pretty safe, compared with the frightful problem and terrible consequences we've been experiencing through 1985.

SIR BRIAN LANGSTAFF: So in terms of the future, and if there are lessons to be learned from this tragedy, as you've called it, you would envisage a small group with executive -- someone with executive decision-making ability and personality but with expertise on tap. So it might be a system of~--

A. Yes, I mean probably --

SIR BRIAN LANGSTAFF: -- with experts on call?

A. -- it's better to have one person with two people sitting alongside giving strong advice. I mean, somebody -- yes, one person -- but, you know, it's a terrible responsibility for -- and a human being has

not been born who does not make mistakes. So -- but, you know, (unclear) B team, a couple of people, perhaps of slightly different disciplines, who are close, and there's a team, but so long as it's clear who's in charge.

The difficulty here -- am I now, with the wisdom of hindsight, saying what could have been done? Well, (unclear) future. This was a multifaceted problem. And as I say, the thing that saved lives, cured, end of the tragedy, largely, was something we hardly refer to and, as I say, I still haven't a clue where it came from. I mean, it's not a very complicated, highfalutin, nuclear science type solution. Pasteurisation, heat treatment worked.

Now whether any kind of structure would have speeded that up or identified it quicker, I haven't a clue where that came from. And I think -- I suspect most of the people most the time had no idea that work was going on on this and this was suddenly going to bring the worst of the nightmare to an end. I mean, this was a nightmare ever since because of the consequences. But it did -- it's difficult.

And the same process, some successor to you will be going through the same process, again probably for years, when we have this inquiry in Covid.

And that's not all medical. That's rather easier. That is: were decisions taken quickly enough? Were the right decisions taken? Were lobbies ignored? Did we really take notice of the science and medicine? But then combine that with, you know, your beliefs in the -- what the Government could and couldn't do and what human behaviour was going to be like and what was going to be deliverable, what wasn't, and all the rest of it. That -- so it is -- although at the heart of it you have a new, unknown disease, it's different to this.

There's a -- in the early days, in '83, '84, this was a kind of helplessness on all sides when HIV first comes because, you know, we hadn't had anything like this for years, and the -- and the first people it was a problem for was particularly homosexuals, and the -- fatal every time, at first, no cure. We were waiting for a vaccine. No vaccine. And then suddenly something seems to be happening to the haemophiliacs. You know, why? How are they getting this? If they're not either rather promiscuous heterosexuals -- if they're not, you know, sexually a little wayward, like some homosexuals, some heterosexuals, why are haemophiliacs getting it when they don't seem to have had any unusual, anyway, sexual life?

All the way through, this is a sudden -- almost instant disastrous mystery, and so it's -- we didn't know what structure would have dealt with it. And I work with strong personalities. Some of the key figures are dead. The Chief Medical Officer was very much in charge. I mean, I keep praising this Chief Medical Officer but he *(unclear: overspeaking)* sort things out.

SIR BRIAN LANGSTAFF: Well, you've praised the Chief Medical Officer from mid --

A. I didn't know what --

SIR BRIAN LANGSTAFF: -- from 1983.

A. -- I'm sure he was, at first, as completely perplexed by this new disease as everybody else was.

SIR BRIAN LANGSTAFF: I think you've given us a rather different view of Sir Henry Yellowlees.

A. Well, I don't want to be -- I'll probably upset his family or something. One of the officials, in all my many, many departments, one of the very senior and responsible officials who, shall I say, failed to impress me. And I think you've probably got the -- you probably get the hint, I don't know. I don't -- I haven't discussed it with any of the others, but I think you might find that's quite widespread, and I got the impression at the time I overlapped with him

that it was -- actually, it was quite widespread amongst his deputies and the people who were working for him. He was not frightfully interested in getting involved in clinical, medical decisions.

I won't go on because as I say, I shall merely find I've upset somebody who is related to him or something, but my -- my thought -- my own judgment doesn't matter much, but Henry was one who made less impression on me than practically any other senior civil servant that I've ever known. He wasn't -- he took a strange approach to the job.

SIR BRIAN LANGSTAFF: So in terms of the -- this decision-maker who is capable of making decisions having executive power, he wouldn't be the man?

A. *(Unclear: overspeaking)* not very interested in making decisions in this kind of thing. I'm sure -- I don't know. I can't remember it -- I think it came up as Henry -- if anybody asked Henry for advice, he probably would refer them to Diana Walford or somebody else and say, you know, "She does that kind of thing."

SIR BRIAN LANGSTAFF: Yes. She, I think, rather regretted that she didn't have very much contact with Sir Henry.

A. He took a very, very close interest in the honours list for medics.

SIR BRIAN LANGSTAFF: Yes.

A. That was exclusively his concern, to which, he used to joke in the Department, he devoted a great deal of his time and had a very considerable filing system, and who got what honour was very much a decision for Sir Henry.

SIR BRIAN LANGSTAFF: Thank you. Well, thank you. That's all that I --

A. I shouldn't have said that. I mean, that's quite irrelevant to your -- well, as I say, it's my honest opinion.

SIR BRIAN LANGSTAFF: You've said it. There we are.

A. I couldn't have been more relieved when I got a totally different personality -- because I didn't appoint him, but suddenly emerged as my Chief Medical Officer, a man who was passionately concerned with public health.

SIR BRIAN LANGSTAFF: Thank you very much. That's all I have to ask.

THE WITNESS: Thank you very much.

MS RICHARDS: Lord Clarke, there are no further questions, then. Is there anything further you would wish to add?

THE WITNESS: Only to say that, you know, it is one of those terrible incidents of my lifetime. I just repeat my -- despite, you know, my strong feelings, it

was a terrible tragedy. I am very, very devoted to our Health Service. I think our Health Service is one of our great institutions. Of course, it's clinically advanced, and the amount we now spend on it, it's a hugely better service than it was 30 years ago but, by the standards of the time, it was a good service, and this is probably the worst tragedy that's ever occurred, and I feel -- and everybody, I dare think all the people I work with is acutely aware of the human suffering that was being caused whilst this HIV and then these infections being spreading to haemophiliacs carried on and we were desperately trying to find what was happening, how to stop them. And I genuinely feel very great sympathies, to say the least.

I mean, I wholly share everybody's concern for the fate of those not only who died but their families and the people who continued to have problems. It's so -- the importance of the subject matter you're studying, and its significance to any families, should not be underestimated.

MS RICHARDS: Thank you, Lord Clarke.

Sir Brian?

SIR BRIAN LANGSTAFF: Well, thank you, Lord Clarke, for allowing us to trespass on your time by having you

come here.

I can't think that anyone who has listened to your evidence will forget it in a hurry, given, as it was, in a style you yourself --

A. That's a very ambiguous remark.

SIR BRIAN LANGSTAFF: -- well, given, as it was, in a style which you yourself have described as combative and challenging. Developing an understanding of what has happened, which is a very large part of the Inquiry's remit, is like piecing together a huge jigsaw. It depends upon documents, available recollections, context and personality, in which each witness's evidence and how they give it represents one piece.

So if questions, trying to understand the shape and size of your particular piece of the jigsaw and how it fits in, have been frustrating to you at times, I just want you to know that the answers have been helpful to us.

A. Thank you very much. I've no doubt you were warned in advance that, I think, probably compared -- reassured compared with any of my colleagues -- I mean, I've been a public figure so you've probably had the view of me before I arrived -- I realise I am naturally rather combative. I'm not always impatient --

patient. I mean, going back to decision-making, I'm sometimes rather impetuous so anybody working with me has to get me to, you know, sit down and really read the papers and think about it and, you know, "I think we'd better get the Permanent Secretary in to listen to it", and so on. And I give long answers. And the older I get, bearing in mind I am now in my 80s, I think I get even more garrulous.

But any journalist who has ever interviewed me on radio or television will tell you, they often say before we start, "Now, short answers if we can", and if it's an old friend, somebody I know, I tend to say, "Look, you know, John, you've had me here before, so I'll do my best, but I" -- and after about two minutes I'm incapable of giving short answers, so I apologise to the counsel and the tribunal as well, if I was at times getting -- showing signs of impatience or giving her long answers the whole time.

I don't think I interrupted as much as I usually do. I think you'll --

SIR BRIAN LANGSTAFF: How much do you usually interrupt?

A. If I'm not careful -- I'll have to cure myself of that. I mean, with journalists they interrupt you the whole damn time anyway, so I can blame journalists where everyone listening to us -- if you weren't

careful -- of course, it sounds terrible, so it's a wonder I haven't stopped doing it but, you know, sometimes -- some journalists, they wouldn't let me finish a sentence and I wouldn't let them. But I think that -- I hadn't cured myself of, but I have modified myself. But I still, as I am now, going to give long answers.

SIR BRIAN LANGSTAFF: Well, if you will bear with me for a moment while I mention a number of things to others.

THE WITNESS: Of course.

Closing comments by SIR BRIAN LANGSTAFF

SIR BRIAN LANGSTAFF: This is for everyone here and those who are watching online or on YouTube. As you all know, this is our last hearing day before we break for the summer.

Break, that is, from hearings. The work of course, goes on. But I'd like to say four things at this stage.

First, many of you have made a contribution to the work of the Inquiry and it's a reminder to all of us of the importance to many of the issues before us that so many have been following it, in person or online. And very nearly 500 have followed us on YouTube and Zoom each day this week, together with a full house here at Fleet Bank, as you know, and I've

no doubt that there are many more still for whom watching may perhaps have been too difficult, who have kept in touch with the Inquiry in their own way.

I'd like to thank you, each of you, whatever your perspective is, for being part of a collective endeavour to understand how and why such a tragedy occurred.

You too have made a contribution and I'd like to thank those of you who have been here in person. Whatever your perspective, however welcome the evidence has been, however enlightening, however difficult it may have been from time to time to listen to it, or however much you may have fundamentally disagreed with it, I'd like to thank each of you for showing the courtesy to the witness, which has allowed each witness to say what they wanted to say, as they would wish to say it, whatever their role may have been.

Secondly, the Inquiry will return from Tuesday, 21 September, when we will be at our new premises in Aldwych. We're starting with evidence from the former Secretary of State for Health and Social Security, Lord Norman Fowler, followed by evidence of the roles played by pharmaceutical companies and blood services. As we do so, I expect an increasing proportion of the

evidence to relate more directly to those who have suffered from hepatitis or HIV who are not also people with haemophilia.

The whole of our terms of reference are being and will be considered.

We will sit for quite a number of weeks in the autumn, the full timetable is yet to be finalised, and though these remain uncertain times, we will endeavour to make progress no matter what challenges we might then be facing.

Third, before Easter, I issued a statement of approach on final submissions. Now, during the summer break, I encourage all who are participants to continue thinking about the points they would wish to make in their final submissions. These will of course cover both the conclusions you think I should reach, and the recommendations you hope I will feel able to make.

Making recommendations is of central importance. They aim to help future generations learn the lessons of what happened and perhaps to lessen the danger of history repeating itself.

Submissions come at the end of the Inquiry hearings. Potential recommendations require careful consideration which may benefit from timetabling

witnesses before the end with relevant expertise that help to inform those recommendations. So please treat this as advance notice that I'd like to have at least three months before submissions, and at least in outline, what, if any, recommendations you would wish me to consider making.

Fourth -- I said there were four points -- and finally, I wish you all a restorative break.

[Applause]

Thank you.

(2.33 pm)

(The hearing adjourned until 21 September 2021)

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