1 **Tuesday, 18 May 2021**
2 **(10.00 am)**
3 **SIR BRIAN LANGSTAFF:** Good morning, Ms Richards.
4 **MS RICHARDS:** Good morning, sir.
5 **SIR BRIAN LANGSTAFF:** Good morning Ms Gougeon, morning,
6 Ms Baker.
7 Now you can hear me -- at least one of you can,
8 because you responded. Now can I identify which is
9 which. My apologies, but on the left on our screen,
10 wearing black, you are?
11 **MS GOUGEON:** I'm Mairi Gougeon.
12 **SIR BRIAN LANGSTAFF:** Thank you.
13 That means that you, on the right-hand side,
14 wearing a lilac, lilac-pink, I don't know how one
15 would describe it, you must be Ms Baker.
16 **MS BAKER:** Yes, that is right.
17 **SIR BRIAN LANGSTAFF:** Thank you very much for joining us.
18 You are in separate rooms I think in -- is it in
19 St Andrew's House or in the Parliament building?
20 **MS GOUGEON:** In St Andrew's House, yes.
21 **SIR BRIAN LANGSTAFF:** St Andrew's House.
22 Let me describe who you are talking to. You
23 have a small audience, now that we can have an
24 audience back at Fleetbank House. The main audience
25 that you're talking to, however, is remote. It will

1 be around the country watching on YouTube or on
2 a Twitter feed, and that will be in Scotland as it
3 will be throughout the rest of the UK.
4 Ms Richards will ask you the questions but first
5 I shall ask you to take the oath each in turn. Mary
6 will ask you to do that.
7 **MAIRI GOUGEON, sworn**
8 **SAMANTHA BAKER, affirmed**
9 **Questions by MS RICHARDS**
10 **MS RICHARDS:** Ms Gougeon, Ms Baker, can you see and hear
11 me?
12 **MS BAKER:** Yes.
13 **MS RICHARDS:** Ms Gougeon, starting with you if I may,
14 you're currently the Minister for Public Health and
15 Sport in the Scots Government; is that right?
16 **MS GOUGEON:** Yes, that's correct.
17 **MS RICHARDS:** You've been in that position since
18 December 2020. Did you hold any ministerial positions
19 prior to that?
20 **MS GOUGEON:** Yes. I was appointed the Minister of Rural
21 Affairs and the Natural Environment in June 2018 until
22 I became the Minister for Public Health and Sport in
23 December 2020.
24 **MS RICHARDS:** We know there's been a recent election in
25 Scotland. Do you know whether this is a role you will

1 be continuing in yet?
2 **MS GOUGEON:** I don't know that yet. The new Government is
3 due to be appointed over the coming next few days.
4 **MS RICHARDS:** Now, can you just tell us a little about
5 your ministerial responsibilities in your capacity as
6 Minister for Public Health and Sport.
7 **MS GOUGEON:** Yes. I'm responsible for the testing policy
8 for coronavirus in Scotland, for diet and healthy
9 weight, for other areas of public health, for abortion
10 policy, for infected blood policy that we're talking
11 about today as well, and various other matters that
12 relate to public health in Scotland, whether that's
13 relating to smoking, alcohol and diabetes, lung
14 health, all of those issues.
15 **MS RICHARDS:** Ms Baker, can you tell us, please, what your
16 role is within the Scottish Government.
17 **MS BAKER:** Yes, I'm responsible for infected blood policy
18 and have been since 2016, and I also cover a number of
19 other areas including things like blood safety, organ
20 and tissue donation, abortion policy.
21 **MS RICHARDS:** And you are a team leader; is that correct?
22 **MS BAKER:** Yes, that's correct.
23 **MS RICHARDS:** Very roughly, what proportion of the work of
24 the team that you lead is made up of infected blood
25 policy work, and what proportion's made up of other

1 work?
2 **MS BAKER:** I think -- well, it varies over time but at the
3 moment, I would say, probably about a third, but --
4 but, yes, it does vary, I mean, depending on what's
5 happening with the Inquiry and other things.
6 **MS RICHARDS:** You are both giving evidence this morning
7 effectively as representatives of the Scottish
8 Government, and we'll hear later in the day from
9 Martin Bell who works for NHS National Services
10 Scotland, which administers the Scottish Infected
11 Blood Support Scheme on a daily basis.
12 Just so that we can understand the broader
13 division of responsibilities between the Scottish
14 Government and NHS National Services Scotland, is this
15 right: the Scottish Government set up the scheme, set
16 the eligibility requirements, so it decides who can
17 qualify, in general, and sets the payment levels, and
18 then individual decisions, policies as to precisely
19 how the scheme will operate, what needs to be shown by
20 an applicant and so on, that's dealt with by SIBSS; is
21 that correct?
22 **MS GOUGEON:** Yes, that's correct.
23 **MS RICHARDS:** Ms Gougeon, when you took up your
24 ministerial role, your current ministerial role, which
25 I understand from your evidence has only been

1 relatively recent, what knowledge and understanding
2 did you as minister have about the suffering
3 experienced by those who were infected with HIV and
4 hepatitis C and the suffering experienced by their
5 families?
6 **MS GOUGEON:** When I was appointed to my role I was given
7 some briefing on all the different areas of policy
8 within that role as well, so initially it was through
9 that initial briefing that I received which updated me
10 on the position and where we were with that.
11 **MS RICHARDS:** Although you have only been in post for,
12 I think, some six months or so, has your awareness and
13 understanding or knowledge of that suffering changed
14 over that period of time?
15 **MS GOUGEON:** Yes, it has. I would say I have gained
16 a greater appreciation and understanding of that as
17 well. I was also keen that when I came into my post,
18 right across the portfolio, because it is quite
19 a broad portfolio, to really meet, first of all, all
20 the relevant policy officials but as well as that to
21 meet as many stakeholders as possible. So I had met
22 with Haemophilia Scotland and the Scottish Infected
23 Blood Forum. That wasn't until mid-March. I think
24 that was around 15 or 16 March that I met with them.
25 **MS RICHARDS:** Ms Baker, you told us you have been in your

1 current post since 2016.
2 **MS BAKER:** Yes.
3 **MS RICHARDS:** Again, a similar question to you: when you
4 took up that post, what knowledge or understanding did
5 you as team leader have about the suffering
6 experienced by those infected with hepatitis C and HIV
7 and their families?
8 **MS BAKER:** Well, I think it was quite limited before
9 I started. Obviously, I'd heard about it in the media
10 and I'd heard about the Penrose Inquiry but I didn't
11 know a huge amount of detail until I applied for this
12 job, and then obviously did quite a bit of reading
13 before starting, and then, once I started the post,
14 did a lot of reading up and getting to meet people
15 and, you know, similar to Ms Gougeon, I met a number
16 of infected and affected and other people involved,
17 and that obviously helped to broaden my understanding
18 about the issues and what had happened and the impacts
19 that that had had on those who were infected and
20 affected.
21 **MS RICHARDS:** Has that knowledge and understanding changed
22 and deepened over the years in which you have been
23 involved in this area of policy?
24 **MS BAKER:** Yes, I think so. I mean, I think there's --
25 you know, it's such a broad and complex area that I am

1 still learning and still developing my understanding
2 about things like HIV and hepatitis C and the impacts
3 they have.
4 **MS RICHARDS:** Now, I'm going to ask some questions about
5 the origins of the Scottish Infected Blood Support
6 Scheme, and these questions will be largely
7 directed -- these next few questions will be largely
8 directed to you, Ms Baker, given your involvement
9 since 2016.
10 Now, the Scottish Infected Blood Support Scheme
11 took over from the Alliance House organisations in
12 April 2017.
13 **MS BAKER:** Yes.
14 **MS RICHARDS:** Can you assist us with understanding why it
15 was set up as a scheme administered by NHS National
16 Services Scotland?
17 **MS BAKER:** Well, I think we looked, in 2016, at a number
18 of options for organisations that could run the
19 scheme. The Financial Review Group had recommended
20 that there should be a separate Scottish scheme, so
21 when I joined this team, part of my job was to set up
22 the new scheme and take that forward. So we did look
23 at, for example, whether we could appoint an external
24 organisation, but we understood we would need to go
25 through an official general new tender process for

1 that. We looked at setting up a new public body, we
2 looked at the Independent Living Fund as an option,
3 but somebody suggested that National Services Scotland
4 had the systems and ability to make these kind of
5 payments and relevant experience. So I also looked
6 into that as an option and spoke to the chief
7 executive, and as a result of that we sort weighed up
8 the pros and cons of the various options and agreed
9 with the Cabinet Secretary at the time that National
10 Services Scotland would be the best option, for
11 a number of reasons. Firstly, to make sure that the
12 scheme could be set up relatively quickly. Also, in
13 terms of cost effectiveness, the administrative costs
14 were likely to be lower through that option than
15 through some of the other options such as tendering
16 and, as I say, they already had the relevant IT
17 systems and staff in place who could run the scheme
18 and project manage the setting up and so on.
19 **MS RICHARDS:** Now, is this right, that prior to the
20 Scottish scheme taking over in April 2017, higher
21 payments for those regarded as Scottish claimants, if
22 I can put it that way, as the Scottish cohort, had in
23 fact begun the year earlier and had been paid by the
24 Scottish Government via Skipton and MFET limited for
25 the 2016/2017 financial year; is that right?

1 **MS BAKER:** Yes, yes. I think it was March 2016 that the
2 then Cabinet Secretary announced that she was
3 accepting the recommendations of the financial review
4 group. So at that point we knew that it would take
5 some time to set up SIBSS and that it wasn't going to
6 be something that could be done in a few months, so we
7 looked at making interim payments where we could,
8 through MFET and Skipton. That took longer than we
9 had hoped because there were a number of changes to
10 agreements that were required but I think it was
11 December 2016 that they started paying those extra
12 lump sums and the higher annual payments.
13 **MS RICHARDS:** We'll look in a moment at the report of the
14 Financial Review Group upon which the SIBSS scheme was
15 in part based but before we do that can you assist us
16 with this: what was it that led the Scottish
17 Government to set up the Financial Review Group and
18 ask it to review on financial support?
19 **MS BAKER:** I have to say I wasn't in post at that point
20 but my understanding is that after the Penrose
21 Inquiry -- the Penrose Inquiry didn't specifically
22 look at financial support so I think the Cabinet
23 Secretary at the time felt there was a need to
24 consider -- she was aware that there was some
25 unhappiness amongst beneficiaries about the existing

1 payment levels and the Alliance House arrangements,
2 and that's why she asked for a financial review to be
3 undertaken.
4 **MS RICHARDS:** Were there financial limits or parameters
5 imposed by the Scottish Government on the proposals
6 that could be made by the Financial Review Group?
7 **MS BAKER:** Not that I'm aware of but, as I say, I wasn't
8 here at the time when the Financial Review Group was
9 going on or when it was underway.
10 **MS RICHARDS:** If we look at the report -- Soumik, it's
11 WITN4508014 -- we can see there:
12 "Financial Review Group Final Report.
13 "Contaminated Blood: Financial Support:
14 Conclusions and Recommendations."
15 I think it was published in late 2015.
16 If we could go to the second page, please,
17 Soumik, I'm just going to go through it in part just
18 to provide some structure for the questions I'm going
19 to ask you and then ask you a number of questions.
20 So we can see under the heading "Conclusions",
21 if we look at the very bottom of the page, left-hand
22 column, picking up the last three lines:
23 "The Group's discussions are summarised at
24 Chapter 3. They concluded that although the situation
25 had been improved to some extent [and then if we go to

1 the top of the next column] by the 2011 Contaminated
2 Blood Review, there was still significant unmet need
3 among those affected. A combination of pain,
4 suffering and associated financial loss had
5 irrevocably altered the lives of those affected. Many
6 had died from their infection, leaving their families
7 to deal not only with grief, but long-term loss of
8 support. Carers had sacrificed their own careers and
9 opportunities because of their caring
10 responsibilities. Although it is impossible to place
11 a monetary value on these experiences, the Group are
12 of the view that the depth of the physical and
13 emotional suffering involved can only be addressed by
14 introducing new financial support arrangements."
15 Then if we go to the next page we can see the
16 "Key recommendations". So we can see the first key
17 recommendation is in relation to annual payments and
18 the first bullet point tells us the recommendation is
19 the annual payments for HIV and advanced hepatitis C,
20 currently known as stage 2, should be increased from
21 15,000 per annum to 27,000 per annum to reflect
22 Scottish full-time gross median income. I will come
23 back to that. Then there's a recommendation of the
24 amounts that should be paid in relation to the
25 co-infected.

1 Then if we go to the top of the next page --
2 sorry, same page, Soumik, top of the page, right-hand
3 column, we can see that the second proposal was
4 supporting widows and widowers:
5 "When the primary recipient dies, the increased
6 annual payments should convert into a pension for
7 surviving spouses of 75 per cent of the relevant level
8 of annual payment."
9 Then the next bullet point tells us that:
10 "The proposed annual payment should continue for
11 a full year after the date of death of the primary
12 recipient [and] Thereafter ... convert into payment at
13 75 per cent [per annum] to the spouse until death."
14 So that's the payment for widows and widowers.
15 Then if we look at proposal 3, bottom of the page,
16 thank you:
17 "Increased lump sum payment for chronic
18 hepatitis C infection."
19 We can see there the first bullet point refers
20 to the Ross Expert Group, which we've looked at in
21 earlier Inquiry hearings:
22 "... report recommendation related to chronic
23 infection with [hepatitis C] should be fulfilled.
24 That is: all those chronically infected with
25 [hepatitis C] should receive a £50,000 lump sum

1 payment."
2 Then if we go over the page -- sorry, it's the
3 page before that, Soumik, "Proposal 4. Support and
4 Assistance Grants", I'm not going to go through the
5 detail of that but that's discretionary one-off
6 grants, as I understand it. Then "Proposal 5.
7 Further work", I'll come back to that.
8 Then if we just look at the next page "Operation
9 of the scheme", we can see a number of matters there
10 set out:
11 "None of these proposals should require
12 recipients to sign any sort of waiver to prevent
13 individual legal action for damages, et cetera.
14 "A new Scottish scheme should be established
15 that is sensitive to the unique Scottish context.
16 This should encompass current and future HIV and
17 [hepatitis C] beneficiaries."
18 Then, if we look at the right-hand column:
19 "Appeals mechanism -- a credible, transparent
20 appeals mechanism should be established for all parts
21 of the improved schemes. Applicants should be able to
22 appear in person at their appeal and bring
23 an appropriate representative.
24 "Accountability -- the new structures
25 established in Scotland should have affected patients

1 involved in Governance/oversight.
2 "The group agreed as a principle that nobody
3 should receive less financial support due to the new
4 arrangements. The same level of support should at
5 least be maintained."
6 Then finally:
7 "Any new arrangements should be subject to
8 periodic future review to ensure they are fit for
9 purpose."
10 Now, I've not gone through it, obviously, line
11 by line but is it right to understand that these are
12 the proposals and recommendations that form the basis
13 then of the SIBSS scheme?
14 **MS BAKER:** Yes, that's correct.
15 **MS RICHARDS:** I think it's Ms Gougeon's witness statement
16 which tells us that the then Cabinet Secretary
17 confirmed that the Scottish Government accepted the
18 recommendations for future financial support and would
19 be implementing them in the first half of 2016.
20 **MS GOUGEON:** Yes, that's correct.
21 **MS RICHARDS:** Can you just assist whilst we still have
22 this page open on the screen, with the second bullet
23 on the left-hand side. It refers to establishing
24 a new Scottish scheme that should be sensitive to the
25 unique Scottish context. Are you able to assist us in

1 understanding what the Scottish Government's
2 understanding was of the unique Scottish context?
3 **MS BAKER:** Is that for me?
4 **MS RICHARDS:** Yes.
5 **MS BAKER:** I suppose, as I say, I wasn't involved in the
6 group, so I can't say exactly what they meant by that,
7 I'm afraid. I suppose that there is a close-knit set
8 of people involved, who have been involved in
9 campaigning over the years and who have gone through
10 the Penrose Inquiry but, yes, I don't know to what
11 extent the Scottish context is unique. But,
12 obviously, people -- some people were very keen to
13 have a scheme that was Scottish, if you like, that was
14 more local to them, perhaps more responsive than
15 smaller -- they were able to phone up and speak to
16 an individual that they would know.
17 But it's difficult for me to speculate because,
18 as I say, I didn't write the report, so I don't know
19 what they meant by it, I'm afraid.
20 **MS RICHARDS:** Then if we could go to page 9, please, under
21 the heading "Key points", we can see the first bullet
22 point is:
23 "The Group favoured a new Scottish scheme that
24 would not be constrained by UK-wide
25 discussions/agreement."

1 Ms Baker, I'm conscious, obviously, as you have
2 said, you weren't in post at the time this report was
3 produced or, indeed, at the time that the then Cabinet
4 Secretary accepted its recommendations. I'm going to
5 be asking both of you later about discussions that
6 have taken place more recently between the four
7 nations, the UK-wide discussions, but have you become
8 aware, since taking up your post in 2016, of any
9 particular concerns about difficulties with UK-wide
10 discussions in previous years? Are you able to assist
11 us with what was meant by the concern about
12 constraints here?
13 **MS BAKER:** Yes. I mean, I think, well, under the
14 Alliance House arrangements, in order to make any
15 changes to any of the schemes or -- particularly
16 around things like annual payment levels or lump sums
17 or even discretionary through the three -- well, the
18 Caxton Foundation and Macfarlane and Eileen Trust, you
19 needed basically four nations' agreement to that and
20 that was quite difficult, I guess, because everybody
21 had to agree and be able to provide additional funding
22 and I know there had been difficulties, for example,
23 that the former Cabinet Secretary had asked, you know,
24 if interim additional higher winter fuel payment could
25 be made by the schemes as -- while the financial

1 review was going on but because there wasn't four
2 nations' agreement to that, that couldn't happen.
3 They couldn't just implement that for Scottish
4 beneficiaries, which I understand the reasons for
5 that, but obviously it did make it much more difficult
6 to make changes because we needed all four nations to
7 agree to something.
8 **MS RICHARDS:** Then if we look at the second bullet point,
9 it says this:
10 "There was at least some discussion about the
11 court-style damages ... model -- but also a view that
12 the Group should be trying to address current
13 gaps/shortcomings and helping those in need."
14 Then it says:
15 "A court-style model was not supported by the
16 consultation exercise."
17 Again, I'm not going to ask you about the
18 Financial Review Group's views on that because you
19 were not involved but what, if any, consideration has
20 the Scottish Government given, either in the setting
21 up of the SIBSS scheme or subsequently, to such
22 a model?
23 **MS BAKER:** To be honest, we haven't given it much
24 consideration because, obviously, it wasn't part of
25 what the Financial Review Group recommended, so we

1 followed what -- largely what the Review Group was
2 recommending and didn't consider alternatives because
3 there wasn't significant calls for it.
4 **MS RICHARDS:** Was any consideration given by the Scottish
5 Government, to your knowledge, to the model used in
6 the Republic of Ireland, either at the time of setting
7 up SIBSS or subsequently?
8 **MS BAKER:** I'm not aware. I understand it was discussed
9 within the Financial Review Group. They looked at
10 various models, talked about it but, as I say, as the
11 Financial Review Group recommended a particular model,
12 we didn't then investigate the Irish model further.
13 **MS RICHARDS:** Then if we just go over the page, please,
14 Soumik, to the next page, if we look at the first
15 paragraph, left-hand side, under the heading
16 "Proposal 1. Annual payments", we can see, and we saw
17 it in the summary as well:
18 "For those who are receiving *ex gratia* annual
19 payments ... those payments should be increased so
20 that they are in line with the Scottish gross median
21 income for full-time employees."
22 Then the next bullet point says:
23 "These annual payments will ensure nobody is in
24 poverty, and will reflect historic and future
25 financial loss for those most affected by infections."

1 Now, first of all, is it right to understand
2 from the fact that the Scottish Government accepted
3 this report and set up SIBSS in the way that it did
4 that the basis for choosing the amount of annual
5 payments was, as set out here, to reflect the Scottish
6 gross median income for full-time employees?
7 **MS BAKER:** Effectively, I think so. As I say, I wasn't
8 involved directed. I mean, I think that that was the
9 intention. I think it is noted, actually elsewhere in
10 the report, that as the payments are not subject to
11 income tax the payment level was actually higher than
12 gross median income, in fact, but I think, as I say,
13 I wasn't involved in the discussions when the Cabinet
14 Secretary accepted the recommendations, but
15 I understand that she accepted that the arguments put
16 forward by the review group were reasonable in
17 relation to that.
18 **MS RICHARDS:** The second bullet point -- and, again, I'm
19 conscious that this is the report of the group with
20 which you had no involvement at the time, but the
21 second bullet point says:
22 "These annual payments will ensure nobody is in
23 poverty, and will affect historic and future financial
24 loss for those most affected ..."
25 Now, a proposal that, as implemented through

1 SIBSS, that there would be annual payments from
2 April 2017 onwards, one might be able to see how that
3 could encompass an element of meeting future financial
4 loss. Are you able to assist from the Scottish
5 Government or your own team's perspective with the
6 suggestion here that these annual payments would
7 somehow reflect historic loss?
8 **MS BAKER:** I'm afraid, as I say, I didn't write the report
9 so I don't know how it's written. I think, generally,
10 the annual payments are seen to support people's
11 day-to-day living costs. So they're not really about
12 historic financial loss but, yes, we certainly didn't
13 question how the report had been drafted.
14 **MS RICHARDS:** Now, has a full assessment of the needs of
15 those infected and their families or of the losses
16 experienced by them ever been commissioned or
17 undertaken by the Scottish Government, to your
18 knowledge?
19 **MS BAKER:** Not a full assessment. I mean, certainly we've
20 done -- via SIBSS they've run beneficiary surveys
21 which I appreciate doesn't constitute a full
22 assessment but it's there to sort of gauge how people
23 are feeling but we don't -- and we've never had access
24 to people's contact details or personal data to really
25 be able to do a full assessment.

1 **MS RICHARDS:** Are you able to assist with this: when SIBSS
2 was set up, and as it's operated subsequently, means
3 testing has been retained, as I understand it, for
4 a part of the scheme, so it's retained in relation to
5 applications for discretionary grants and elements of
6 discretionary support. Why did the Scottish
7 Government in setting up SIBSS include an element of
8 means testing?
9 **MS BAKER:** I think we've tried to move away from means
10 testing gradually. We're aware that a lot of
11 beneficiaries don't like it and I absolutely
12 understand why they don't. I think, initially, with
13 the support and assistance grants we weren't sure how
14 much demand there would be for it, so we felt -- and,
15 you know, I think it's somewhat acknowledged in the
16 Financial Review Group's report -- that while,
17 clearly, the annual payments are not means tested in
18 any way, nor are the lump sums, that maybe the fairest
19 way to allocate discretionary funding was through
20 means testing.
21 But, as I say, we've moved away from that as
22 much as we can, largely by increasing the annual
23 payments, firstly through the financial review and
24 then through the clinical review later on, and now
25 obviously the new increases that we'll be making in

1 the next few months will hopefully mean that the
2 people shouldn't need one-off grants or income
3 (unclear) as they have in the past. So that should
4 move away from the means testing as much as possible.
5 **MS RICHARDS:** The documents that form, as it were, the
6 architecture of the scheme, I think, comprise a scheme
7 document made by Scottish Ministers -- I'm not going
8 to go to that, I don't have any specific questions
9 arising out of it -- and also a memorandum of
10 understanding between Scottish Ministers and National
11 Support Services Scotland -- sorry, National Services
12 Scotland, and I just want to ask both of you
13 a question arising out of that.
14 Soumik, could we have WITN4728006, please. So
15 we can see this is entitled "Scottish Ministers and
16 National Services Scotland, Memorandum of Agreement in
17 respect of the operation of the Scottish Infected
18 Blood Support Scheme" and just one question I have, if
19 we go to the second page. If we look at the
20 "Recitals", about a third of the way down,
21 paragraph 1, it says:
22 "A scheme has been established in Scotland for
23 the making of *ex gratia* payments to Scheme
24 Beneficiaries (as defined below) who are persons
25 affected by infected blood."

1 Then it goes on to provide for the appointment
2 of NSS to administer the payments.
3 I wanted to ask both of you, and I'll perhaps
4 start with Ms Gougeon with this, what the Scottish
5 Government's understanding or your understanding is of
6 the concept of *ex gratia* payments and why that's the
7 basis for the current system.
8 **MS GOUGEON:** To be honest, I don't know why that was
9 determined to be the basis for the current system.
10 I just know that the way that the system was designed
11 was on the back of the recommendations of the
12 Financial Review Group. I don't know if Sam would
13 have any further information to add to that.
14 **MS RICHARDS:** Ms Baker?
15 **MS BAKER:** Yes, I mean, to be honest, as you'll be aware
16 the previous Alliance House schemes were always run on
17 an *ex gratia* basis, so I think -- I don't think we
18 gave it too much consideration. That's -- you know,
19 our lawyers have drafted this agreement and included
20 that but it wasn't something I specifically instructed
21 them on. But, yes, I think it was assumed to be on
22 an *ex gratia* basis.
23 **MS RICHARDS:** If we then just go back to the report of the
24 Financial Review Group.
25 WITN4508014, and could we go to the last page of

1 the document, please, Soumik. I'm sorry, the page
2 before that.
3 So this is "Annex D Scottish Infected Blood
4 Forum", and it's a note of dissent to the report and
5 recommendations of the Financial Review Group. We can
6 see that if we look, first of all, at the left-hand
7 column, bottom half of the page, there are a number of
8 areas of disagreement expressed by the Scottish
9 Infected Blood Forum. The first three relate to the
10 retention of the distinction between stage 1 and
11 stage 2 and the lack of recognition of the significant
12 levels of health impacts of those who were termed
13 stage 1 patients.
14 We then, at the bottom of the page, see that
15 it's being said that:
16 "The proposed financial settlement for ... [the]
17 Stage 1 patient victims ... [the lump sum payment]
18 does not present any increase on the original
19 recommendations ..."
20 If we go to the top of the next page:
21 "... laid down by Lord Ross ... [nor] does it
22 incorporate any inflationary impact dating back
23 to ..."
24 To the time of the Ross report in 2003 or
25 before.

1 There's then, in the next bullet point -- the
2 last three lines of the next bullet point says:
3 "... the consultation process did not include
4 the opportunity for people to formally detail their
5 losses, either actual or estimated."
6 And then there's:
7 "The lack of recognition of the clear majority
8 view among patient victims to see lump-sum payments as
9 preferable to just annual payments."
10 Now I'm not going to ask, in light of the fact
11 that you weren't in post at the time this report was
12 being considered by the Cabinet Secretary, Ms Baker,
13 to tell us what was made of this by the
14 Cabinet Secretary, but can you assist with this: what,
15 if any, consideration has the Scottish Government
16 given since the report of the Financial Review Group,
17 since the time you have been in post and SIBSS has
18 been set up and run, to the concerns expressed here?
19 **MS BAKER:** Well, I think I was -- I was certainly aware --
20 as I say, I wasn't directly involved in this but I was
21 aware of dissent and I was aware, I think, if you read
22 the rest of the report and the comments from the
23 consultation, I was aware that there was by no means
24 a clear consensus on what everybody wanted from the
25 consultation process they went through. So we were

1 always aware that the steps we took in setting up
2 SIBSS were only a first step.
3 The main part of the actions we took I think to
4 try and address the concerns that were raised here by
5 SIBF was around the clinical review. It took a little
6 bit of time to set that up because we were initially
7 focusing on getting the new payments out first through
8 Skipton and the MFET and then through setting up
9 SIBSS, but we did, around I think spring 2017, then
10 turn our attention to the clinical review and get that
11 set up, and that started working around the summer
12 of 2017.
13 We were clear that the sort of work that SIBSS
14 was doing initially was only a starter, if you like,
15 and that there were still points to be addressed in
16 relation to the stage 1 agreement, in particular,
17 because we recognised that the SIBF and a number of
18 beneficiaries were not happy with the outcome. You
19 know, obviously they welcomed the extra £30,000 lump
20 sum but felt that there should be additional support
21 and additional recognition of the mental health impact
22 of hepatitis C and the extra hepatic manifestations,
23 if you like. So that's what we took forward through
24 the clinical review, to try and consider that in more
25 detail, because I think -- well, as I say, I can't

1 speak for the review group but, as I understand it,
2 they felt it needed expert clinician involvement to
3 look in more detail at those issues and they didn't
4 feel able to provide specific recommendations at the
5 time, which is why I think one of the recommendations
6 was to have a further clinical review.
7 **MS RICHARDS:** We'll look at the clinical review in
8 a moment. If we just, taking up the point in this
9 note of dissent, that the consultation process didn't
10 include the opportunity for people to formally detail
11 their losses, either actual or estimated, would it be
12 right to understand, I think from an answer you gave
13 to one of my earlier questions, Ms Baker, that the
14 Scottish Government has never invited those infected
15 and affected to formally detail their losses, either
16 actual or estimated?
17 **MS BAKER:** Not that I'm aware of, no.
18 **MS RICHARDS:** In terms of the next issue, in the next
19 bullet point, the possibility of "lump-sum payments as
20 preferable to just annual payments", and that was
21 something which the Financial Review Group I think
22 suggested there might be further thought given to,
23 providing that as an option to individuals, has
24 anything further been done by the Scottish Government
25 in relation to that issue?

1 **MS BAKER:** Well, we have had some discussions but progress
2 has been limited. It was one of the things we were
3 going to take forward but actually, once this Inquiry
4 started, we felt it was best to wait, particularly
5 given that the points raised about ensuring parity
6 between the schemes and none of the other schemes in
7 the UK were looking at that. But we've always said we
8 are willing to look at lump sum payments for those
9 individuals who want that but we weren't clear that it
10 was a good time to take it forward both when the
11 Inquiry was looking at financial support but also, as
12 the payment levels have changed several times over the
13 years and are about to change again, clearly we
14 wouldn't want anybody to accept a lump sum payment and
15 then lose out if payments were increased in future.
16 **MS GOUGEON:** I'm sorry, if I'm able to add to that, it was
17 really to say that this was a matter that was raised
18 with me in the meeting that I had that I mentioned
19 with Haemophilia Scotland and the Scottish Infected
20 Blood Forum as well and, you know, basically, just as
21 Sam said there, that, especially given the ongoing
22 discussions with parity, it's not something that the
23 Scottish Government has ruled out at all by any means,
24 but felt it was better to wait until those discussions
25 had been finalised so that nobody would be

1 disadvantaged if the payment levels changed.
2 **MS RICHARDS:** We'll come on to the parity discussions in
3 due course. Thank you.
4 Then just picking up on the clinical review,
5 before we look at the document itself, we know that
6 the English Infected Blood Support Scheme introduced
7 the special category mechanism from September 2017,
8 and that was a mechanism for the stage 1 hepatitis C
9 sufferers to receive a higher payment. Are you aware
10 of any particular reason why the Scottish Government
11 didn't follow suit and introduce something similar
12 either when it set up SIBSS in April 2017 or when the
13 English scheme introduced this type of payment in
14 September 2017?
15 Ms Baker?
16 **MS BAKER:** Well, we did ask the clinical review -- as soon
17 as we became aware of the English Infected Blood
18 Support Scheme plans for the special category
19 mechanism we did ask the Clinical Review Group,
20 I think, to look at that and consider it as part of
21 their deliberations. So it was considered, but it
22 wasn't something that was favoured by the review group
23 as a whole, certainly not as a whole. So that's why
24 we didn't adopt it.
25 **MS RICHARDS:** If we look then at the clinical review

1 report -- Soumik, that's GGCL0000168, please -- we can
2 see the report is headed:
3 "Clinical Review of the Impacts of
4 Hepatitis C: Short Life Working Group Report for the
5 Scottish Government.
6 "Informing Decision Making on Awards for People
7 without Advanced Hepatitis C ... Disease, who were
8 Infected with Hepatitis C through NHS Blood
9 Transfusion/Treatment with Blood Products, and for
10 their Widows, Widowers, Civil Partners or Long-term
11 Partners."
12 And we can see the date, May 2018.
13 If, by way of background, we can go to page 5,
14 I think, just so that we can pick up the timing. In
15 the first paragraph, under the heading "Background",
16 we're told here that:
17 "In mid-2017, the Scottish Government asked
18 Professor David Goldberg ... to establish and preside
19 over an expert group to assess the health and
20 wellbeing of individuals chronically infected with the
21 hepatitis C virus (previously often known as Skipton
22 Fund Skipton 'Stage One') ..."
23 Then if we go to page 9 I think, Soumik, I just
24 want to pick up the key recommendation at the bottom
25 of the page. We can see, picking it up in the last

1 two lines of the first bullet point:
2 "To address this dilemma, the Clinical Review
3 Group favours, unanimously, the following approach:
4 "People with chronic [hepatitis C] (including
5 those who have cleared their virus through treatment),
6 or their widows, widower or partners, who are
7 currently SIBSS beneficiaries or who become eligible
8 to be SIBSS beneficiaries in the future, should be
9 asked to self-declare hepatitis C impact in the
10 following simple way."
11 Then we see three categories:
12 "If they themselves considered that their ...
13 hepatitis C had not appreciably affected their life,
14 they would not be eligible for a chronic HCV annual
15 payment award ..."
16 Then the second is:
17 "If they themselves considered that their (or
18 their spouse's/partner's) hepatitis C had seriously
19 affected and continued to affect their life, they
20 would be eligible for a chronic HCV award at a higher
21 level.
22 "If they themselves considered that their (or
23 their spouse's/partner's) hepatitis C had affected and
24 continued to affect their life, but not seriously,
25 they would be eligible for a chronic HCV award at

1 a lower level."
2 Then if we just go down the page we can see the
3 recommendation in the next bullet point:
4 "Accordingly, those applying for a chronic HCV
5 award would have to declare themselves in one of two
6 categories. A definition of 'serious' would be
7 provided to assist the decision-making; this
8 definition would be to the satisfaction of the
9 Clinical Review Group. There would be no requirement
10 for the applicant to justify the application and the
11 category they declared themselves in. The process
12 would be entirely based on trusting the judgment of
13 the potential applicant. There would be no
14 requirement for a healthcare professional to be
15 involved.
16 "In the context of the available evidence as
17 outlined in this report and the vast collective
18 experience of its members, the Clinical Review Group
19 deemed this approach to be optimal for the following
20 reasons:
21 "It has patient and healthcare professional
22 support, it is simple to administer, it aims to ensure
23 that those with the greatest need receive the greatest
24 benefit, it avoids patient/healthcare professional
25 conflict and any need for an appeals process, it

1 reduces stress among applicants to a minimum, it is
2 person-centred recognising that the individual's
3 perception of hepatitis C is critical, it promotes
4 both individual and collective responsibility and it
5 sends out a loud and clear message saying 'you are
6 trusted to make the appropriate declaration'."
7 Again, Ms Baker, is it right to understand that
8 this is the system that the Scottish Government then
9 decided to implement, a system, as it were, of
10 self-declaration?
11 **MS BAKER:** Yes, effectively.
12 **MS RICHARDS:** Why in particular was that approach chosen?
13 **MS BAKER:** Well, obviously that was what the review group
14 recommended. I wasn't part of the review group.
15 I think I attended the first meeting to talk about the
16 sort of context and the terms of reference but we
17 deliberately didn't involve ourselves in it because we
18 wanted to make sure it was an independent process.
19 But we considered what the review group had
20 recommended and advised ministers around it, and also
21 considered with SIBSS how it would work and how it
22 would operate and I think we agreed that what the
23 review group was saying was appropriate, for the
24 reasons they set out.
25 I know that -- well, from speaking to people who

1 were involved, I understand certainly that clinicians
2 had concerns about sort of "happy to sign off", if you
3 like, or give an opinion, and difficulties associated
4 with that, so I think it was certainly felt it was
5 best that individuals do that themselves.
6 I know there were some concerns how it would
7 work in practice and we had some difficulties trying
8 to make sure that the guidance was easy enough to
9 understand, if you like, and clear enough for people
10 to be able to make a decision about which category
11 they should come into, but ministers -- the ministers
12 at the time accepted that the approach was sensible.
13 I think we have implemented some sort of slight
14 changes. For example, if people self-declared in one
15 category and then decided they want to change, we do
16 ask -- or SIBSS does ask them to provide a letter of
17 support from a medical professional in that case.
18 But, generally speaking, we felt it was appropriate to
19 let people make their own decision.
20 **MS RICHARDS:** Then I think we understand from Ms Gougeon's
21 statement, although she wasn't involved at the time,
22 that this was implemented with effect from I think the
23 autumn of 2018. Why was it not backdated to the
24 inception of SIBSS in April 2017?
25 **MS BAKER:** Is that for me or for Ms Gougeon?

1 **MS RICHARDS:** Sorry, for you, Ms Baker, yes.
2 **MS BAKER:** I think -- well, I don't remember, to be
3 honest, but I think certainly in terms of -- you know,
4 there would have been financial considerations about,
5 you know, finding additional funding, but I think
6 there was discussion about what date it would be
7 backdated to but it was only felt to be realistic to
8 backdate it to that financial year. I think it was
9 1 September 2018 it was backdated to. But
10 unfortunately I don't remember there being any
11 discussions about backdating before 2018 at all.
12 **MS RICHARDS:** We can take that down, thank you, Soumik.
13 I then have some more general questions about
14 the Scottish Government's rationale for and approach
15 to the scheme, and these will be directed to both of
16 you. Starting with Ms Gougeon, and then I'll ask
17 Ms Baker if you have anything to add, what's the
18 Scottish Government's understanding of why these
19 payments are made? What are the sums intended to be
20 for?
21 **MS GOUGEON:** I think it's to recognise the impact that
22 this has had on people's lives, how they have been
23 impacted, their ability to work or if they are unable
24 to work. So I believe that that's what the payments
25 are there for.

1 **MS RICHARDS:** Ms Baker?
2 **MS BAKER:** Nothing to add really. I think what Ms Gougeon
3 has said is what I would have said.
4 **MS RICHARDS:** Would it be right to understand that they
5 are not intended to be compensatory in nature as the
6 scheme is currently constructed?
7 **MS GOUGEON:** I believe that would be correct, yes.
8 **MS RICHARDS:** And I think it's probably clear from the
9 answers Ms Baker has already given to earlier
10 questions but would you both accept that the scheme
11 doesn't account for or compensate for past loss for
12 the SIBSS members?
13 **MS BAKER:** Is that for me or --
14 **MS RICHARDS:** It's really for both of you. Perhaps you
15 first, Ms Baker.
16 **MS BAKER:** Yes, I think that's correct. I mean, I guess
17 to some extent the lump sum payments, when people join
18 or change categories, you know, from stage 1 to
19 stage 2, I guess they -- they are an element of
20 recognition for past loss but, as you say, it's really
21 about people's living costs for now and then in future
22 make sure they can live reasonably comfortably if they
23 are not able to work and ensure that they have some
24 security for the future that they know they're going
25 to continue to get the payments.

1 **MS RICHARDS:** Ms Gougeon?
2 **MS GOUGEON:** Yes, and I would agree with what Sam Baker's
3 just outlined.
4 **MS RICHARDS:** Again, this is a broad question, it's not
5 tailored to any particular aspect of the current
6 scheme, but what does the Scottish Government see its
7 responsibility as being? I don't mean in a legal
8 sense here but does it consider it has effectively
9 a moral responsibility through the current scheme to
10 address, in some measure at least, the impact of what
11 has happened?
12 **MS GOUGEON:** Yes, I believe that we do.
13 **MS RICHARDS:** Ms Baker?
14 **MS BAKER:** Yes, I believe so.
15 **MS RICHARDS:** Then, again, a broad question: what role has
16 devolution played in the approach of the Scottish
17 Government to the system for financial support?
18 Ms Baker?
19 **MS BAKER:** Well, obviously, as a devolved scheme we've
20 always wanted to respond to Scottish beneficiaries'
21 needs, if you like, and take account of those,
22 particularly where they are different. We recognise
23 that there's a lot of common issues across the UK but
24 where there's things that we can or should do
25 differently, then I think devolution -- in the spirit

1 of devolution, we should be able to do that. But,
2 obviously, decisions regarding the scheme are for
3 ministers to take.
4 **MS RICHARDS:** Now, I've just got a couple of questions on
5 some specific elements of the scheme, which again
6 I think these questions will be directed to you,
7 Ms Baker, probably most usefully. If we look, first
8 of all, at WITN4728001, please, this is the statement
9 of Mr Bell, who will be giving evidence later today.
10 If we could go to page 18 of the statement, and if we
11 could just look at question 21 and the answer at
12 paragraph 21.1, you'll see there the question is about
13 implementation of backdating payments and the answer
14 that's given at 21.1:
15 "SIBSS did not consider backdating payments for
16 first time registrants to (i) the date of diagnosis,
17 (ii) the date of first eligibility for support or
18 (iii) the date on which SIBSS was established. The
19 policy, set by Scottish Government, is to backdate
20 payments to the date an application is received by
21 SIBSS."
22 Ms Baker, are you able to assist us in
23 understanding why the Scottish Government's decision
24 in terms of the back-dating policy described here was
25 to backdate to the date an application was received,

1 rather than date of diagnosis or date of eligibility
2 for support.
3 **MS BAKER:** I'm afraid I don't know the details but
4 I understand that was the approach taken by the former
5 schemes, Skipton Fund, and so on, and so we had
6 followed that and I know, well -- or my understanding
7 is that's the same approach taken in the other UK
8 schemes as well.
9 **MS RICHARDS:** So is this right to understand, if you are
10 able to answer this, Ms Baker, that it was effectively
11 done because it was a continuation of what was
12 understood to be the existing system, rather than
13 through an independent consideration of the
14 appropriate policy by the Scottish Government?
15 **MS BAKER:** Yes, I think that's correct.
16 **MS RICHARDS:** Then if we go back to the Financial Review
17 Group report, again there's a specific issue I want to
18 ask you arising out of that. It's WITN4508014,
19 please, and if we go to page 13 please, Soumik, under
20 the heading "Proposal 5. Further work", I've asked
21 you about the issue of lump sum payments, which was
22 the first bullet point. The second bullet point, in
23 terms of recommendation for further work, was that:
24 "Access to insurance products, and additional
25 loading of premiums due to infections, should be given

1 further consideration."
2 Are you able to assist us with what, if any,
3 further consideration has been given by the Scottish
4 Government to this matter?
5 **MS BAKER:** I'm afraid we would have liked to have done
6 more but we just haven't had the time to address it
7 yet. But it is something that we've said and I've
8 discussed with the minister, that we would be keen to
9 try and take forward UK-wide. I think there would be
10 a better chance of having successful engagement with
11 the big insurance firms if we did that on a UK-wide
12 basis.
13 **MS RICHARDS:** I think the statement or one of the
14 statements of Sally Richards, who is involved with
15 SIBSS, not herself giving oral evidence, suggests that
16 the Scottish Government intends to take forward some
17 work in relation to this but doesn't have the capacity
18 to do so at the moment due to workload. Is that
19 correct and if that is correct is there any way that
20 can be addressed?
21 **MS BAKER:** Yes, I think that's correct. We have obviously
22 been trying to get additional staff to help but, yes,
23 I would hope it's something we could take forward
24 reasonably soon, but it has been difficult with
25 a number of pieces of work around infected blood in

1 the last few years.
2 **MS RICHARDS:** Ms Gougeon, from a ministerial perspective,
3 are you able to say whether this is something which
4 the Scottish Government considers is important and
5 should be given further consideration?
6 **MS GOUGEON:** Yes, I think it is important and something we
7 want to give further consideration to and, again, this
8 was another matter that was raised at the meeting
9 I had on 16 March. So I know that this is an issue
10 and, certainly from my perspective, I believe that
11 that's something we should look at.
12 **MS RICHARDS:** Ms Baker, is it right, as a matter of fact,
13 to understand that, for whatever reason, this is
14 an issue which has not been the subject of any
15 particular further work since the Financial Review
16 Group report, which was obviously now a number of
17 years ago?
18 **MS BAKER:** Yes, I believe somebody in my team may have
19 done a little bit of initial investigation work but it
20 never got very far, I'm afraid.
21 **MS RICHARDS:** I'll be coming onto the more recent
22 discussions about parity in a little while but is this
23 issue, the issue of access to insurance products and
24 loading of premiums, a matter that's been raised at
25 all in the discussions between the four nations?

1 **MS BAKER:** I think I may have raised it recently but it's
2 certainly not something that I remember being raised
3 over the, sort of, five years or so that I've been in
4 post. But certainly it's something that I did
5 indicate recently that I felt we should try and
6 discuss further in future.
7 **MS RICHARDS:** We looked in this report earlier at
8 a reference to the appeals process for SIBSS. I'm not
9 going to ask you anything about the detail of the
10 appeals process but one of the features recommended by
11 the Financial Review Group and, as I understand it,
12 accepted by the Scottish Government was that
13 applicants would be able to appear in person at
14 a meeting of the appeals panel and we know from other
15 evidence the Inquiry's heard that wasn't a feature of
16 the Skipton scheme. Do you know why that was seen as
17 important by the Scottish Government, Ms Baker?
18 **MS BAKER:** I think -- well, as I've already said, I can't
19 speak for what the Review Group said in its report,
20 but I think that people felt that it was important for
21 the individual to be able to put their case in person,
22 if you like, rather than just being -- the Appeals
23 Panel considering the paperwork, if you like, so they
24 could explain the circumstances and answer questions.
25 We felt that was reasonable and, obviously, it's

1 a bit easier in Scotland for people -- in terms of
2 travel, for people to attend in person than it would
3 have been, for example, if the Appeals Panel was in
4 London.
5 **MS RICHARDS:** We can take that down, thank you, Soumik.
6 Ms Gougeon, you have referred to you yourself
7 having had a meeting with campaigners, with
8 Haemophilia Scotland, the Scottish Infected Blood
9 Forum. More generally, does the Scottish Government
10 regard it as important to involve the infected and
11 affected communities in decision-making about the
12 scheme?
13 **MS GOUGEON:** Yes, I think that's really important that we
14 get their feedback on how it's operating and that we
15 listen to their ideas and suggestions. They are the
16 ones that are most affected by it so I think it's
17 absolutely vital that we listen to them.
18 **MS RICHARDS:** Ms Baker, over the years since 2017, how has
19 the Scottish Government attempted to secure the
20 involvement of the infected and affected communities
21 in decision-making?
22 **MS BAKER:** I think -- well, for a number of ways. There's
23 been fairly regular engagement between ministers and
24 the organisations such as Haemophilia Scotland,
25 Scottish Infected Blood Forum, they have met or

1 communicated, written to each other fairly regularly.
2 You will be aware SIBSS also has an advisory group
3 which provides an opportunity for SIBSS and we also
4 attend that as observers for us to get feedback and,
5 in addition to that, we've liaised with the SIBSS
6 staff on surveys and they have done two surveys since
7 they started.
8 One was an initial survey after, I think, about
9 a year of operation and then a more in-depth survey
10 after three years to try to get feedback on what was
11 working well and what wasn't working well with the
12 scheme.
13 **MS RICHARDS:** Now, I wanted to ask next about how the
14 funding for financial support and for SIBSS operates
15 at a macro level.
16 Ms Gougeon, is this correct that SIBSS is funded
17 by the Scottish Government, the levels of funding for
18 SIBSS are determined by the Scottish Government in the
19 annual spending reviews and then there is
20 a contribution of funding from the Department of
21 Health and Social Care towards the cost of payments
22 for HIV. Is that broadly correct?
23 **MS GOUGEON:** Yes, that's correct.
24 **MS RICHARDS:** In leaving aside for a moment the
25 contribution from the Department of Health and Social

1 Care, which I'll ask about in a moment, is there any
2 particular budget that the allocation of money from
3 the Scottish Government to SIBSS is drawn from, either
4 Ms Gougeon or Ms Baker, whoever is able to assist with
5 that?
6 **MS BAKER:** It comes from the overall health and social
7 care budget but within that each division of the
8 Scottish Government has its own budget so, as part of
9 our divisions budget, we have a budget for the
10 Scottish Infected Blood Support Scheme.
11 **MS RICHARDS:** Why does the funding for HIV payments
12 operate differently? Why is funding received from the
13 Department of Health and Social Care. Ms Gougeon, can
14 you assist with that?
15 **MS GOUGEON:** Yes, I believe that that had initially been
16 the case or that may have been -- or Sam, I'm sure,
17 will correct me if I'm wrong on any of these details
18 but I think it comes on the back of the Alliance House
19 schemes. I think there had been some discussion with
20 the previous Cabinet Secretary, perhaps around
21 2016-2017, about the future of HIV funding and whether
22 or not the HSC would be considering those payments and
23 I believe there was some discussion about that and
24 whether or not that should be for the Scottish
25 Government to fund through Barnett Consequentials but

1 I don't think the conversation developed any further
2 from that, from what I'm led to believe, and the DHSC,
3 instead of looking at funding the Scottish Government
4 through Barnett Consequentials, decided to continue to
5 make those payments.
6 **MS RICHARDS:** Ms Baker, do you have any further light you
7 can shed on why the Department of Health and Social
8 Care makes this contribution in respect of HIV
9 payments?
10 **MS BAKER:** Yes, I mean, effectively, it's as the minister
11 said, I think the UK Government always funded the
12 Macfarlane Trust or the ongoing costs of the
13 Macfarlane fund, the Eileen Trust, the MFET, so those
14 were always funded centrally, whereas Skipton and
15 Caxton, we always contributed towards the cost of the
16 Scottish beneficiaries. So it was only in around
17 2016, I think, when the UK Government was looking at
18 scheme reform, that they started to talk about us
19 needing to contribute to those costs.
20 As the minister said, there was some discussion
21 with the former Cabinet Secretary where she agreed
22 that that was fine in principle but that under the
23 normal arrangements we should receive a Barnett
24 Consequential for that because we never received
25 any -- as far as we were aware never received any

1 Barnett Consequential from the UK Government following
2 devolution in relation to the HIV schemes.
3 So we proposed that but then the Department of
4 Health came back and suggested that, instead, they
5 would continue providing HIV funding rather than
6 providing a Barnett Consequential. So they've done
7 that since and have agreed to do so this financial
8 year, although it's not yet clear if that funding will
9 continue longer term.
10 **MS RICHARDS:** So that all those listening can understand,
11 can you just -- particularly those who are outside
12 Scotland who may not have the same familiarity, can
13 you explain what you mean by Barnett Consequential
14 Funding.
15 **MS BAKER:** Yes. The Barnett formula is a formula that's
16 used to allocate funding from the UK Government to the
17 devolved administrations, which was established many
18 years ago and it sets out that, for example, if the UK
19 Government provides additional funding for something
20 that's in a devolved area then a proportion of that
21 funding should be allocated to the devolved
22 administrations.
23 **MS RICHARDS:** In terms of quantifying the amount which is
24 provided by the Department of Health and Social Care
25 to the Scottish Government, is this right, that it

1 reflects what the Department of Health and Social Care
2 will pay in respect of HIV through the English
3 Infected Blood Support Scheme and then there is, as it
4 were, a pro rata calculation according to number of
5 Scottish beneficiaries? Is that broadly accurate?
6 **MS BAKER:** Yes.
7 **MS RICHARDS:** Does that then constrain or restrict the
8 Scottish Government's ability to provide the support
9 it might wish to the HIV infected population in
10 Scotland?
11 **MS BAKER:** Do you want me to take that? No, it doesn't
12 because we set our funding, you know, based on the
13 funding we think we'll get. There is a slight
14 difficulty in that, normally, we only get told how
15 much funding -- HIV funding we will get in around
16 December of each year, so, you know, we've obviously
17 had to provide allocations and budget for SIBSS long
18 before that but for that financial year. So that
19 makes it slightly difficult sometimes to calculate
20 exactly how much budget we'll have available. But
21 that's something we work out internally with our
22 finance if we end up overspending.
23 **MS RICHARDS:** Has the Scottish Government ever sought
24 increased HIV funding from the Department of Health
25 and Social Care?

1 **MS BAKER:** No. I've maybe raised concerns about when it's
2 been less than we've expected but, yes, effectively
3 there's not much we can do about it at that stage.
4 **MS RICHARDS:** If we look at a document EIBS0000704,
5 please, Soumik, and if we go to the next page, please,
6 paragraph 7 says this:
7 "At present, the Department of Health and Social
8 Care fund core and discretionary payments to those
9 infected with HIV. This is a historical arrangement
10 as the Macfarlane and Eileen Trusts, which initially
11 distributed these payments, pre-dated devolution and
12 funding for this has since remaining in DHSC's
13 budget."
14 Which reflects the explanation you gave us,
15 Ms Baker. Then this:
16 "Going forward, DHSC does not have the funds to
17 continue to provide this support ..."
18 Then there's a reference to the inclusion of
19 an amount in the costings that the Scottish Government
20 was submitting to the Westminster Government.
21 So is this right, that the Scottish Government
22 has been informed that the Department of Health and
23 Social Care will not be continuing to provide the
24 support?
25 **MS BAKER:** No, well, that was the position at the time

1 this was written, which I think was end of July/early
2 August last year. We were told when we were doing the
3 parity calculations at the time that we should include
4 the funds for the HIV payments as the Department of
5 Health felt that they wouldn't have funding for that.
6 However, since then, I think at the end of April, the
7 Department of Health did confirm that they would be
8 providing HIV funding for this year. It's something
9 that I'd raised with them in terms of trying to ensure
10 clarity on that. So, as I say, they are providing the
11 funding this year, although it's not clear if that
12 funding will continue in future years.
13 **MS RICHARDS:** So is this right then: there's been no
14 longer term commitment from the Department of Health
15 and Social Care to continue this arrangement?
16 **MS BAKER:** No, no. And -- yes, we've agreed it's
17 something we need to discuss further in future but,
18 yes, unfortunately there's no commitment from them.
19 **MS RICHARDS:** And then more generally does the fact that,
20 currently at least, the funding of SIBSS depend in
21 part on funding received from Department of Health and
22 Social Care, does that department or the Westminster
23 Government more generally have an influence or say in
24 any respect over the policy and operation of the
25 scheme?

1 Ms Gougeon?
2 **MS GOUGEON:** I'm sorry -- certainly not as far as I'm
3 aware, no.
4 **MS RICHARDS:** Ms Baker?
5 **MS BAKER:** No. No, they don't.
6 **MS RICHARDS:** We can take that down.
7 Before we break, just one further area of
8 questioning on the issue of a longer term commitment.
9 You have explained to us that there isn't a longer
10 term commitment presently at least from the Department
11 of Health and Social Care to the HIV element. What
12 kind of commitment can the Scottish Government give
13 more generally that it will continue to provide
14 financial support to beneficiaries for their lifetime
15 and the lifetime of their partners?
16 Ms Gougeon, is that something the Government is
17 able to give some form of promise or commitment to?
18 **MS GOUGEON:** Well, we have committed to that and I suppose
19 I'm in a difficult situation right now, I may not be
20 in this position over the course of the next couple of
21 days and it's not for me to take a decision for any
22 future Government, but I think it's been out -- we've
23 made that clear since the establishment of the scheme
24 that we would be committed to that and I would hope
25 that whoever's in my post would make that same

1 commitment.
2 **MS RICHARDS:** Ms Baker?
3 **MS BAKER:** Yes, I mean, I think -- I'm aware that some of
4 the campaigners have raised concerns that, for
5 example, a future administration could choose to make
6 changes to the scheme, and obviously the Scottish
7 Government couldn't guarantee what a future
8 administration might do, but I would be pretty
9 confident that future ministers would want to continue
10 to support the scheme and certainly current ministers
11 have always seen this as an arrangement for the rest
12 of the beneficiaries' life, so I wouldn't expect any
13 future administration to want to change that.
14 **MS GOUGEON:** It just comes back to what we talked about
15 earlier about the moral duty and obligation that
16 I think governments have to care for people and to
17 provide for them in these circumstances. So I would
18 certainly imagine that that would be continued.
19 **MS RICHARDS:** Sir, I note the time. I've still got
20 a number of questions to ask, so would this be
21 a convenient moment for a break?
22 **SIR BRIAN LANGSTAFF:** Yes, yes, it would. Let me just say
23 to each of you that we normally have a break during
24 the morning. It allows those who are watching
25 remotely, in particular, to have refreshment if they

1 want. It allows us that privilege too. But during
2 any break in this Inquiry, I always tell witnesses,
3 whoever they are, that what they must not do is
4 discuss anything which they have said in evidence or
5 they think they may yet be asked about in evidence
6 with anyone, whoever they are. They can talk about
7 anything else they like. That rule applies just as
8 much to you as it does to anyone else. But I look
9 forward to seeing you back, it will be half-an-hour so
10 let's say quarter to 12.
11 **MS RICHARDS:** Thank you, sir.
12 **(11.17 am)**
13 **(A short break)**
14 **(11.45 am)**
15 **SIR BRIAN LANGSTAFF:** Yes.
16 **MS RICHARDS:** If I can just pick up one area of
17 questioning from before the break, I'd asked you about
18 the payments made by the Department of Health and
19 Social Care in respect of HIV to the Scottish
20 Government and I've been asked to clarify one matter
21 with you.
22 In relation to those who are co-infected, does
23 the hepatitis C element of what they receive also get
24 paid from the Department of Health and Social Care?
25 **MS GOUGEON:** No, that's paid by the Scottish Government.

1 **MS RICHARDS:** Thank you.
2 I want to ask you next about two omissions from
3 the current scheme. The first is in relation to
4 hepatitis B. So SIBSS includes HIV and hepatitis C as
5 the Alliance House organisations do but no-one who is
6 infected with hepatitis B in consequence of infected
7 blood products or blood is eligible to receive
8 a payment from SIBSS.
9 Why is that? Ms Gougeon --
10 **MS BAKER:** Do you want me to answer?
11 **MS RICHARDS:** Ms Baker, certainly.
12 **MS BAKER:** Well, as you said, the previous schemes just
13 looked at hepatitis C and HIV. As far as I understand
14 it, the reason that a scheme in relation to
15 hepatitis B has never been taken forward is because
16 the blood services were always screening blood
17 donations for hepatitis B going way back, so that that
18 is why we don't include hepatitis B in the scheme.
19 **MS RICHARDS:** During the time that you've been in post,
20 Ms Baker -- so since 2016 -- has the Scottish
21 Government ever given specific consideration to the
22 position of those infected with hepatitis B and
23 whether they should receive some form of financial
24 support?
25 **MS BAKER:** Not specifically, no. Obviously, I'm aware

1 that this Inquiry is looking at it so clearly we would
2 want to take account of the Inquiry's views but it's
3 not something we've looked at.
4 **MS RICHARDS:** Ms Gougeon, is there anything you can add
5 from a ministerial perspective that might address the
6 concerns of those infected with hepatitis B?
7 **MS GOUGEON:** Well, I'd say that it's just not been an area
8 that's been raised with me in relation to this. But,
9 again, if that is an area of concern that the Inquiry
10 believes the Scottish Government should consider, then
11 we would absolutely look to consider that.
12 **MS RICHARDS:** The second gap or omission in the scheme
13 I want to ask you about is the position of the
14 bereaved family members beyond partners, widows or
15 dependent children under the age of 21 and in
16 full-time education.
17 Now, there are many bereaved who are not
18 eligible to receive money from SIBSS, including, in
19 particular, parents whose children died or adult
20 children whose parents died. Why have they not been
21 included in the Scottish scheme?
22 Ms Baker?
23 **MS BAKER:** Well, as I understand it, we have discussed it.
24 I know it has been raised and I know that the minister
25 has discussed it with Haemophilia Scotland and SIBF,

1 so she may want to add more. But when we've looked at
2 this in the past you'll be aware that our scheme
3 derives in relation to hepatitis C from section 28 of
4 the Smoking, Health and Social Care (Scotland) Act
5 2005, which talks about being able to make payments to
6 dependants, and we've been advised that, you know,
7 whilst Scottish ministers have some discretion in how
8 you define a "dependent", that really we would need to
9 be looking at people who in some way were either
10 financially dependent or dependent for care on the
11 infected person. So our advice has been that
12 currently the legislation doesn't allow for us to make
13 payments under the scheme to broader categories, if
14 you like, of people you've described.
15 **MS RICHARDS:** Ms Gougeon?
16 **MS GOUGEON:** Yes, I would agree with what Sam has said,
17 and that's certainly the advice that I received, that
18 that would go beyond the definition of "dependent" as
19 it's laid out in the legislation at the moment.
20 **MS RICHARDS:** If we leave aside any constraints imposed by
21 the current legislation, because legislation,
22 obviously, is something that can in principle be
23 amended, what about the moral responsibility or moral
24 case for including within the scheme people who have
25 suffered some of the greatest tragedies imaginable,

1 the loss of a parent or loss of a child?
2 Ms Gougeon, is that something that the Scottish
3 Government is willing to consider further?
4 **MS GOUGEON:** Well, it's something that I've been happy to
5 look at during the time that I've been in post and
6 have wanted to consider further, because just because
7 somebody doesn't necessarily fall within that legal
8 definition or, as it's laid out, as being dependent,
9 that doesn't account for the impact that it may have
10 had on other people's lives and, like you've said
11 there, adult children are people who have had to care
12 for someone who's been affected by this. So I think
13 it's something that warrants further consideration.
14 **MS RICHARDS:** Would it be right to understand from the
15 answers you have given that as a matter of fact the
16 Scottish Government hasn't up until now undertaken any
17 assessment or study of the losses sustained by
18 children or parents who might fall within that
19 category?
20 **MS GOUGEON:** Not as far as I'm aware.
21 **MS RICHARDS:** Can I then come to the question of parity
22 and the discussions that have taken place over the
23 last year or so and where they've got to. Before we
24 do that, it might assist to get a sense of the extent
25 of disparity, and I'm going to do so by looking at

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1 a table that I think was prepared by The Haemophilia
2 Society.
3 Soumik, it's RLIT0000643, please.
4 Now I'm not going to be asking you about the
5 detail of the figures that are within this but it's
6 really just to provide some context for the questions
7 that follow.
8 We can see here, if we just zoom in a little,
9 please, Soumik -- we can see here that The Haemophilia
10 Society has put together some comparison figures for
11 the four nations, England, Scotland, Wales and
12 Northern Ireland, and we can see that there are, for
13 example, if we look at the second item, the
14 "Hepatitis C stage 1 one-off lump sum", there's
15 significant differences in terms of what was available
16 in Scotland as opposed to England, Wales and Northern
17 Ireland.
18 And then "Hepatitis C stage 1 (moderately
19 affected)", there we see larger regular payments in
20 England and Northern Ireland, smaller in Scotland and
21 Wales.
22 If we just zoom out again, if we look down
23 towards the bottom of the table, we can see, in
24 relation to "Bereaved partners", the provision made in
25 the other nations for a £10,000 one-off lump sum, and

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1 then the provision made in Scotland which did not
2 include that lump sum but was the 100 per cent of
3 payments for 12 months and then 75 per cent of that
4 amount.
5 So there are obviously other disparities, and
6 the figures have changed in various respects over the
7 years, but we can see that there have been, since the
8 schemes were set up in 2017, fairly significant
9 differences between the types of payment and the
10 amounts of payment made between the four nations.
11 So would it be fair to say that the disparity
12 between the schemes is something that's been an
13 obvious fact from their inception, Ms Baker?
14 **MS BAKER:** Yes, yes, I think so. It's -- we've talked
15 about the financial review, so it's clear that that
16 was recommending things that were different from what,
17 for example, the English scheme was looking at back
18 in 2016 when I think they did a consultation and
19 looked at some changes which went in a slightly
20 different direction. So certainly the payment levels
21 have evolved since there and that has perhaps
22 increased some of the differences between them.
23 **MS RICHARDS:** And then if we look at just a couple of
24 documents before I ask you some questions.
25 Ms Gougeon, your witness statement, if we go to

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1 WITN5672001, and we go to page 7, paragraph 6.5, top
2 of the page, Ms Gougeon, you say this -- in response
3 to a question about the differences in the schemes,
4 you say:
5 "The Scottish Government recognises that it can
6 be frustrating for beneficiaries in each scheme where
7 they see that another scheme is providing more
8 generous payment levels; that applies equally within
9 the UK as it does when beneficiaries compare support
10 with that provided in other countries outside the UK.
11 While the Scottish Government believes it is
12 beneficial to have some consistency in the support
13 between the four nations, we believe any changes to
14 SIBSS should be based on evidence of need and not
15 simply to match what other UK nations are doing.
16 Where there is good practice identified in other
17 schemes we would seek to adopt that where possible."
18 So that was your statement, Ms Gougeon.
19 Then if we could look at WITN4508001, please.
20 This is a statement from Sally Richards.
21 If we go to the third page, please -- I should
22 say she's the scheme manager of SIBSS.
23 And if we look at the top half of the page --
24 just scroll down a tiny bit further, please, Soumik.
25 Thank you.

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1 So we can see under paragraph (b) she refers to
2 the legislative origin of the scheme and then says
3 this:
4 "The Scottish Government sets the policies and
5 level of payments for [SIBSS] based on Scottish
6 circumstances. These are therefore not influenced by
7 levels of payment in other devolved administrations.
8 The Scottish Government does ensure it is aware of
9 payment levels and policies within other parts of the
10 [UK], but given this is a devolved matter, the
11 Scottish Government does not feel it's necessary or
12 appropriate to monitor the consistency of policy and
13 awards across the devolved administrations."
14 Looking at both what Ms Richards says and what
15 Ms Gougeon's witness statement says, would it be fair
16 to say that the issue of parity has not been regarded
17 by the Scottish Government as a particularly pressing
18 issue previously in part because the Scottish
19 Government's scheme based upon the Financial Review
20 Group report made some higher and different payments
21 from the other schemes? Is that a fair comment,
22 Ms Baker?
23 **MS BAKER:** Yes, I think so. The position on parity has
24 certainly evolved but, yes, I think the principle's
25 still the same that we, you know -- and Ms Gougeon may

1 want to add, but the Scottish Government has wanted to
2 maintain some flexibility but at the same time to try
3 and increase parity between the schemes as much as
4 possible.
5 **MS GOUGEON:** Yes, and I would say that I can completely
6 understand it from someone who -- from the perspective
7 of people who are beneficiaries of the scheme and to
8 see big differences in other schemes across the UK.
9 I do think it's really important in Scotland that we
10 retain a Scottish scheme that's flexible to the needs
11 of people here and can respond quite quickly to that
12 if there were any changes that needed to be made, and
13 I think maintaining that is quite important, but
14 I think, particularly from a beneficiary's
15 perspective, that that could be frustrating to see,
16 particularly in the areas where there are quite stark
17 contrasts in the differences in payments.
18 **MS RICHARDS:** We can take that down, thank you, Soumik.
19 Ms Gougeon, your statement refers to there
20 having been discussions with the other nations,
21 looking to try to increase parity of support between
22 the four schemes. I'm going to ask Ms Baker in
23 a moment to tell us a little more about the history of
24 that, but in terms of your own involvement since
25 December 2020, what discussions are you aware of that

1 have taken place between the four nations?
2 **MS GOUGEON:** Well, certainly in my role I haven't had --
3 I haven't been directly involved in discussions
4 personally. I was aware that discussions around
5 parity had been ongoing for some time but it was only
6 in March that things really seemed to progress.
7 I think I became aware the day before there are
8 weekly four nations' meetings with the -- well, it was
9 the Cabinet Secretary for Health as well as the other
10 Health Secretaries from the other four nations. Those
11 are had weekly and I think the day before the meeting
12 on 11 March we were made aware that it was going to be
13 an issue on the agenda at that point, and then it was
14 discussed at the meeting on 11 March when I think all
15 ministers agreed that parity should be pursued.
16 But then I don't think there was much over the
17 course of the next couple of weeks until about
18 24 March. So, well, a decision had been reached at
19 that meeting that we'd work towards parity. We didn't
20 know exactly when that would be until there was a bit
21 of a flurry in terms of the decision-making that
22 needed to be made and needed to happen really quickly
23 over the space of 23, 24 and 25 March.
24 **MS RICHARDS:** The decision-making that needed to be made,
25 made by whom? Was it effectively a question of

1 needing something from the UK Government or was there
2 internal decision-making within the Scottish
3 Government that was outstanding?
4 **MS GOUGEON:** Like I say -- Sam Baker will be able to give
5 more information, perhaps, on the background and what
6 had led up to this, but I think that, again, this --
7 discussions about parity had been ongoing for some
8 time because I believe that they were -- within the
9 UK Government they were trying to get agreement from
10 Treasury as to the funding to trying to reach that
11 parity across the four nations. So I think it was
12 really from that perspective we were asked to give
13 costs. I think that may have been couple of years, so
14 maybe that's 2019-2020. We were then asked to give an
15 updated costs after that meeting that was held on
16 11 March as to what parity was expected to cost us and
17 again, as I say, the decision-making happened fairly
18 rapidly after that point.
19 **MS RICHARDS:** But what, if any, decisions fell to be taken
20 by the Scottish Government in March of this year?
21 **MS GOUGEON:** Really to agree to the proposals that had
22 been put -- that had been put forward. So we required
23 the funding to enable that to happen and those were
24 the decisions that needed to be made.
25 **MS RICHARDS:** So is it right to understand that the

1 Scottish Government was waiting for confirmation from
2 the Westminster Government that additional funding
3 would in principle be made available?
4 **MS GOUGEON:** Yes.
5 **MS RICHARDS:** Ms Baker, I am going to take you back and
6 ask you a bit about the discussions over a longer
7 period of time and to do so by reference to a handful
8 of documents.
9 Could we have, Soumik, RLIT0001491, please.
10 We see, bottom of the page, this is an answer by
11 the Secretary of State for Health and Social Care,
12 I think, or answered by the Department of Health and
13 Social Care, 14 June 2019. It refers to a major
14 uplift announced on 30 April to financial support
15 available in the English scheme, and then it says
16 this:
17 "As announced at that time, the Government is
18 committed to working with its counterparts in the
19 devolved administrations to look at the issue of
20 parity of support across the United Kingdom. I have
21 written to my counterparts in all the other devolved
22 nations, including the Permanent Secretary of Northern
23 Ireland, inviting them to meet to discuss this issue
24 at the earliest opportunity. A date for this meeting
25 is currently being sought."

1 Ms Baker, there were, as I understand it,
2 regular meetings between representatives of the four
3 nations prior to this, looking at issues such as the
4 workings of the individual schemes. This might
5 suggest that, until this point in time, parity had not
6 been a particularly prominent part of those
7 discussions or meetings; is that right?
8 **MS BAKER:** I think so. Certainly we had discussed it
9 before then. I can't remember exactly when we started
10 discussing it but I know -- I think it was following
11 the Inquiry actually raising it. I can't remember
12 exactly when that happened but certainly had been
13 discussions at official level about it, but they
14 hadn't progressed very far, and then, as the PQ answer
15 notes, that then the UK Government made
16 an announcement on 30 April 2019 and following that
17 I think Department of Health ministers did try to
18 progress it a bit more.
19 **MS RICHARDS:** If we can just chart through a couple of
20 further documents to see what, if any, progress was
21 made, so that's June 2019. If we go then to
22 SIBS0000011, please, Soumik, we can see this is
23 a meeting in May 2020 a quarterly review with the
24 Scottish Government. As I understand it, this is
25 a meeting between your team, Ms Baker, and we can see

1 you're present at this meeting, and senior SIBSS
2 officials; is that right?
3 **MS BAKER:** Yes.
4 **MS RICHARDS:** These take place, as we can see from this,
5 on a quarterly basis.
6 **MS BAKER:** Yes.
7 **MS RICHARDS:** Then if we just go a little further down the
8 page we can see it says "SG Update".
9 So this is just below the bold discussion about
10 the budget:
11 "... Parity issue still under discussion --
12 information supplied to Penny Mordaunt, minister now
13 overseeing inquiry; however, no extra funding
14 available."
15 So we're pretty much a year on here from that
16 Department of Health and Social Care announcement from
17 June 2019. It doesn't appear that an enormous amount
18 of progress had been made in that year. Is that
19 right?
20 **MS BAKER:** Yes. I mean, it's maybe, sort of, very brief
21 summary of what was said but, certainly, my impression
22 was that there was -- the UK Government hadn't been
23 able to secure any additional funding so that there
24 was a lack of progress as a result of that and things
25 weren't progressing as quickly as we'd expected.

1 I think when the four nations' ministers had met back
2 in July 2019 there had been a commitment to try and
3 move forward fairly quickly but I think that had not
4 progressed as quickly as had been expected for
5 a number of reasons. I think there was a change in
6 ministers within the Department of Health and then,
7 obviously with coronavirus, I think that caused
8 further delays as well.
9 So certainly we were hoping to move forward more
10 quickly but there didn't seem to be much in the way of
11 updates from the UK Government about progress.
12 **MS RICHARDS:** So where this says "however, no extra
13 funding available", that's no extra funding available
14 from the UK Government?
15 **MS BAKER:** Yes, that was my -- probably just based on my
16 understanding but, certainly, that was what we
17 understood at the time, that there wasn't any funding
18 at that point. I understood that the UK Government
19 was still looking at it but they hadn't been able to
20 secure any funding at that point, as far as I was
21 aware.
22 **MS RICHARDS:** And then if we look at EIBS0000704, this is
23 a letter from the Health Protection Division, dated
24 4 August 2020, to the Department of Health and Social
25 Care headed "Scottish Infected Blood Support Scheme,

1 Increasing parity between the four nations", and we
2 can see the purpose is:
3 "To provide a breakdown of funding required to
4 reach parity of payments between [SIBSS] and the
5 schemes of the other nations."
6 Paragraph 2 then refers to -- well, it says --
7 I'll read the whole thing:
8 "While the Scottish Government's preference
9 would be to consider in more detail the evidence basis
10 for appropriate payment levels for each group of
11 beneficiaries based on the likely day to day impacts
12 on them, in light of the in principle agreement that
13 no one's payment should decrease in reaching payment
14 parity across the four nations' schemes, additional
15 funding is sought base on meeting the highest payment
16 level in the UK for each beneficiary group."
17 Before we just look at the rest of the letter,
18 can you assist us, Ms Baker, with what is said to be
19 there the Scottish Government's preference?
20 **MS BAKER:** I guess -- well, originally when talk about
21 parity was first mooted, I think our understanding or
22 our expectation was that the four nations would get
23 together and discuss and look at and, you know,
24 possibly even consult on what should be, you know, the
25 appropriate parity arrangement. I think the UK

1 Government's announcement, that has just been referred
2 to, in April 2019 kind of side-tracked it a bit
3 because they significantly increased the payments. So
4 that, I think, then meant effectively, as you'll see
5 has happened, that to achieve parity the only
6 realistic way to do that was to increase payments to
7 the highest level for each category because, clearly,
8 we and the other schemes wanted to decrease anybody's
9 payments, so I think that would be there's a clear
10 commitment that nobody should lose out as a result.
11 So that meant that, effectively, we would need to
12 increase payments to the English levels.
13 **MS RICHARDS:** So what we see then set out or referred to
14 in the rest of the letter -- and then I think there's
15 an attachment which we don't have but I don't think
16 that matters for present purposes -- is the Scottish
17 Government's estimate of increasing the payments to
18 meet the highest payment levels across the UK; is that
19 right?
20 **MS BAKER:** Yes, that is right.
21 **MS RICHARDS:** If we go over the page, we can see
22 paragraph 8 gives an estimated five-year cost of
23 changing payments, as described, to a total
24 32.3 million.
25 Now, this is August 2020. Are you able to

1 assist us with this: when was the Scottish Government
2 first asked to provide this breakdown of funding?
3 **MS BAKER:** I think probably around June-ish, or June or
4 July. Certainly, I think we provided initial figures
5 by around the end of July 2020 and then maybe updated
6 this covering information to provide a bit more
7 detail, as it says, on 4 August. But, yes, I think it
8 was maybe -- I don't remember exactly it was about
9 a month or so before this.
10 **MS RICHARDS:** So would it be right to understand that the
11 Scottish Government hadn't been asked by the UK
12 Government, as far as you're aware, prior to mid-2020
13 to provide this data?
14 **MS BAKER:** Yes, that's correct. We'd never been asked for
15 that before.
16 **MS RICHARDS:** And then if we just -- following the
17 developments through chronologically, if we go to
18 EIBS0000705, we can see this a letter from Penny
19 Mordaunt, Paymaster General, to Chancellor of the
20 Exchequer Rishi Sunak, 21 September 2020, and she
21 says:
22 "I am writing to update on the ... Inquiry, as
23 promised in my letter of 13 July, specifically our
24 commitments on financial support and compensation."
25 Then under the heading "Financial support", she

1 refers to people receiving *ex gratia* financial and
2 non-financial support and the Ministers and the
3 previous Prime Minister have committed to address
4 disparities across the UK in the levels of financial
5 support provided. She then refers to figures, so we
6 can see there £32 million there for Scotland and then
7 the figures for the other three nations.
8 Reference is made to the chair's observation
9 about the grinding hardship experience, and then
10 there's a request:
11 "I would be grateful for your views on how this
12 additional funding would be integrated best into the
13 2020 Comprehensive Spending Review."
14 Then if we look at the bottom of the page, under
15 the heading "Compensation for victims", she says she
16 expects the Inquiry to make recommendations:
17 "... inevitable that the Government will need to
18 provide substantial compensation. The costs are
19 likely to be high, and I firmly believe that we should
20 begin preparing for this now -- before the Inquiry
21 reports."
22 Then over the page she requests a meeting and
23 then says:
24 "I cannot stress enough the urgency of taking
25 long overdue action on financial support and

1 compensation."
2 Then refers to having copied the letter to the
3 Chief Secretary to the Treasury and the Parliamentary
4 Under-Secretary of State for Health. Ms Baker was the
5 Scottish Government aware of this request being made
6 to the Treasury?
7 **MS BAKER:** Yes, I think so. I don't believe we saw that
8 letter but we were certainly aware from the Cabinet
9 Office that the Paymaster General had approached the
10 Treasury.
11 **MS RICHARDS:** Do you know how and when the Treasury
12 responded?
13 **MS BAKER:** I don't know, I'm afraid. You would need to
14 ask the Cabinet Office about that, I'm afraid.
15 **MS RICHARDS:** And then, just looking at that penultimate
16 sentence of the letter, "I cannot stress enough the
17 urgency of taking long overdue action on financial
18 support and compensation", Ms Gougeon, does the
19 Scottish Government, or do you, I should say, in your
20 capacity as Minister, agree with what's said there
21 that it's urgent to take action on financial support
22 and compensation and that this is long overdue?
23 **MS GOUGEON:** Yes.
24 **MS RICHARDS:** Now, just then moving forward then to the
25 end of 2020, if we go to WITN4728035, please, and if

1 we go to I think it's the third page of this,
2 Soumik -- yes. I should have said, this is a meeting
3 of the SIBSS Advisory Group, 10 December 2020, and if
4 we look under the heading "Scottish Government
5 Update", we can see it's being reported, it's the
6 second bullet point:
7 "Parity Discussions -- [Scottish Government]
8 hoping to have something in place asap. No update
9 with regards to the 4 Nations' meetings other than
10 that they continue to take place every 4 weeks."
11 So would it be right to understand from this
12 that by December 2020 there had been no further
13 development following the submission of the Scottish
14 estimates for funding?
15 **MS BAKER:** Yes, I think that's correct. I don't think
16 there was any signs to us that there was any
17 significant progress by that time.
18 **MS RICHARDS:** And can you just assist us more generally.
19 The four nations' meeting referred, are they
20 ministerial meetings or civil servant meetings?
21 **MS BAKER:** Civil servant meetings.
22 **MS RICHARDS:** And then --
23 **MS BAKER:** Sorry, there had been -- there was discussion
24 about having -- as I mentioned there was a meeting in
25 July 2019 and there had been an agreement to have

1 a further ministerial meeting and we did ask a number
2 of times and some of the other devolved
3 administrations asked when that ministerial meeting
4 would be able to take place. So there was
5 an intention to have it but it never really happened,
6 apart from the meeting that the Minister's already
7 mentioned.
8 **MS GOUGEON:** Sorry, I'd just to clarify on that point as
9 well. I mean, I referred to a meeting, a four
10 nations' meeting, on 11 March and that's obviously
11 separate to the four nations' meetings that -- the
12 four weekly ones that had been held by officials
13 because there was the weekly four nations' meetings
14 which all the Cabinet Secretaries and -- well,
15 relevant health secretaries attended.
16 **MS RICHARDS:** Then we will look at the March 2021
17 announcement in a moment but are either of you able to
18 assist us in understanding why it's taken until
19 March 2021, not long indeed before these hearings, for
20 an announcement to be made that would enable broad
21 parity between the schemes?
22 Ms Gougeon, first of all, what, if any,
23 perspective do you have to offer on that?
24 **MS GOUGEON:** In relation to the time that it's taken --
25 **MS RICHARDS:** Yes.

1 **MS GOUGEON:** -- to get here? I can only presume it's
2 based on evidence I've seen and the letters that
3 you've provided as part of the evidence as well, that
4 it was about securing that funding from Treasury and
5 then I think it was a case of things progressing
6 rapidly because in both Wales and in Scotland we were
7 entering the pre-election period on 25 March, so it
8 was important to get a decision and to have announced
9 by that time if there was agreement on that so that it
10 wouldn't be delayed any further.
11 **MS RICHARDS:** Ms Baker, you have obviously been involved
12 for a longer period of time than the Minister. What's
13 your understanding of why it's taken this long to
14 reach an announcement on achieving broad parity?
15 **MS BAKER:** Well, similar to what the minister said.
16 I think -- well, my understanding, again, is probably
17 better to ask somebody from the UK Government about
18 this but I think it was about trying to, find funding
19 and, you know, it took some time for them to be able
20 to identify a source of funding.
21 **MS RICHARDS:** Then if we -- as I say, I'll come on to the
22 wording of the announcement in a moment, but before we
23 do that if we can just look at the advisory group
24 meeting that postdated the announcement.
25 WITN4728036, please, Soumik.

1 We can see this is the SIBSS Advisory Group
2 meeting on 8 April 2021. If we go to the second page,
3 please, bottom half of the page under the heading
4 "Scottish Government Update", we see you, Ms Baker,
5 reporting, under the heading "Parity Payments",
6 reference to the announcement of 25 March, agreement
7 it will be backdated to 2019, and then saying this:
8 "Currently awaiting monetary amount from
9 UK Government so that payments can go ahead [as soon
10 as possible]."
11 Then:
12 "New scheme document will be formally
13 agreed ..."
14 And so on.
15 So what was it you were still waiting for on
16 8 April and do you now have what you need?
17 **MS BAKER:** We were waiting for a letter from the
18 Department of Health and Social Care to confirm the
19 amount that we would receive and when we would receive
20 it and any terms associated with it. We haven't yet
21 received that although I understand that they are
22 working on it. They have assured us that they're
23 working to get something to us in writing to confirm
24 the payment.
25 **MS RICHARDS:** So is this right: the Scottish Government

1 does not yet know how much it's going to receive or
2 over what period of time?
3 **MS BAKER:** Yes. Well, I think certainly the understanding
4 we've been given is that we would receive the amount
5 based on the figures we submit but we don't have
6 anything in writing to confirm that. So I think, yes,
7 our understanding is that that's what we will receive
8 but clearly we would like something in writing that
9 would confirm that.
10 **MS RICHARDS:** If we then just go to the wording of the
11 March 2021 announcement, Soumik, it's RLIT0001498, and
12 I'm going to look first of all at the Paymaster
13 General's statement and then the Scottish Government's
14 statement.
15 We can see here this is a statement by the
16 Paymaster General a written statement I think:
17 "Today I am providing an update on parity of
18 financial support, the commitment to considering
19 a compensation framework, and enhancements to the
20 psychological support for the victims of the infected
21 blood tragedy."
22 Under the heading "Parity", she refers to a
23 UK-wide agreement in July 2019 in principle to resolve
24 disparities in treatment, and then a reference to
25 a meeting in January 2020 that the UK Government held

1 with campaigners. And then says -- confirms that:
2 "... the following changes are planned to the
3 four separate schemes to bring them into broader
4 parity. Increases in annual payments will be
5 backdated to April 2019."
6 Et cetera.
7 Then if we skip over the changes to the English
8 scheme, because those are for others to answer
9 questions about, if you go a little further down we
10 can see paragraph:
11 "In Scotland, the changes are to increase annual
12 payments for infected beneficiaries and bereaved
13 partners, and to introduce £10,000 lump sum
14 bereavement payments for the families of those
15 beneficiaries who have died since the scheme began."
16 Then, again, Wales and Northern Ireland we'll
17 come on to in the course of the week.
18 If we go over the page, top of the page she
19 says:
20 "We've agreed with Health Ministers that any
21 future changes to national schemes would be subject to
22 consultation between the UK Government and devolved
23 administrations."
24 Then under the heading "Compensation framework":
25 "To meet the Government's commitment to consider

1 a framework for compensation, we can confirm our
2 intention to appoint an independent reviewer to carry
3 out a study, looking at options for a framework for
4 compensation, and to report back to the Paymaster
5 General with recommendations before the inquiry
6 reports.
7 "The terms of reference of this study will be
8 finalised in consultation between the independent
9 reviewer and those infected and affected. The study
10 will include consideration of the scope and levels of
11 such compensation, and the relationship between
12 a compensation framework and the existing financial
13 support schemes in place.
14 "The study is entirely separate from the public
15 inquiry ..."
16 Et cetera.
17 Before I ask you a little more about this, if we
18 can just look at the Scottish Government statement at
19 SIBS0000129.
20 Again, we can see this is dated 25 March 2021.
21 If we go a little further down the page, so we can see
22 the text of the rest of the page.
23 Thank you.
24 So we can see it says:
25 "Following comments about the disparities

between infected blood payments across the UK by the Chair of the Infected Blood Inquiry ... agreement has been reached in principle between the four devolved governments to reduce these disparities.

"The Scottish Government is still waiting for confirmation of funding details from the UK Government ..."

As I understand it, Ms Baker, you are still waiting for that?

MS BAKER: Yes, yes.

MS RICHARDS: "... but we currently expect that the following changes will be made to [SIBSS] to bring annual payments into alignment across the UK."

Then if we go over the page you can see the anticipated changes. So we can see an increase in payments for chronic hepatitis C stage 1 moderately affected and severely affected, a smaller increase for stage 2, for HIV, co-infected -- sorry, the left-hand side column is SIBSS, the right-hand column UK parity.

So we can see, in fact, the increases are largely to achieve UK parity.

And then if we go further down the page, we can see:

"... UK payment levels for the infected include a winter fuel allowance. SIBSS will confirm in due

course when this part of the payment will be paid."

Is that still under consideration, Ms Baker, that particular matter?

MS BAKER: Yes, I think we -- we need to agree. I think we're talking about paying it in the autumn because that's what the English scheme does but we haven't finally confirmed that. But I think that's the expectation.

MS RICHARDS: Then we can see reference to:

"... the Stage 1 group who have self-assessed ... [with] no noticeable impact ... will be able to get an annual payment and payments backdated to April 2019."

And then there's a -- very bottom of the page -- it's not entirely clear but I think we can see it if we go to the top of the next page:

"In addition, those widows, widowers, civil partners of long-term cohabiting partners who have ..."

And if we go to the top of the next page, we can see what it says:

"... since remarried, entered into a new civil partnership or are living with a new partner will now be able to receive these regular annual payments as will also receive backdated top-up payments for period

from April 2019.

"Effective from April 2021, the new £10,000 lump sum payment will now be mad on the death of a beneficiary ..."

And reference then to an expectation in relation to HIV lump sum payments.

So that's the Scottish Government's announcement.

First of all, I think Ms Gougeon has already touched on this, I think, in her earlier answers, but how much involvement did the Scottish Government have in the UK Government's announcement on 25 March? Ms Gougeon's earlier answer suggested it was something which came about very quickly; is that right?

MS GOUGEON: Yes, it did. And the turnaround for decision-making was very tight as well, so it was really over the 23rd, 24th, and I think even up until the morning of the 25th changes were still being made at that point, which was, again, difficult.

I think when it came to all this, ideally we would have liked to have been in the position where we could have consulted with Haemophilia Scotland and with the Scottish Infected Blood Forum as well in any changes that would be made, but we didn't have the time to do that before the pre-election period. So

there were quite a lot of updates over that period of -- over the course of those three days.

MS RICHARDS: Then we've seen reference there to certain payments being backdated to April 2019. Why is the backdating to April 2019 rather than to the point at which the schemes diverged in April 2017?

MS GOUGEON: Again, Sam will probably correct me if I'm wrong on this, but my understanding is that it's April 2019, because that's when the English scheme had increased their payments. So -- yes, Sam's nodding, so I presume that that's correct and that's why that date was chosen.

MS BAKER: Yes. I mean, I think it was the UK Government that proposed that that was the date for backdating. Yes, I think that was the rationale.

MS RICHARDS: Does the announcement, as reflected in what changes are going to be made by the Scottish Government, does that indicate that the failure to bring about a greater parity of payment between severely affected stage 1 and stage 2 was a mistake by the Scottish Government, Ms Baker?

MS BAKER: I don't know if it was a mistake. I mean, I think, obviously -- and we reflected on earlier when we discussed the Financial Review Group's report -- there were differing views between different

1 beneficiaries, as to whether those in stage 1 or
2 stage 2 should receive the same payments levels, and
3 that was looked at in the clinical review. So I don't
4 think it was a mistake but I think, as part of the
5 parity, we agreed that it was appropriate to move up
6 to the English levels. And that obviously recognises
7 the serious impacts on those in the severely affected
8 group.
9 **MS RICHARDS:** We saw at the bottom of the previous page,
10 top of this page, that one change announced by the
11 Scottish Government was that those who have,
12 subsequently, remarried or entered into new long-term
13 relationships will now be eligible to receive support
14 payments; previously they were excluded from the
15 scheme. Why has it taken again to March 2021 for that
16 change to be made to the Scottish scheme?
17 Ms Gougeon?
18 **MS GOUGEON:** I don't know why it had taken until that time
19 for the change to be made but I think that it's
20 important that the change was made and that was one
21 that I'd agree to.
22 **MS RICHARDS:** Ms Baker, are you able, with your longer
23 term involvement in these issues, to assist in why
24 that was a feature of the scheme in the first place
25 and why it's taken a number of years to be removed?

1 **MS BAKER:** My understanding is that this was part of the
2 original financial review group discussions that had
3 been recognised, that the payments -- I mean, I think
4 they were referred to as "pension payments" although
5 they are not actually a pension -- would operate in
6 a similar way to a pension, and so if you remarried
7 you wouldn't continue to receive that payment, and so
8 that was how it was set up.
9 And, you know, I should -- I should clarify that
10 we did make discretionary payments to people who
11 remarried. They weren't -- it was only the annual
12 payments that they did not receive.
13 But yes, certainly, it had been raised a number
14 of times by campaign groups, and I think as part of
15 the parity arrangements, once we understood that some
16 of the other schemes, particularly the Northern Irish
17 scheme, had decided not to include any criteria that
18 prevented people who remarried or had a new partner
19 from claiming their widow's annual payments -- or
20 widows', widowers' and partners' annual payments,
21 I think we felt that, as part of the parity
22 discussions, it was an appropriate time to revisit
23 that. So, therefore, I -- I asked the minister for
24 her views and she agreed that it was appropriate to
25 change the rules on that as part of the parity

1 discussions.
2 **MS RICHARDS:** We can take that down, Soumik.
3 In terms of the steps that would need to be
4 taken to bring these changes into effect, first of
5 all, what is your best estimate of when these changes
6 will come into effect? Ms Baker?
7 **MS BAKER:** I think -- well, as I've mentioned, we are
8 waiting for that letter from the Department of Health
9 and Social Care, and I think our finance colleagues
10 will be keen to receive that before SIBSS starts
11 making payments, but I'm hopeful that that will be
12 received soon. So I'm afraid it's hard to say exactly
13 when. As the minister's already alluded to, it's not
14 yet clear if we would have a different minister, in
15 which case they will need to sign off the few
16 remaining details of the scheme so that we can
17 finalise an amended scheme document.
18 But I think if we get that letter from the
19 Department of Health and Social Care I would hope to
20 be able to start making the payments quite quickly.
21 Certainly the increased annual payments for this year,
22 as I understand it, are quite straightforward for
23 SIBSS to make. Some of the backdated and other
24 payments may take a little bit longer but, yes, we
25 would be hopeful to pay them soon.

1 **MS RICHARDS:** Sorry to press you on this where in part you
2 are waiting on information from others, in other words
3 the Department of Health and Social Care, but what
4 does "soon" mean in -- if you were, for example, to
5 receive the Department of Health and Social Care
6 letter within the next fortnight, what work is then
7 required, in broad terms, and how long would it take
8 to start making at least some of the enhanced
9 payments?
10 **MS BAKER:** Well, assuming the letter is as we expect and
11 it doesn't create any issues or further uncertainty,
12 then I think once, you know, future -- whoever is
13 responsible as Minister going forward is confirmed,
14 then we would be able to do something quite quickly.
15 We do need a new amended scheme document, which our
16 lawyers are working on at the moment, but I don't
17 think that should take so long. So if we get the
18 letter soon and it's all okay, then I would think it
19 would be possible to start making payments in June.
20 But there are a few issues and that -- I think,
21 it was alluded to in that note of the Advisory Group
22 that you showed a few minutes ago that there's still
23 one or two points that have been looked at
24 particularly around the clinical review discussing
25 whether the current three categories remain

appropriate in light of the parity discussion and therefore what that means for payment levels for the no noticeable impact group.

So that does need to be agreed but I'm hoping that that can be agreed fairly soon. I understand the Clinical Review Group is meeting later this week to discuss that.

MS RICHARDS: Then going back to -- I don't think we need to put it on screen again but if we just go back to the Paymaster General's 25 March 2021 announcement, that indicated that future changes to the schemes would be the subject of consultation between the four nations. If we leave aside for a moment the compensation framework issue, which I will come onto in a moment, first of all, is the Scottish Government, Ms Gougeon, committed to there being a consultation and close working between the four nations for the future, to try to ensure that disparities do not creep back into the system?

MS GOUGEON: Yes, and I would expect that all four nations' governments would be exactly the same, that's something that we said we would do that we would consult with each other over any changes. So I imagine that everybody would be committed to that and make sure that happens.

MS RICHARDS: Just then asking you, if I may, about the compensation framework, which we saw referred to in the Paymaster General's announcement, what, if any, involvement has the Scottish Government had in that aspect of the Paymaster General's involvement -- announcement? So the appointment of a review to explore a compensation framework.

MS GOUGEON: I personally haven't had any discussions with my counterparts in the UK Government in relation to that and only have the statement that was made there, so I don't know if there have been any discussions at an official level with her or not.

MS RICHARDS: Ms Baker?

MS BAKER: No, there hasn't been any discussions about it. I think the Cabinet Office may have mentioned that they were looking at it but they haven't involved us in any of the discussions about it.

MS RICHARDS: Does the Scottish Government have any expectation of involvement or consultation about the appointment of the reviewer or the terms of reference or the work that's undertaken by the reviewer?

MS GOUGEON: I don't -- at the moment, I don't have expectations around that. Again, all I have is the statement that was laid out in that letter but I would hope that we would at least be kept informed of how

that progresses.

MS RICHARDS: Having, as I understand it, essentially seen that announcement for the first time when it was made by the Paymaster General on 25 March, does the Scottish Government have any expectation as to who would fund any compensation framework?

MS GOUGEON: Not at the moment. It would really depend what comes out of that review, essentially.

MS RICHARDS: Ms Baker, has anything been said at an official Civil Service level about whether the Scottish Government would be expected to contribute or whether this is money that would be expected to be forthcoming from Westminster?

MS BAKER: Yes, it's not something that's been discussed in any detail at all, so I'm afraid I don't know. As the Minister says, you know, we would be keen to be kept informed about what's discussed but this is something that's been entirely led by the Cabinet Office so we haven't been involved or been invited to input into it.

MS RICHARDS: If I can move then to one final topic before I ask you a couple of last questions. The psychological support service, we've seen described in both of your statements the existing service providing psychological and psychiatric support to patients with

bleeding disorders and their families but, before I ask you about how that's going to be expanded, do you know, either of you, whether that service is available to family members where the patient with a bleeding disorder may have died some time ago?

MS GOUGEON: Yes, that would be available for family members.

MS RICHARDS: Now, the service didn't include patients infected by a blood transfusion, or tissue or organ transplant, or their families, but your statement, Ms Gougeon, indicates that you have recently approved funding for this, and the aim is for it to be up and running, I think your statement says, in the spring. Are you able to give us any update on that as to when the enhanced service will be available to those who were infected by a transfusion?

MS GOUGEON: Yes, two psychologists, I think, were actually starting this week -- again, I see Sam nodding her head, so that's correct. So they should be able to start taking appointments as of next month.

MS RICHARDS: Is the funding for that -- I think your statement tells us the projection for the next year of £78,000, is that funding ring-fenced and is there any form of long-term commitment to that funding, Ms Gougeon?

1 **MS GOUGEON:** It's not ring-fenced, as far as I'm aware,
2 but it's something that we just want to continue to
3 monitor because, obviously, we don't know what the
4 uptake of the service is going to be and how that will
5 look. It could be, if there's a high demand for it,
6 we may need to look at extra resource but I think that
7 it's important that we continue that service. So as
8 to future commitments, again, I don't know who --
9 I may not be continuing on in this post, so it
10 wouldn't be for me to commit for that for another
11 minister but I think it is really important that we
12 provide that service and I'm sure that whoever is in
13 post will look to continue that. But I do think it's
14 important we monitor it and see the resource that will
15 be continued to be required.
16 **MS RICHARDS:** Ms Baker, again, bearing in mind you have
17 had the longer involvement than Ms Gougeon, are you
18 able to assist with why it's taken until now and, it
19 would seem from Ms Gougeon's statement, the
20 observations of the Inquiry chair, for this
21 development, so that the service is extended beyond
22 those with a bleeding disorder?
23 **MS BAKER:** Yes, I mean, I think initially when we set up
24 SIBSS, we had set it up our arrangements so that
25 people could apply for one-off grants for private

1 counselling. I think initially we had felt that that
2 was probably sufficient and that that will be able to
3 provide support for those who weren't able to use the
4 haemophilia service. However, I think over time,
5 well, initially there wasn't much take up. I think
6 take-up has increased recently, so we did have to make
7 sure we promoted it more but I think, having reflected
8 on it and reflected on comments that the chair made,
9 I think about a year ago, around making sure that
10 there was equivalence for those who have had
11 a transfusion, we felt we wanted to do a bit more work
12 and see what level of demand there was, and so we
13 looked at it through the SIBSS survey of beneficiaries
14 that took place last year, so we included some
15 questions in that, within the survey, to try and gauge
16 a bit more what sort of level of number of people
17 might be interested.
18 That certainly indicated that there would be
19 some interest not massive numbers of people but there
20 definitely was some interest. So, from that point, we
21 wanted to take it forward and look at what we could do
22 to set up a more bespoke service, because we
23 recognised that people appreciate having a service
24 that perhaps is more -- has more understanding about
25 infected blood and the issues associated with it than

1 a private counsellor might have.
2 **MS RICHARDS:** Finally, can I ask you both to look at
3 WITN1146038. If we go to the next page, you will see
4 this is a response to a Freedom of Information request
5 and if we go to the third page, we can see a table
6 giving the numbers of patients who were -- or
7 individuals who were members of the SIBSS scheme who
8 had died. Deceased since 1 July 2017, 53; deceased
9 since 28 February 2020, 11. This was as at
10 3 August 2020, so now doubt there will have been
11 others who have died since.
12 Ms Gougeon, would you accept, in light of the
13 numbers of people infected as a result of their
14 treatment who have died and continue to die, that it's
15 imperative that if changes are to be made to the
16 scheme, whether by way of increased parity or other
17 changes or a compensation framework, that those
18 changes should be made as soon as possible?
19 **MS GOUGEON:** Yes.
20 **MS RICHARDS:** If we could then just go back to the
21 Paymaster General's letter to the Chancellor,
22 EIBS0000705, go to the bottom of this page where the
23 paymaster says, under the heading "Compensation for
24 victims":
25 "... it is inevitable that the Government will

1 need to provide substantial compensation."
2 Ms Gougeon, as Minister in the Scottish
3 Government, do you share the view expressed by the
4 Paymaster General that it is inevitable that the
5 Government will need to provide substantial
6 compensation to those infected and affected?
7 **MS GOUGEON:** Yes.
8 **MS RICHARDS:** Is the Scottish Government committed from
9 its perspective to doing everything it possibly can to
10 ensure that this is achieved?
11 **MS GOUGEON:** Again, I know that where there'll be the
12 review into that, that's also been laid out by the
13 Paymaster General in another letter, so I think we
14 would have to look at the recommendations of that and
15 recommendations of the Inquiry as well, as well as
16 working with the other four nations in relation to
17 that too. So all those discussions would have to take
18 place. And again, I can't commit that for another
19 minister who would come into post but we would have to
20 take that into serious consideration.
21 **MS RICHARDS:** Sir, those are the questions I have. We
22 obviously need to afford Core Participants the
23 opportunity to suggest any further lines of questions
24 arising out of the evidence this morning.
25 **SIR BRIAN LANGSTAFF:** Yes, and you will need some time to

1 do that. But I am conscious that both of you have
2 busy jobs to attend to, so would it be sensible to
3 take the short break now and come back, let us say, at
4 1.05 and finish such questions as there are?
5 **MS RICHARDS:** I am certainly happy to do that, sir.
6 I would ask perhaps 1.10, just because --
7 **SIR BRIAN LANGSTAFF:** The alternative -- I put it to you
8 actually, give you a choice, Ms Gougeon and
9 Ms Baker -- would you prefer to have your break now,
10 until, say, 1.45, and come back then and finish off,
11 or would you prefer to come back at 1.10 and finish
12 off then?
13 **MS GOUGEON:** 1.10 for me. It's just that there are votes
14 in the chamber this afternoon appointing the First
15 Minister, so ideally if I could be back for that.
16 **SIR BRIAN LANGSTAFF:** Well, I can see you might want to be
17 there for that, yes! Very well, 1.10.
18 **(12.49 pm)**
19 **(A short break)**
20 **(1.12 pm)**
21 **MS RICHARDS:** Ms Gougeon and Ms Baker, a handful of
22 questions that I have been asked by Core Participants
23 to raise with you.
24 The first goes back to the issue of the HIV
25 funding received from the Department of Health and

1 Social Care.
2 Ms Baker, if an individual who was infected with
3 HIV or co-infected with HIV and hepatitis C dies, such
4 that under the Scottish scheme their widow or
5 equivalent is paid 100 per cent and then 75 per cent
6 of the infected partner's payment, from what funding
7 stream does that 75 per cent come? Is any part of it
8 contributed to by the Department of Health and Social
9 Care or is that solely Scottish Government funding?
10 **MS BAKER:** Solely Scottish Government's funding. The
11 Department of Health and Social Care funding is just
12 an amount based on their core payments for infected
13 beneficiaries. And then there's an amount for
14 discretionary funding which I think in the past has
15 included, you know, an amount for widows, but it's
16 calculated on the basis of being just a proportion of
17 the discretionary funding that they pay out for people
18 or widows of people with HIV. So it's not
19 specifically linked to our payment levels, so it's
20 that we would just provide the funding for that.
21 **MS RICHARDS:** Then, going back to your evidence this
22 mornings, Ms Baker, about the decision to set up SIBSS
23 through NHS National Services Scotland, you said in
24 your evidence that the NSS was already set up to be
25 able to administer the SIBSS payments. What other

1 payments was National Services Scotland regularly
2 administering that meant that it was in a position to,
3 in the Scottish Government's view, take on this
4 additional task?
5 **MS BAKER:** As I understand it, they make payments to, for
6 example, GPs and dentists, things like that. So they
7 have the IT systems available to make large payments
8 on a regular basis and change them. But, yes, there
9 was nothing that was exactly equivalent to SIBSS, if
10 you like, but -- but yes, they did have the IT systems
11 available and they were confident that they could set
12 up a system that would allow them to manage the
13 payments for this scheme.
14 **MS RICHARDS:** Was the decision to have the scheme
15 administered by the National Services Scotland the
16 reason why payments come from the health budget?
17 **MS BAKER:** No, no. All of my teams and our divisions'
18 budgets come from the Health budget.
19 **MS RICHARDS:** So if, for example, an entirely independent
20 separate body had been set up that was not part of the
21 National Health Service in Scotland, the budgetary
22 position would still have been the same?
23 **MS BAKER:** Yes, yes. Assuming that my team remained
24 within the Directorate General for Health and Social
25 Care, then our budget would come under the health

1 budget, yes.
2 **MS RICHARDS:** Then these questions are still for you
3 Ms Baker. The lump sum payments that are made under
4 the Scottish scheme, what are they designed to
5 reflect? In particular, are they designed to be, in
6 some measure, payments for pain and suffering or
7 grief?
8 **MS BAKER:** I guess so. I mean, to some extent that's
9 something that pre-dates my involvement because
10 obviously the lump sums evolved from what was
11 originally set up under Macfarlane and Eileen Trust
12 and under the Skipton Fund. So I don't know, to be
13 honest, what the original intention was but I guess,
14 yes, partly it is to do that.
15 **MS RICHARDS:** You referred, Ms Baker, when I was asking
16 you about the changes made following the clinical
17 review, to the fact that a medical support letter
18 would be required if someone was seeking to
19 self-declare a change in terms of their hepatitis C
20 category. Why is medical support required at that
21 stage when the system was designed to reflect the
22 individual's own perception of the impact of
23 infection?
24 **MS BAKER:** I suppose we felt if somebody could, for
25 example, self-assess as being moderately affected but

1 then, you know, six months later wanted to self-assess
2 as being severely affected, we felt that it warranted
3 us asking questions about why they'd changed their
4 mind, and perhaps, therefore, warranted some
5 additional checks. So that's the reason why. And
6 I understand there have been a number of people who
7 have moved categories over time.
8 **MS RICHARDS:** Is that evidential requirement one imposed
9 by the Scottish Government or was that a requirement
10 of SIBSS' own devising?
11 **MS BAKER:** I think -- we certainly discussed it together.
12 I think -- I don't know who -- I think it may have
13 been us that suggested it but I can't remember. But
14 certainly we agreed that it was appropriate that, in
15 those circumstances, that they should seek to get
16 a letter from a doctor or a nurse to support their
17 application and I understand that that doesn't seem to
18 prove problematic. As I say, a number of people have
19 moved categories and provided a letter of support from
20 their doctor or their nurse.
21 **MS RICHARDS:** I asked you both about the omission or gap
22 in the scheme which means, for example, parents who
23 have lost children, children who have lost parents,
24 are not entitled to receive payments in the way that
25 a widow or widower or other partner is, and you

1 referred to advice that had been received in relation
2 to the definition of "dependant" under the 2005
3 legislation. First of all, are you able to tell us
4 from whom that advice has been received? I don't mean
5 a named individual but the organisation or body from
6 whom that advice has been received?
7 **MS BAKER:** That was from our internal lawyers.
8 **MS RICHARDS:** And is that advice that you would be able to
9 share with the Inquiry?
10 **MS BAKER:** I'd need to discuss that with our lawyers to
11 check whether they're content for that to be shared.
12 **MS RICHARDS:** Are you able to cast any further light on
13 what the Scottish Government's understanding of the
14 limitations of the legislative definition are? At
15 what point does the Scottish Government's
16 understanding of the point of dependency beginning and
17 ending -- what is your understanding of that? What
18 makes a dependent?
19 **MS BAKER:** If I take that, I've -- my understanding, as
20 I think I said earlier, is that a dependant is
21 defined, whether it's in the dictionary or elsewhere,
22 as somebody who is financially reliant or reliant for
23 care on somebody else. That's my understanding of
24 what it means and what the general understanding of
25 the word would be. But I'd need to check the -- you

1 know, what our lawyers have said on that precisely.
2 **MS RICHARDS:** As a matter of fact, do you know whether
3 a dependant child can claim the 75 per cent annual
4 payment or are those payments limited to widows or
5 partners?
6 **MS BAKER:** The payments are limited to widows or partners.
7 So at the moment dependant children can claim
8 discretionary support such as one-off grants.
9 **MS RICHARDS:** And is that limitation based upon the
10 Scottish Government's understanding of the limitations
11 imposed by the legislation or is that a policy choice
12 that's been made within the legislation?
13 **MS BAKER:** I think it's a policy choice based on the
14 financial review recommendations, which just propose
15 that the annual payment should be for widows or
16 widowers or civil partners, partners of the deceased.
17 I think the review did talk about financial support
18 for dependants but it was more based on grants rather
19 than long-term annual payments.
20 **MS RICHARDS:** To what extent -- and this is a question for
21 Ms Gougeon -- does the Scottish Government retain an
22 ability and enthusiasm to understand and address the
23 needs and losses of the Scottish infected and affected
24 population after the recent parity announcement?
25 **MS GOUGEON:** Yes, we're absolutely concerned with that and

1 want to know how people feel about that and agreements
2 that have been reached. And ideally that's something
3 that we would have done before those agreements had
4 been made but unfortunately we were in the position
5 where we had to take a decision to do that quickly
6 prior to 25 March. So we weren't in a position to do
7 that.
8 **MS RICHARDS:** Are there any current plans for consultation
9 or further engagement with the infected and affected
10 communities following the parity announcement?
11 **MS GOUGEON:** There aren't at the moment but I would stress
12 that that's purely because, as of 25 March, we were in
13 the pre-election period until the election on 6 May,
14 so it hasn't been possible to undertake any further
15 work in relation to that at that time. But I made it
16 clear when I met with Haemophilia Scotland and
17 Scottish Infected Blood Forum that should I remain in
18 post that that's something I was certainly keen to do
19 personally, because I think that's an absolutely vital
20 role to any minister in Government, actually to keep
21 in touch and to have that regular contact with the
22 stakeholders that you engage with. So I made that
23 commitment and I see that as a vital part of my role.
24 But yes, it's purely because of the timing and because
25 of the pre-election period that those discussions

1 weren't able to take place.
2 **MS RICHARDS:** Ms Baker, if the Scottish Government wished
3 to implement a higher payment scheme for those
4 infected and affected by HIV than the current
5 Department of Health and Social Care funding permits
6 or would be covered by a Barnett Consequential, where
7 would that funding come from?
8 **MS BAKER:** It would need to come from the Scottish
9 Government, but as I think you have already alluded
10 to, as part of the parity agreements we've agreed to
11 try to work together in future on any changes. So
12 I think if we did look at any changes we would want to
13 try to do so on a four nations basis rather than --
14 certainly any significant exchanges obviously, more
15 minor changes certainly we could probably look at
16 individually, but I think if we wanted to make any
17 significant changes to HIV or other payments we would
18 want to try to do that together on a UK-wide basis.
19 **MS RICHARDS:** Ms Gougeon, finally, you referred to there
20 being a moral duty and obligation on governments to
21 care for people and provide for them in these
22 circumstances. What did you mean by "these
23 circumstances"?
24 **MS GOUGEON:** I think, given everything that's happened and
25 how people's lives have been changed forever, many

1 people have lost their lives in the interim period, so
2 that's what I mean by we have a duty to -- obviously,
3 no amount of money will ever bring somebody back, it
4 can't ever recoup for the losses that families or
5 people will have experienced, but I think that that's
6 the least that governments can do.
7 **MS RICHARDS:** And is one of the relevant circumstances
8 which shape your view of there being some form of
9 moral responsibility the fact that people were
10 infected as a result of their NHS treatment?
11 **MS GOUGEON:** Yes.
12 **MS RICHARDS:** Thank you.
13 Those are the further questions, sir, that I'm
14 proposing to ask from those suggested by Core
15 Participants.
16 **Questions by SIR BRIAN LANGSTAFF**
17 **SIR BRIAN LANGSTAFF:** I have just one area which I want to
18 address with both of you. You both accepted, have you
19 not, the moral case, you just said a moment ago,
20 Ms Gougeon, that it is the least that Government can
21 do to meet the needs of those who have been infected
22 and affected in what has happened. The answer,
23 I think, is yes, isn't it?
24 **MS GOUGEON:** Yes.
25 **SIR BRIAN LANGSTAFF:** To put the context to my question,

1 one of the criticisms which has been made of what
2 happened when the Macfarlane Trust was set up was made
3 by the All-Party Parliamentary Group in Westminster
4 when it said that there had been no assessment of
5 financial need and that, it may be thought, led into
6 a second problem for the administration of the
7 Macfarlane Trust, which was that there never seemed to
8 be enough money. I've made no particular finding on
9 those yet but these are criticisms which have been
10 made, and that in itself led to a third problem, which
11 was that people who applied for grants, because that
12 was what the Macfarlane Trust, in essence, was set up
13 to do, felt they had to hand out the begging bowl and
14 there was a means test, all of which are quite serious
15 criticisms.
16 When the Scottish Infected Blood Support Scheme
17 was set up, as I understand it, you had two critical
18 documents. One was a financial review and the other
19 was a clinical review, the clinical review addressing,
20 in essence, the clinical needs and the description of
21 how clinical conditions might relate to needs,
22 medically speaking. So you had the clinical needs and
23 a financial review which did not involve any
24 assessment of need.
25 The way the scheme was set up was to provide for

1 regular payments at the median Scottish wage gross
2 but, as it happens, not to be taxed, but also to
3 provide grants. How was it that the grant sum was
4 a sum hit upon by Government, how was it to be known
5 how much might be needed by way of grants without
6 there being a financial assessment, because it was
7 plain that those who designed the scheme, because they
8 had allowed for grants, had thought there must be some
9 financial needs why would go beyond paying the median
10 wage?
11 Now, that's one for each of you in turn.
12 Really, Ms Baker, you were there when the scheme was
13 set up. Did it occur to anyone to ask how are we
14 assessing this sum when we don't know what the needs
15 really are?
16 **MS BAKER:** Yes. I mean, I think it's correct that we
17 didn't know what sort of level of demand there would
18 be for grants.
19 The Financial Review Group had recommended that
20 there should be support and assistance grants and that
21 the budget available should be up to £1 million
22 pounds. So we did allow for that although, in fact,
23 the demand wasn't actually as high as that. But
24 before we set up the scheme we didn't know whether
25 there would continue to be significant demand. We had

1 assumed that most people were interested or seeking
2 grants and income top-up support would be the ones who
3 weren't getting the annual payments, and that was
4 correct, and we encouraged the people who weren't
5 receiving annual payments initially, although they are
6 now in most cases, to be the ones seeking support
7 through the one-off grants or income top-up support,
8 living cost supplement, and so on.
9 So we did encourage them to do it but before
10 people --
11 (Video feed interrupted)
12 **SIR BRIAN LANGSTAFF:** I'm sorry, we just lost the
13 transmission there for a moment. Do you want to start
14 again.
15 **MS BAKER:** Sorry.
16 **SIR BRIAN LANGSTAFF:** That last sentence or two.
17 **MS BAKER:** Oh right, yes.
18 I was just saying that we didn't know before we
19 set up exactly how many people would apply, and what
20 they would want in terms of grants, but I think the
21 demand for the one-off grants was fairly limited.
22 There were quite a few people seeking income top-up
23 support initially, although once we brought in
24 payments for people with chronic hepatitis C and their
25 widows, widowers and partners, then that changed and

1 hardly anybody was receiving income top-up support
2 after that so the level of demand for the grants has
3 certainly dropped away since the scheme's been set up.
4 **SIR BRIAN LANGSTAFF:** Really, the question which arises
5 out of it for you, Ms Gougeon, is: has anyone
6 suggested to you that perhaps at some stage since the
7 SIBSS was set up there ought to have been
8 an assessment of the need that it was designed to
9 address, which it was the moral obligation to address?
10 **MS GOUGEON:** I haven't had that suggested to me so far,
11 no.
12 **SIR BRIAN LANGSTAFF:** That's all that I had to ask. Thank
13 you very much.
14 **MS RICHARDS:** I'm going to just ask each of you in turn if
15 there's anything you wish to add. Ms Baker, is there
16 anything you wish to add to your evidence?
17 **MS BAKER:** No, I don't think so thank you.
18 **MS RICHARDS:** Ms Gougeon?
19 **MS GOUGEON:** Yes, if its possible for me just to make a
20 short comment? I suppose I really just wanted to say
21 that I know that I've only been responsible for this
22 area for a short period of time but I can see how
23 awful and devastating infected blood has been for many
24 families, including many families in Scotland, and in
25 March 2015 the First Minister Nicola Sturgeon

1 apologised to all those who were infected or affected
2 and I really just want to take this opportunity to
3 reiterate that apology today and to say a sincere
4 sorry to everyone who has had to deal with the
5 devastating impact of infected NHS blood and blood
6 products.
7 While we can't change what's sadly happened in
8 the past, the Scottish Government continues to be
9 determined to make sure that these terrible events
10 don't happen again, so the Scottish Government will
11 continue to do what it can to support this Inquiry and
12 to help ensure that any lessons that still need to be
13 learnt are learned. Thank you.
14 **SIR BRIAN LANGSTAFF:** Can I thank you both for the clarity
15 with you have answered questions? The lack of
16 hesitation with which you have answered questions and,
17 in particular, if I may say, in singling out you,
18 Ms Gougeon, it's really because you are a politician
19 it's refreshing to have someone who is answering
20 questions with a simple yes or no without
21 qualification, and I'm very grateful for that. I'm
22 grateful for both of you for what seems to me to be
23 your real attempt to help this Inquiry, which will
24 take a little while yet but you've given, I think,
25 those who have been listening some hope for the

1 attitude of the Scottish Government, Ms Gougeon, for
2 the future. So thank you very much.
3 **MS RICHARDS:** Sir, we will have the evidence of Mr Bell
4 but, obviously, need to think a break for lunch first
5 for everybody's convenience and, in particular, those
6 who are listening.
7 **SIR BRIAN LANGSTAFF:** Shall we start at 2.15, will that
8 give you long enough?
9 **MS RICHARDS:** It's Ms Scott but, yes, I think so.
10 **SIR BRIAN LANGSTAFF:** So 2.15 and I hope you make the
11 Parliament building in time. Thank you very much.
12 **MS GOUGEON:** Thank you.
13 **(1.35 pm)**
14 **(Luncheon Adjournment)**
15 **(2.15 pm)**
16 **SIR BRIAN LANGSTAFF:** Mr Bell, can you see me?
17 **MR BELL:** I can, Sir Brian.
18 **SIR BRIAN LANGSTAFF:** And you can obviously hear me too.
19 Good. Let me tell you who you are talking to. You
20 are talking to a room which has probably about 20-odd
21 people in it. We are back to having people who come
22 in person to watch the Inquiry proceedings but the
23 wider audience -- which will be probably around
24 about 200, perhaps, it depends how many are watching
25 in Scotland -- will be watching remotely. So they are

1 the audience probably that you are really addressing,
2 in particular, those who are in Scotland, as you are.
3 You are there on your own, are you?
4 **THE WITNESS:** I am, sir, yes.
5 **SIR BRIAN LANGSTAFF:** Are you in St Andrew's House or --
6 **THE WITNESS:** No, I'm in Gyle Square, which is the
7 headquarters for NHS National Services Scotland.
8 **SIR BRIAN LANGSTAFF:** Is that near the Astley Ainslie?
9 **THE WITNESS:** No, it's out towards the airport from the
10 centre.
11 **SIR BRIAN LANGSTAFF:** I see, right.
12 In just a moment Ms Scott will ask you some
13 questions but first Mary will ask you to take the
14 oath.
15 **MARTIN STALKER BELL, sworn**
16 **MS SCOTT:** Good afternoon, Mr Bell, can you hear and see
17 me?
18 **A.** Yes, I can, thank you.
19 **Q.** You are the director of Primary Care and Counter Fraud
20 Services for NHS National Services Scotland; is that
21 right?
22 **A.** That's correct.
23 **Q.** And in that role you are responsible for the strategic
24 direction and operational delivery of the business
25 unit that operates the Scottish Infected Blood Support

1 Scheme?
2 **A.** That's correct.
3 **Q.** You've held that post since 1 February 2019?
4 **A.** Yes.
5 **Q.** Your predecessor was David Knowles, was it?
6 **A.** That's correct.
7 **Q.** In that role, Director of Primary Care and Counter
8 Fraud Services, you are also a director of the
9 Scottish Infected Blood Support Scheme, which I'm
10 going to refer to as SIBSS; is that right?
11 **A.** Yes, that's correct.
12 **Q.** As director of SIBSS, you tell us in your witness
13 statement that you have to ensure that the team
14 administering the scheme is properly resourced, that
15 they deliver the scheme outcomes, and that you have
16 formal responsibility for approving applications to
17 the scheme, and so you work closely with the scheme
18 manager on that task. Is that an accurate reflection
19 of your role as director?
20 **A.** Yes, it is.
21 **Q.** You also tell us that you report to the chief
22 executive of NHS National Services Scotland; is that
23 right?
24 **A.** Yes.
25 **Q.** And you also chair the SIBSS Advisory Group?

1 **A.** Yes, I do.
2 **Q.** I'll come on to ask you a little bit more about that
3 in due course. Is it right as well to understand that
4 the staff at SIBSS consist of the scheme manager,
5 Sally Richards, and two administrators?
6 **A.** That's correct.
7 **Q.** Can I get an idea from you about the numbers of
8 beneficiaries on the schemes, and I will take you to
9 a document. It's Ms Richards' statement.
10 It's WITN4508001, and it's page 5 of that
11 document.
12 We have Ms Richards statement on the front page,
13 and if we go to page 5, at the bottom of that page,
14 the second half of that page, there's some tables. So
15 we have the first table, it says "Numbers Transferred
16 & SIBSS Applications", and we can see there that there
17 are 535 beneficiaries in total at that stage. 472 of
18 those, so the top three lines added together, look
19 like they've transferred over from the Alliance House
20 organisations, and then 63 new registrants registered
21 with SIBSS. Is that a correct way to read that table?
22 **A.** That's correct. And those numbers were correct at
23 that time. The numbers move slightly over the year,
24 obviously, but they're correct.
25 **Q.** So slightly confusing because Ms Richards' statement

1 is dated 20 April 2021 but, in fact, these numbers are
2 somewhat earlier than that, aren't they?
3 **A.** Yes.
4 **Q.** Then if we look at the bottom table I wonder if you
5 can just help us understand what those numbers mean.
6 We can see that the beneficiaries are -- or
7 registrants are divided into types, so we've got
8 18 estates, 449 primary infectees, 11 secondary
9 infectees, and those we've heard from some of the
10 Alliance House organisation witnesses sometimes called
11 "infected intimates". I don't think that's a phrase
12 that SIBSS uses, is it?
13 **A.** No, we don't use that. We'd refer to those as
14 secondary infectee.
15 **Q.** So those that have been infected usually by their
16 partners or through needlestick injuries?
17 **A.** Yes.
18 **Q.** And then you have 57 widow, widowers or partners, and
19 a grand total, we can see there, of 535. And then
20 those are, in turn, broken down on the columns -- on
21 the rows on the left-hand side.
22 Can you help me with this, the third row down,
23 "Payment Scheme - Chronic HCV (Stage 1) with Widows
24 Annual Payments", and we can see there's one person in
25 that row, is that the discretionary top-up or does

1 that say that only one widow is actually getting an
2 annual payment at that stage?
3 A. I believe that is the one widow getting the annual
4 payment at that stage. I can check with the team but
5 that's what I believe that to be.
6 Q. So the widows -- out of the 57 widows, widowers and
7 partners, only one is getting the annual payment. The
8 others would have received -- why would they be
9 registered as beneficiaries?
10 A. So, no, the widows for -- so I would read this table
11 that we have 57 widows receiving payments. So I'd
12 have to go back and check that particular line.
13 Q. Perhaps we can deal with that after the hearing. We
14 can get some clarity in relation to that.
15 A. Certainly.
16 Q. Then if we can look at another document, please,
17 WITN1146038, which is -- it's an exhibit to a witness
18 statement.
19 If we can go to the second page, it's a freedom
20 of information request -- it's an answer to a freedom
21 of information request.
22 We can see a date there, 3 August 2020. And if
23 we go over to the second page, there's a table giving
24 number of SIBSS scheme members as at 3 August 2020.
25 We can see at the bottom there the total is 542. So

1 an increase, a small increase from the table we looked
2 at earlier.
3 Do you know whether that is an accurate total of
4 the number of beneficiaries as of today?
5 A. Well, as at yesterday the total was 546.
6 Q. You can take that down, Soumik.
7 I'm going to ask you some questions now about
8 relationships between SIBSS and the beneficiaries, or
9 registrants -- or members. Does SIBSS call them
10 "members"?
11 A. We call them members, yes.
12 Q. I'm going to look at the terms of reference first.
13 Soumik, that's WITN4728002.
14 So this is a document entitled "Scottish
15 Infected Blood Support Scheme Advisory Group
16 Background for Potential Members". So, is this
17 a document that's provided to those that are thinking
18 of applying to become members of the Advisory Group?
19 A. Yes, and it's also available to the public on our
20 website.
21 Q. If we turn, please, over to page 2 of this document,
22 we can see, a third of the way down, "Terms of
23 reference", and it says:
24 "The advisory group is not a decision-making
25 body but it will play an important role. It will:

1 "Take on an independent role in providing advice
2 on service delivery and exercise those functions
3 fairly and effectively without undue regard to any one
4 particular interest or any personal concerns.
5 "Advise on the development of processes and
6 procedures particularly as the scheme is initially
7 being established, but also in the event that the
8 scheme is changed over time.
9 "Provide a strong and clear voice for all
10 beneficiaries and applicants to promote best practice
11 in service delivery.
12 "Advise on measures to ensure any beneficiary
13 concerns and operational problems are handled
14 appropriately.
15 "Facilitate greater openness in the delivery of
16 the service.
17 "Promote co-operation between the scheme
18 administrators and beneficiaries/their
19 representatives."
20 Then, going down to the next paragraph:
21 "NSS will review these arrangements
22 periodically. It will not be the Group's role to
23 consider individual decisions made by the scheme,
24 except where, for example, that raises concerns about
25 inconsistent approaches being taken to service

1 delivery. The Group will be separate from the
2 Scottish Government, although government officials may
3 occasionally attend as observers where appropriate."
4 So who drew up these terms of reference?
5 A. These terms of reference were drawn up, I believe, by
6 the original project that was set up -- it was set up
7 in order to establish the SIBSS within NSS back
8 in 2016, leading up to the scheme going live in
9 April 2017. So I believe that's when the original
10 terms were made up and came out, I believe, from
11 recommendations based out of the independent reports
12 that the Government had commissioned, whether that was
13 the clinical or the financial reviews.
14 Q. You tell us in your witness statement that in practice
15 what that means is that the advisory group are briefed
16 on the number of and type of applications that have
17 been made, how many have been approved, and any
18 additional information or evidence that has been
19 sought before a decision is made, that they are also
20 briefed on the financial position of SIBSS. And the
21 purpose of the group or one of the purposes of the
22 group is so that the members of the advisory group can
23 question and challenge those SIBSS employees that are
24 present at the meetings.
25 Is that an accurate reflection of, in practice,

1 how this group works?
2 A. Yes. Yes, it is. As I would add, as chair of that
3 group, I try to make sure that everybody's point of
4 view -- has a chance to get their point of view
5 across. More often than not, the Government
6 representatives are in attendance so they -- it's
7 almost we can facilitate the discussion directly from
8 the advisory group into -- and the members who sit on
9 that -- directly to Government. And in the case of
10 our surveys, the membership surveys we conducted in
11 2018 and 2020, the advisory group were the group that
12 actually helped us make a decision of when we were
13 going to run those surveys and what the questions
14 would be. So we agreed all the questions and we also
15 agreed the analysis and agreed the action plans with
16 the advisory group to ensure that they had an input
17 into how we improve things going forward.
18 Q. Just to get an idea of who sits on the advisory group,
19 you tell us in your witness statement that there are
20 representatives from the National Health Service, and
21 we can see from the minutes that that includes Health
22 Protection Scotland, NHS National Services Scotland
23 and other representatives from individual trusts and
24 so on; is that right?
25 A. It's predominantly -- they're not Health Protection --

1 it's now called Public Health Scotland. It was
2 recreated last year as a new board last year. So
3 Health Protection went into that. The -- ourselves
4 from the SIBSS, as the NHS reps -- and we would bring
5 any other NHS representative in if they did -- at the
6 moment I think we are the primary representatives for
7 the NHS.
8 Q. Then a number of representatives of groups such as
9 Hepatitis Scotland, Haemophilia Scotland, Hepatitis C
10 Trust and Scottish Infected Blood Forum.
11 A. Yes.
12 Q. Then you have also said that there is a scheme member
13 as well who's also part of the group.
14 A. I think there are two scheme members. I think they
15 also represent the bodies that you've mentioned.
16 Q. We heard this morning and you've said this yourself in
17 your evidence just now, that the Scottish Government
18 attend as observers. Can you tell us what the benefit
19 of that is, having them there as observers and not
20 taking part in the decision-making?
21 A. So from my perspective is that it allows -- having
22 them there is essential because it then allows the
23 representative groups and the advisory group as
24 a whole to put its point across to Government directly
25 and help shape, where possible, the decision-making

1 where we can.
2 As an example, the recent discussions around
3 parity back in March before the actual decision was
4 published, there were discussions around the levels
5 and we have three levels and whether we need those if
6 the discussions go ahead, and the advisory group
7 recommended that Government commission the Clinical
8 Review Group, David Goldberg who sits on the advisory
9 group to commission him to re-establish his group and
10 give some independent advice into Government as to
11 what that might look like going forward.
12 So they are having an influence -- certainly --
13 it will certainly, at least, make sure that those
14 discussions are happening in an independent and
15 objective way. So having the Government present so we
16 don't have to just, sort of, move that conversation
17 on, they are present and they do answer questions --
18 if they are asked directly, they answer questions at
19 the meetings directly.
20 Q. In terms of as director of SIBSS, what would you say
21 the benefit of having a group -- the advisory group
22 has been to SIBSS?
23 A. It's essential because, notwithstanding the fact that
24 my team speak to members on a daily basis but,
25 collectively, the advisory group can give us that

1 lived experience to make sure what we -- so it's not
2 just about what we do with SIBSS. Clearly, there's
3 criteria and we have to follow those criteria when
4 we're administering the scheme but it's how we do it
5 and making sure that we understand, as much as
6 possible, the lived experience of our members and try
7 to be as empathetic as possible and as helpful as
8 possible.
9 So I think the advisory group have a really
10 important part to play in that, which is why, I think,
11 it's the a really important group for us.
12 Q. And you said in your statement that it meets twice
13 a year; is that right?
14 A. That's correct.
15 Q. I want to just explore with you other ways of keeping
16 in touch with your membership. You have a newsletter
17 which goes out twice a year and in one of the
18 newsletters -- I don't think we need to go to it --
19 there's reference to attending a face-to-face meeting
20 to meet with beneficiaries. Is that something that
21 happens frequently or is that unusual?
22 A. No, I think that was the newsletter shortly after
23 I arrived that I was looking forward to that.
24 Unfortunately, this last 12 months has not -- that's
25 not been possible. It's something that I still aspire

1 to because, at the moment, personally, my principal
2 engagement with membership is through the advisory
3 group, whereas my staff, they have the day-to-day
4 contact with members who are -- or applicants who
5 phone up on a day-to-day basis.
6 So the aim would be, once we're out of lock-down
7 and the conditions allow, to have that ability.
8 Again, it comes back to it's about how we engage.
9 I think that the key thing about the newsletter, that
10 goes out to all those members who have consented to
11 receive it. We also write -- well, when there's
12 a significant change. So recently with the Government
13 announcement on parity, we've written to every member
14 regardless of whether they've consented because we
15 feel it's important that every member gets a letter to
16 inform them of that change and what that change might
17 mean for them. So the newsletter and the website,
18 obviously, are for those who have consented or seek
19 the information but we do write to all members if
20 there's a significant change.
21 CPI was one, when that was agreed last year and
22 again the parity decision that happened on 25 March,
23 I believe it was we wrote straight away to members to
24 say this is happening and, as soon as we are given the
25 go-ahead to administer that, then we will issue those

1 payments.
2 **Q.** You've mentioned the customer -- you've mentioned the
3 surveys that were sent out to members. I don't
4 think -- unless you want me to, I don't think I need
5 to go to the 2020 survey. We might look at it
6 a little later on but, if I just read out some of the
7 headline figures and then ask you the question. The
8 question: scheme members were asked to give their --
9 first of all, I should say that 73 per cent of members
10 responded to the survey and members were asked to give
11 their thoughts on the overall service they received
12 from SIBSS and 91 per cent scored the responses --
13 91 per cent of scored responses rated the service as
14 good or very good.
15 What do you put that down to?
16 **A.** I think it's down to the -- I come back to it's how we
17 do it. It's the way the team engage with membership,
18 the way we try to help where at all possible. So we
19 don't need to go there but the 2018 results were
20 slightly poorer than that, so it tells me that things
21 are still improving but, equally, there's still more
22 to do. So I think it really is down to having quality
23 people. It's a small team but it's a good team and
24 they care and I think that's -- the scores reflect the
25 fact that they actually care about the members and try

1 their best for them, to make sure that we get the best
2 result possible.
3 **Q.** Is it important that the scheme understand the
4 background to how the members became infected and have
5 an understanding about HIV, hepatitis C, and so on?
6 **A.** Yes. So I wouldn't say they have -- they understand
7 every nuance of the various clinical manifestations
8 but they understand the devastating effect that the
9 infected and the affected have suffered, and that's
10 why it's -- having that empathy with the applicants or
11 indeed the members once they've successfully applied
12 is so important.
13 **Q.** I'm just going to ask you one question about funding.
14 Is it right to understand from your statement that if,
15 at any point during the year, SIBSS considered that
16 they may need more money from the Government, that
17 they would simply be able to ask for it and it would
18 be provided to them?
19 **A.** That is my understanding and certainly my experience
20 over last two -- just over two years is we discuss
21 funding and budgets with Government every quarter. We
22 try to predict where at all possible but it's --
23 I guess it's more of an art than a science because it
24 just is but we do our best to predict what we will
25 need.

1 The Government will start -- at this time of the
2 year they will give us an initial allocation so we
3 have the money to pass on and by the sort of end of
4 quarter 3/beginning of quarter 4 we will have those
5 discussions about where are we and is there a need for
6 a top-up. Certainly, my experience has been that
7 there is generally -- there has generally been a need
8 for a top-up. The last financial year we were
9 budgeted for 10 million, came in just under that so we
10 didn't need a top-up but every other year previously
11 my understanding is that that money has been made
12 available.
13 **Q.** I'm going to ask you some questions now on identifying
14 new beneficiaries. Can I start by taking you to the
15 scheme document, which is at WITN4728003, this is the
16 Scottish Infected Blood Support Scheme 2017, drawn up
17 by the Scottish Ministers under the 2005 Act. I just
18 want to take you to this to just understand who
19 beneficiaries -- who the beneficiaries actually are.
20 So if we can turn over to the second page of this
21 document, just to section 3, paragraph 3, where it
22 says "Eligibility".
23 So payments may be made under this scheme to
24 persons who come within paragraphs 4 to 15, and we
25 will look at those in a minute, surviving spouses

1 civil partners, long-term cohabitees or dependent
2 children of qualifying persons. So just pausing
3 there, there's two categories, if I can put it that
4 way, of the bereaved community who can become
5 beneficiaries -- members of the scheme, is that right,
6 partners, broadly speaking, and dependent children?
7 **A.** That's my understanding, yes.
8 **Q.** Then we heard this morning that, while partners can
9 receive annual payments -- so for 12 months
10 100 per cent of the deceased infected person's payment
11 and thereafter 75 per cent -- that is not the case for
12 dependent children. Is that also your understanding?
13 **A.** That's my understanding. The children would apply for
14 the -- the word's gone out my head now.
15 **Q.** The discretionary ...
16 **A.** Yes, it's the estate. They could make an estate
17 claim. So if it was somebody who had never been
18 registered before with either the previous schemes or
19 indeed SIBSS, we've certainly had a case where the
20 children have -- they put in an estate claim and
21 they've received the appropriate lump sums that would
22 have been given to their parent had they applied at
23 the time.
24 **Q.** Is that only available to dependent children, ie
25 children under the age of 21 in full-time education?

1 **A.** I believe that's applicable to the estate. So it
2 would be -- or the executor of the estate could apply.
3 That's my understanding.
4 **Q.** So dependent children aged -- those who are aged under
5 the age of 21 or in full-time education, can make
6 applications themselves for discretionary payments; is
7 that right?
8 **A.** That's correct.
9 **Q.** So that would include income top-up and single one-off
10 grants?
11 **A.** I believe so.
12 **SIR BRIAN LANGSTAFF:** Could we just, for my ease of mind,
13 go back to the first page, if we may. Stop there.
14 Yes, it's not "or in full-time education", it's "under
15 the age of 21 years in full-time education".
16 **MS SCOTT:** Yes.
17 **SIR BRIAN LANGSTAFF:** So it's a combined qualification, so
18 someone who is 18 and is actually dependent
19 financially but is not in full-time education does not
20 qualify? See you nodding, Mr Bell.
21 **A.** Sorry, yes. That would be my understanding of that.
22 **MS SCOTT:** Then if we go back to page 2 -- so that deals
23 with the members of the bereaved community. Page 2,
24 paragraph 3 (c) is transferring qualifying persons, so
25 those are the people who were registered with the

1 Alliance House organisations that came over to SIBSS.
2 So they are eligible, is that right?
3 **A.** That's correct.
4 **Q.** Then the criteria for the paragraph 3(a), that we just
5 looked at, which is dealt with at paragraphs 4 to 15
6 of the scheme, effectively sets out at paragraph 4 for
7 hepatitis C stage 1 but there are equivalent
8 provisions for stage 2 and HIV and co-infected.
9 Paragraph 4 deals with primary infectees:
10 "... before 1 September 1991 was treated in the
11 United Kingdom under the National Health Service by
12 way of receipt of blood, tissue or a blood product;
13 "on the balance of probabilities, as a result of
14 that treatment was infected with Hepatitis C which is
15 at Stage 1; and
16 "at the time of making an application under this
17 Scheme, is resident in Scotland, or is resident
18 outside the United Kingdom but, immediately before
19 that residence, was resident in Scotland."
20 So that's primary infectees?
21 **A.** Yes.
22 **Q.** Are you aware that in the other devolved nations the
23 criteria is not based on residence but based on place
24 of infection?
25 **A.** I wasn't aware of that.

1 **Q.** Has SIBSS ever come across a case that's fallen
2 between the two? So it would have to be infected in
3 Scotland but living elsewhere so, on the face of it,
4 wouldn't qualify for any of the schemes?
5 **A.** I certainly haven't come across that in my two years
6 in the applications that I've dealt with.
7 **Q.** Then paragraph 5 and, again, equivalent provisions for
8 the other hepatitis C stage 2, and HIV and
9 co-infected, deals with those applicants who are,
10 secondary infectees, so were infected with hepatitis C
11 as at stage 1 by transmission from a person to whom
12 paragraph 4 of the equivalent provisions applies, and
13 where, at the time of transmission, were in
14 a qualifying relationship and the transmission
15 occurred because of sexual transmission, mother to
16 baby, needle stick injury, or other means. And then
17 other provisions.
18 So those are, broadly speaking, the categories
19 of eligible beneficiaries, is that correct?
20 **A.** That's correct.
21 **Q.** Soumik, you can take that down now.
22 Is it also correct to understand from -- again,
23 I can take you to the paragraph if it is helpful, but
24 to understand from the memorandum of understanding
25 between SIBSS and the Scottish Government that it's

1 SIBSS's responsibility to identify beneficiaries. In
2 fact, it's between Scottish Ministers and National
3 Service of Scotland. Would it be helpful if I took
4 you to that document?
5 **A.** No, I think, in the -- my understanding, certainly at
6 the moment, we continue -- SIBSS continues to
7 advertise itself and the scheme to the GP community
8 who we would expect to be able to make the appropriate
9 people aware -- that potential members aware. We also
10 obviously through the advisory group make sure that
11 all our information is passed through their networks
12 to make sure we get the word out, as far as
13 practicable.
14 I believe -- and I think I said in my witness
15 statement previously, I believe that the Scottish
16 Government ran an advertising campaign back before the
17 scheme was set up, although I wasn't with SIBSS at
18 that point. So -- and we have and we do liaise with
19 the solicitors on behalf of -- who work on behalf of
20 the Alliance House organisations, also poke about
21 trying to identify any remaining people who may -- for
22 whatever reason didn't consent for their information
23 being transferred to us back in 2018.
24 **Q.** So you are talking there about the process of
25 transferring information from the Alliance House

1 organisations over to SIBSS, and the Alliance House
2 organisations insisting on beneficiaries giving
3 explicit consent for that process and what you tell us
4 in your witness statement is that 12 beneficiaries
5 were lost on transfer; is that right?
6 **A.** That's correct. I believe all bar five of those 12
7 have now been -- the remainder to apply and they did
8 apply but during that application process we were able
9 to -- through the Skipton reference number, we were
10 able to identify that they had been Alliance House
11 beneficiaries but my understanding is, as at today,
12 five remain unaccounted for.
13 **Q.** Does it follow from that that the requirement by the
14 Alliance House organisations that explicit consent
15 must be given for any data to be transferred over to
16 SIBSS, that SIBSS does not have any information about
17 beneficiaries who were turned down by the
18 Alliance House organisations and didn't become their
19 beneficiaries?
20 **A.** In essence, that is correct. We have had applicants
21 who have declared in their application process that
22 they were declined by the Alliance House organisations
23 but we still look at the whole process. We don't --
24 being rejected by Alliance House is not a defaulted
25 position. We will look at all the evidence that's

1 presented to us equally.
2 **Q.** Are you able to tell us whether some of those
3 applicants who were turned down by an Alliance House
4 organisations and subsequently applied to SIBSS has,
5 in fact, been successful?
6 **A.** I don't have that information to hand but I can
7 certainly get that information for the Inquiry.
8 **Q.** So while SIBSS can't themselves contact that cohort of
9 beneficiaries who failed -- whose applications failed
10 for the Alliance House organisations, is there
11 anything that SIBSS could do to notify that cohort
12 that they can make applications to SIBSS and they will
13 be considered on their merits?
14 **A.** I think we already do that, again not only through our
15 own website but also through the representative
16 organisations that we have included within the
17 advisory group in making sure -- because they have
18 great networks and getting the word out through the
19 networks and also the GP community we believe is
20 probably the most effective way of getting to the
21 people who -- the message to the right people, so --
22 **Q.** And -- sorry?
23 **A.** Sorry, no.
24 **Q.** Is there a notice on the website saying, in terms,
25 "Please apply to SIBSS even if you've been turning

1 down by the AHOs"?
2 **A.** I couldn't say for sure whether that's as explicit as
3 that. I would have to check.
4 **Q.** Is that something that SIBSS would consider?
5 **A.** I think -- absolutely -- there's no reason just
6 because they were turned down that that is not an
7 automatic default. The decision that we make is based
8 on all the evidence presented to us. Clearly if there
9 is no evidence to be found then it becomes
10 challenging, but it's not because they have been
11 turned down by one scheme or another. It's all the
12 evidence that needs to be looked at.
13 **Q.** Sorry, I think my question was unclear. Would SIBSS
14 consider putting a notice of that kind onto their
15 website?
16 **A.** Well, yes.
17 **Q.** Can I ask you as well what the process is for inviting
18 a partner, whether that's widow, widower, cohabitee,
19 of a member who has recently died to become themselves
20 a beneficiary?
21 **A.** When a partner or cohabitee informs us of a member's
22 passing, then the team would automatically inform them
23 of what they are entitled to over that -- so that, as
24 you explained earlier, the 12 months of full payment,
25 then 75 per cent. And going forward with the £10,000

1 that's been proposed within the parity agreement, we
2 would also then -- once that's gone live, we would
3 then forward that as well so that -- and help them
4 with that application. It could be a very difficult
5 time for them, obviously, with the passing of their
6 partner.
7 **Q.** I'm going to come on a little bit later on and ask you
8 about the issues about the death being caused by the
9 virus in order to qualify, but I'm not going to
10 address those now, but is there a similar process for
11 informing dependent children of their ability to apply
12 to SIBSS to become a member?
13 **A.** I think we would -- the person we would be informing
14 would be the person who's informing us of the passing.
15 So that would normally be the immediate next of kin.
16 That could be the dependent child if the dependent
17 child was the immediate next of kin.
18 **Q.** Does SIBSS collect data on the cause of death of
19 a member?
20 **A.** Not -- I'm not aware that we specifically seek that.
21 There are occasions where, if there's a lack of
22 evidence of -- in an application, for example -- not
23 of a member because they've already passed a certain
24 threshold, so -- but it was an application for someone
25 who was not a member or had never been a member, then

1 we may look for something -- the team may go to the
2 death certificate to see if there's anything in that
3 that would allow us to confirm the cause. Or even if
4 it wasn't -- if that was one of their -- it could have
5 been a complication that -- from that that was the
6 cause of death not the specific hep C, for example, in
7 itself, but was it contributory to that, did they have
8 it. And that would all be -- that would all form part
9 of the evidence pack, I think.
10 **Q.** Does SIBSS collect data on the numbers of members who
11 have died that are infected with HIV or infected with
12 hepatitis C at stage 1 or stage 2 or co-infected and
13 so on?
14 **A.** We keep -- obviously to keep understanding our numbers
15 we would know -- once we're informed of the death of
16 a member, then we would note that for the record.
17 **Q.** So if the Inquiry wanted to get those figures from
18 SIBSS, that wouldn't cause a difficulty?
19 **A.** I don't believe so. I think the -- and that's why the
20 numbers we discussed earlier on change on a -- sadly,
21 sometimes on a monthly basis.
22 **Q.** Does SIBSS do any kind of analysis to understand
23 whether there are any gaps in the members? So either
24 whether there may be no members from a particular
25 geographical region, which may mean that the clinical

1 network's not operating efficiently, or by
2 a particular type of patient? Is there any analysis
3 of that sort undertaken by SIBSS?
4 **A.** I'm not aware of any of that being undertaken, no.
5 **Q.** Do you know whether there are any members who have
6 become infected via their treatment for sickle cell
7 anaemia on the SIBSS scheme?
8 **A.** No. So there may be -- we don't look for that. There
9 may be, in the evidence packs, for those who have
10 applied since April 2017, there might be some
11 information about that in the medical evidence, but
12 it's not something that we routinely pull out and hold
13 as a dataset, but we have no information on those who
14 transferred in April 2017 because they were
15 automatically transferred. There was no -- we didn't
16 get any documentation other than their -- individual's
17 personal details, I think the bank details and
18 their -- generally, the Skipton reference number.
19 There was no medical evidence transferred with them.
20 So it would be difficult to see for the whole
21 membership what that meant. We could look at the
22 numbers since 2017 as they apply, though, but it's not
23 something we hold as a specific dataset.
24 **Q.** Presumably the same could be said for those members
25 who may have been infected via their treatment for

1 thalassaemia?
2 **A.** Absolutely, yes -- same detail.
3 **Q.** I'm going to ask you now about applications that have
4 been made to come on to the SIBSS scheme. Can we
5 look, please, at your witness statement, which is
6 WITN4728011. It's at -- that's the wrong page
7 reference. Let me just find the page reference. It's
8 at page 48 of that. It's WITN4728001.
9 I had better start at page 47. We can see
10 that's your witness statement.
11 **A.** Yes.
12 **Q.** And at the bottom of page 47 you are asked:
13 "How many applications have been refused because
14 they do not meet the eligibility criteria? Of those,
15 how many claim to have been infected via
16 a transfusion?"
17 You say:
18 "43 applications to SIBSS have not been
19 approved."
20 Then you set out on the following page the
21 reasons for non-approval:
22 "Blood transfusion in 1993, post 1991 (1)
23 "Confirmed intravenous drug user (6)
24 "HCV did not cause death (3)
25 "Infected with Hep B, not Hep C (1)

1 "Infected elsewhere, not in the UK (2)
2 "Means tested (13)"
3 Just pausing there, is that an application for
4 a discretionary payment?
5 **A.** Yes.
6 **Q.** So that's not somebody wanting to come on to the
7 scheme, that must be somebody that's already a member
8 making an application?
9 **A.** Yes, and existing members, yes.
10 **Q.** "No evidence of blood transfusion (4)
11 "Self-cleared (7)
12 "Applicants making an estate claim ineligible
13 due to separation (2)
14 "Deferred Stage 2 [payments] (4)."
15 Again, presumably that last cohort are existing
16 members who are wanting to go over to HCV stage 2?
17 **A.** That's correct.
18 **Q.** Then you say:
19 "All applications mentioned ... above, less
20 those not accepted due to means testing, claim to have
21 had a blood transfusion i.e. 30."
22 **A.** Yes.
23 **Q.** I'm going to come back and ask you some questions
24 about HCV not causing death, and I think I'm going to
25 ask you about HCV not causing death, which you have

1 already touched on.
2 But just -- Soumik, you can take that down now.
3 Just -- is it right to understand from your
4 witness statement and from the documents that we've
5 been provided by SIBSS that the test for an
6 application for somebody applying to come onto SIBSS
7 as a member is the balance of probabilities?
8 **A.** Yes.
9 **Q.** Is it also right to understand that you adopt a policy
10 of giving the applicant the benefit of the doubt?
11 **A.** That's correct. If there's -- if the evidence is in
12 the balance, and I think I said earlier about there's
13 an element of art rather than science, if -- so if
14 something -- the balance of probability is over
15 50 per cent. If it's around 50 per cent, you know,
16 49 per cent -- if it feels it's in the balance then we
17 would give the benefit of the doubt to the applicant.
18 **Q.** Why do you do that? What's the thinking behind that
19 policy?
20 **A.** So the policy -- that's policy set by Scottish
21 Government. I can only assume, as I wasn't here
22 when -- I wasn't in post when that policy was made,
23 but I can only assume it's to make sure that we, where
24 at all possible, look after the applicant as far as
25 possible -- as far as practicably possible.

1 **Q.** Do you know whether there have been any
2 applications -- any new applicants applying to SIBSS
3 with HIV since SIBSS has started?
4 **A.** I think yes, we have. I think we've had one.
5 **Q.** So predominantly you're dealing with applications from
6 those infected with hepatitis C?
7 **A.** Yes, yes.
8 **Q.** The Inquiry's heard quite a lot of evidence during the
9 hearings for the Alliance House organisations about
10 the difficulties that applicants faced -- applicants
11 infected with hepatitis C faced getting hold of their
12 relevant medical records to evidence the treatment
13 that they say they had which caused the infection.
14 I understand from your witness statement that if
15 relevant medical records are missing when an
16 application is made to SIBSS, that SIBSS itself
17 undertakes further investigations to identify those
18 records; is that right?
19 **A.** That's correct. We would look to speak to general
20 practice, perhaps the health board who -- where the
21 treatment or procedure that the applicant has talked
22 about, to see whether we can access documents that
23 they, for whatever reason, either they -- the
24 applicant hasn't asked for or thought to ask for. So
25 we will try and go and get anything that's available

1 to help support that. The team also go back to the
2 applicants to make sure -- to find out who they have
3 spoken to and who they haven't spoken to, to try and
4 cross-reference where we can go.
5 Regrettably, a lot of the records have been
6 destroyed because of time, and the record holding
7 retention policies at the time were not as they are
8 now. So unfortunately a lot of records have gone.
9 Where there's no or low evidence, we would then -- we
10 use Professor Hayes, who is one of our medical
11 experts, and we use him to give an opinion on whether
12 a procedure that has been described in the application
13 form -- to see whether he, in his opinion, and he --
14 he clearly will consult with his appropriate
15 specialists colleagues, but whether that would likely
16 necessitate a blood product transfusion or blood
17 product, et cetera, to give us some indication of,
18 whilst there's no record, the procedure might
19 realistically be expected to have -- or there's
20 a probability that a transfusion was required. And
21 that then helps us with our decision-making.
22 **Q.** Just a couple of questions arising from that. First
23 of all, you've indicated that you do everything that
24 you can to try and find these medical records. In
25 your witness statement, you suggest that that includes

1 approaching the Scottish National Blood Transfusion
2 Service and information services division, to see
3 whether they have any records that might assist about
4 the use of blood or blood products for the particular
5 procedure that the applicant says was undertaken. Is
6 that right?
7 **A.** That's correct. I believe because it is -- the
8 Scottish National Blood Transfusion Service did an
9 exercise post Penrose, or I think perhaps even before
10 Penrose had reported, looking at all the records that
11 they had of people who had received a transfusion to
12 seek and advise and seek to get them tested and,
13 obviously, Information Services Division, who also
14 used to be part of National Services Scotland but are
15 now part of Public Health Scotland, as of last April,
16 they essentially -- for want of a better expression,
17 they are the Office of National Statistics sort of
18 element in Scotland. So they hold all the Scottish
19 health data. So they might have information that
20 would be helpful. So we ask them as well.
21 **Q.** Have SIBSS had success in finding medical records
22 where applicants haven't?
23 **A.** On occasion, yes. Sometimes applicants have thought
24 that perhaps the hospital that they had had the
25 procedure in no longer exists but we've gone to the

1 health boards and, indeed, over time the health boards
2 have changed from health boards to health trusts, back
3 to health boards, but sometimes they'll have archives
4 and they'll have kept -- for whatever reason, things
5 will have been kept longer than perhaps their
6 retention records would have suggested. So we have
7 had some success on that but not in every case,
8 certainly not.
9 **Q.** Then you have indicated that where the medical records
10 can't be found, the next step is to go to consult with
11 Professor Peter Hayes, who is a hepatologist, to get
12 an indication of what was called in previous hearings,
13 Alliance House organisation hearings, clinical
14 plausibility, ie is it clinically plausible that the
15 procedure that the applicant says they underwent would
16 have required a blood transfusion or blood or blood
17 products; is that right?
18 **A.** That's correct.
19 **Q.** You said in your evidence that it was likely that
20 Professor Hayes would consult with colleagues. Is
21 that your expectation or the arrangement that you have
22 with him, that he would effectively go and consult
23 with colleagues, if it's an orthopaedic procedure, he
24 might go and talk to an orthopaedic surgeon?
25 **A.** That would have been my understanding. What he gives

1 us back is a considered opinion on the probability of
2 transfusion or other blood product being required.
3 **Q.** You have consulted with him, you say in your witness
4 statement, on 13 occasions; is that right?
5 **A.** That's right correct.
6 **Q.** Do you provide the applicant with the advice that
7 Professor Hayes provides to you?
8 **A.** I don't think so. If it's a successful application,
9 then they simply get a letter that tells them they've
10 been successful and if it's unsuccessful then we
11 explain in the letter why we think it's unsuccessful.
12 So it might say -- if it had gone to Professor Hayes,
13 it might say that there's no evidence or plausibility
14 of a transfusion but it won't necessarily give every
15 element of his response to us.
16 **Q.** Do you think that it would be fairer to provide that
17 information to the applicant if they've failed?
18 **A.** I think we cover it but it could do no harm for
19 transparency. But I believe we cover it. If there's
20 no -- you know, we don't believe that the clinical
21 opinion is that there's unlikely to have been
22 a transfusion, then that's what we would say in the
23 letter in response to the application.
24 **Q.** Just going to look then at the internal guidance for
25 the assessments of where there's no medical record,

1 and that's at WITN4728017, "Assessment of chronic
2 hepatitis C infection applications (formally known as
3 Stage 1 of the Skipton Fund)". Now, from your witness
4 statement you tell us that this is guidance that was
5 drawn up by the Scottish Government; is that right?
6 **A.** I think it was drawn up with the Scottish Government,
7 those who were setting up the scheme, the project team
8 that were setting up the scheme itself, back
9 pre-April 2017.
10 **Q.** Then it sets out balance of probabilities principle --
11 it sets out some guidance at the bottom of that page
12 on the balance of probabilities principle.
13 **A.** Yes.
14 **Q.** "The assessor is required to make their decision on
15 the balance of probabilities (the same principle also
16 applies to any advanced HCV or HIV new applications to
17 join the scheme). They have to conclude that the
18 chronic hepatitis C infection is more likely than not
19 to have resulted from an eligible exposure via NHS
20 blood, blood products or tissue."
21 Then in the next paragraph down:
22 "In other words, it has to have been
23 a probability and not just a possibility that the
24 chronic infection with hepatitis C occurred in this
25 way. Probable means that the probability that the

1 event happened is more than 50 per cent (see below in
2 relation to cases where the probability is
3 50 per cent)."
4 That's the benefit of the doubt principle we've
5 just been -- you've just been telling us about.
6 Then if we can turn to page 5, please -- I'm not
7 sure that's the right reference, in fact. Sorry, its
8 page 2. So this is under the "Benefit of the doubt"
9 principle. "Benefit of the doubt" principle is the
10 bit underlined:
11 "... borderline cases, where there is viewed to
12 be just over a 50 per cent chance of the infection
13 having occurred as a result of infected NHS blood,
14 tissue or blood products, the benefit of the doubt
15 should be given in favour of the applicant."
16 Then the next paragraph down:
17 "No facts should be discounted in the evidence
18 gathering exercise, unless they are found to have
19 a lack of credibility. Every facet of the applicant's
20 statement should be taken into account in the
21 evaluation of the probability of infection."
22 Then the next paragraph:
23 "Although it is ultimately for the applicant to
24 substantiate the application, in borderline cases
25 where aspects of the applicant's statements are not

1 supported by documentary or other independent
2 evidence ..."
3 So you are talking here about where they can't
4 find their medical records or the medical records
5 don't exist:
6 "... the assessor may judge that those aspects
7 shall not need confirmation when the following 5
8 conditions are met ..."
9 If we go over the page the five conditions are
10 set out:
11 "the applicant has made a genuine effort to
12 substantiate his or her application;
13 "all relevant elements at the applicant's
14 disposal have been submitted, and a satisfactory
15 explanation regarding any lack of other relevant
16 elements has been given;
17 "the applicant's statements are found to be
18 coherent and plausible and do not run counter to
19 available specific and general information relevant to
20 the applicant's case;
21 "The applicant has applied to the relevant UK or
22 Scottish scheme at the earliest possible time
23 following diagnosis, unless the applicant can
24 demonstrate good reason for not having done so; and
25 "the information provided suggests that the

1 applicant is generally credible."
2 So is it right, has SIBSS accepted onto the
3 scheme applicants who are unable to substantiate the
4 blood transfusion or blood products in their medical
5 records applying this guidance?
6 **A.** Yes, we have.
7 **Q.** I'm just looking at the time, I think I've probably
8 got another 40 minutes.
9 **SIR BRIAN LANGSTAFF:** Let's take a break now then, shall
10 we, if it's a convenient moment, and shall we come
11 back at 20 to 4? Would that be all right?
12 **A.** Yes, sir.
13 **SIR BRIAN LANGSTAFF:** So 20 to 4.
14 Now, you're giving evidence, Mr Bell. You must
15 not discuss what you've been asked about or anything
16 you think you may yet be asked about with anyone,
17 whoever they are, but you are free to talk about
18 whatever else you might like.
19 **A.** Thank you.
20 **(3.19 pm)**
21 **(A short break)**
22 **(3.40 am)**
23 **SIR BRIAN LANGSTAFF:** Yes.
24 **MS SCOTT:** Mr Bell, I have had a couple of questions in
25 just over the short break from Core Participants, just

1 asking for clarification of some of the evidence you
2 have given earlier, so I will just pick those up first
3 before going on to my next topic.
4 **A.** Certainly.
5 **Q.** You were giving evidence about the role that
6 Professor Hayes takes in the assessment of applicants
7 coming on to the scheme. Can I just ask you to
8 clarify whether you know for certain whether
9 Professor Hayes seeks advice from other more
10 specialist colleagues when looking at clinical
11 plausibility or whether that's just your understanding
12 or expectation --
13 **A.** That's my understanding.
14 **Q.** It's your understanding and expectation?
15 **A.** Yes.
16 **Q.** So are there any formal terms of reference that set
17 out how Professor Hayes -- the circumstances in which
18 you would consult with him and how he would carry out
19 his obligations?
20 **A.** No.
21 **Q.** Sorry, just to press the point, it's your
22 understanding; and what's your understanding based
23 upon?
24 **A.** It's based upon the advice I've had from the team when
25 I asked about his role and how my predecessor had

1 utilised him in the past when I first came into the
2 role and that's how it was explained to me. He also
3 supports the Appeals Panel, which is obviously an
4 independent panel, and, if necessary, will give his
5 advice to them as well.
6 **Q.** So you haven't yourself seen any evidence from
7 Professor Hayes in an email, for example, saying,
8 "Thank you for asking me about this case, I've
9 consulted with X and this is what he or she has said"?
10 **A.** So I have seen emails that he gives back to the team
11 answering questions but I couldn't -- without going
12 back to the emails, I couldn't say specifically
13 whether he had said he's consulted with somebody else
14 or not.
15 **Q.** Certainly I think you provided some of those emails to
16 the Inquiry and I don't recall seeing that either.
17 I was asking you questions about the rationale
18 for the benefit of the doubt policy, i.e. when
19 there's -- I think the words you used were: when it's
20 in the balance, the policy is to give the applicant
21 the benefit of the doubt.
22 Can I ask you -- and I asked you the reasons for
23 that. Can I ask you whether this was a part of the
24 consideration in drawing up that policy or indeed
25 applying it, that to do otherwise would be unjust or

1 would lead to unfair decisions?
2 **A.** I couldn't say either. My understanding is it was
3 specifically asked to be input into there by the
4 Scottish Government, so within the assessment
5 criteria, so that it was -- it went beyond the balance
6 of probability but actually to give the benefit of
7 doubt, which is a slightly lower threshold to achieve.
8 But my understanding is it was put there by Scottish
9 Government colleagues when they set up the scheme.
10 **Q.** Then just some questions just to clarify what the
11 bereaved community can receive from SIBSS. Is it
12 right to understand this, that widows, widowers and
13 cohabitees can claim lump sum payments and annual
14 payments? Is that correct?
15 **A.** Yes.
16 **Q.** That an estate claim, which can be brought by
17 a dependent child, can claim a lump sum only?
18 **A.** That's my understanding.
19 **Q.** And that a dependent child can make an application for
20 a discretionary payment, including income top-up and
21 one-off grants?
22 **A.** That's my understanding.
23 **Q.** Can I now -- I'm going to ask you to consider the
24 guidance we find at WITN4508007.
25 It's internal guidance for "Chronic hepatitis C

1 (stage 1) widows, widowers and civil partners - cause
2 of death assessment guidance".
3 **A.** I'll just read out some passages from it and then ask
4 the questions:
5 "If a person's husband, wife or civil partner
6 had chronic hepatitis C (so was not entitled to annual
7 payments at the time of their death) and was
8 a Scottish beneficiary (either registered with SIBSS
9 or previously registered with the Skipton Fund as
10 a 'Scottish' beneficiary) then they can still apply
11 for an annual payment if they were married to or in
12 a civil partnership with the deceased beneficiary,
13 were still living with them at the time of their death
14 and have not since remarried."
15 We heard evidence this morning from the Scottish
16 Government that that last -- "since remarried" is
17 subject to change.
18 **SIR BRIAN LANGSTAFF:** May I just ask one question? There
19 it is referring to a husband, wife or civil partner.
20 You earlier -- a moment ago, Ms Scott, you asked
21 a question about widows, widowers and cohabitees.
22 Now, cohabitees are not necessarily those in
23 a civil partnership. One would expect those in
24 a civil partnership to be cohabitees but it doesn't
25 work the other way round. So would they be in or

1 would they be out, a cohabitee who is not in a civil
2 partnership or married?
3 **A.** If the cohabitee -- if there's evidence that the
4 cohabitee has a long -- quite a long-term relationship
5 and has been a cohabitee in a clear long-term
6 relationship, then they would be in.
7 **SIR BRIAN LANGSTAFF:** Thank you.
8 **MS SCOTT:** Is it right that initially the criteria was
9 civil partner but quite early on in the scheme that
10 was widened by the Scottish Government to include
11 cohabitee?
12 **A.** That's my understanding.
13 **Q.** So this guidance -- that may suggest, might it, that
14 this guidance was authored fairly early on in the
15 scheme's history?
16 **A.** Yes.
17 **Q.** And I think you tell us in your witness statement that
18 this is guidance that was authored by the Scottish
19 Government?
20 **A.** That's correct.
21 **Q.** So, just picking up then at the words "remarried",
22 last two sentence there:
23 "However, there will also need to be sufficient
24 evidence that, on the balance of probabilities,
25 Hepatitis C ... directly contributed to the spouse or

civil partner's death."

Then going down to the next paragraph:

"This means the applicant will need to complete the same form as the one for widows, widowers or civil partners of beneficiaries with advanced Hepatitis C or HIV ..."

And this is the bit I want to ask you about:

"... but they will also need to provide:

"a copy of the spouse or civil partner's certificate of registration of death ...

"contact details for an appropriate doctor who can provide relevant evidence about the cause(s) of the spouse or civil partner's death. Ideally this should be completed by a Hepatitis C clinical specialist who was involved in treating the spouse or civil partner for Hepatitis C, but clearly this may not be possible if they died some time ago. In such cases, another hepatologist/infectious diseases consultant can be nominated if they have access to the spouse or civil partner's records or alternatively the spouse or civil partner's GP may be nominated."

So the question I wanted to ask you, Mr Bell, was: is it right to understand this guidance in this way, that if a widow -- I'm going to use the word "partner" to encompass widow, widower, cohabitee,

civil partner. If a partner of a primary beneficiary who has deceased with advanced hepatitis C or HIV is applying to SIBSS, they don't need to provide evidence that the infection directly contributed to their partner's death, but if they are -- if the deceased partner was infected with hepatitis C stage 1, then that additional step, that additional evidence, must be provided?

A. So, yes, there's a difference between the two. But if somebody was receiving the stage 1 -- my understanding is if they were receiving stage 1 membership, what -- that the death certificate highlighted that it was the hepatitis C that was a direct cause to the death, then they could be entitled to the fuller payment of stage 2. So I think there is -- we have to look at those slightly differently. But my understanding is that the death certificate is required to make sure that we have a cause of death recorded.

Q. So is the rationale behind this, is it because if somebody has advanced hepatitis C or HIV and they die, there is an assumption that the death -- that the infection directly contributed to the death, so there's no need to have that additional evidence to prove that?

A. I think we still -- I believe the team still look for

the -- a copy of the death certificate to confirm, but I think the challenge -- it might come back to -- thinking back to my earlier comments around the one case that we talked about very early on, that might be -- there's a -- one of the reasons that that one widow has noted on her own is because of -- potentially because of this. I will double-check and write back to you on that but this could be one of the reasons why that individual is identified on the table separately, because it could be that she's on a slightly different payment because of the stage. So this could be the reason for that.

On that particular one I will write back to you on -- to confirm.

Q. So -- because she's on the table as a widow under hepatitis C stage 1, and it may be because she's in fact receiving a hepatitis C stage 2 payment, having submitted the evidence we've just looked at, the death certificate and potentially contact details -- is that what you're saying?

A. I think that could be -- I will have to double-check and then write to you formally to confirm, but that could lead to one -- this -- just as we're discussing this, that's what's coming to my head with that previous point.

Q. But, in any event, you think that for a widow of a deceased member who suffers from advanced hepatitis C or HIV would, in any event, need to provide a death certificate at least in order to register with SIBSS?

A. I think we would ask for that -- when they inform us, we would help them -- because obviously we want to -- it just speeds the whole process up if we have access to the certificate of death.

Q. And if the partner is unable to satisfy SIBSS that the death of their partner was directly contributed to by their infection, does that mean they wouldn't be eligible for payments?

A. Before we made that decision the team would try and engage the clinicians involved to ascertain what the conditions and the circumstances were at death to -- before we got to that point.

Q. But ultimately that is the criteria. There has to be a direct contribution from the infections to the death for all widows; is that correct?

A. That's my understanding.

Q. All partners, sorry.

A. That's my understanding.

Q. Did you want to say something? No.

A. No.

1 **Q.** I'm going to ask you some questions about the criteria
2 for self-certification for HCV plus applications. Do
3 you know anything -- I'm going to turn to the guidance
4 on that. It's SIBS0000126. Is this the guidance
5 that's on the website?
6 **A.** Yes, it is.
7 **Q.** I beg your pardon. Can you take that down, Soumik.
8 I don't think that's the right guidance. I'll ask you
9 a general question anyway.
10 Do you know how the guidance for these
11 applications was drawn up? Do you know who drew it
12 up? Sorry, I beg your pardon, it is the right
13 document. I just need to turn on a bit. Can we go
14 back to SIBS0000126 and let me just show you what I'm
15 talking about. It's going to help.
16 So this is "Regular payments for people infected
17 with Chronic Hepatitis C and their widows, widowers or
18 partners". If we turn through to page 7, it says
19 "Guidance on the three categories", and it sets out
20 there the three categories of impact hepatitis C has
21 on a member's life, "My life is severely affected by
22 hepatitis C", then if we go over to page 9, we see "My
23 life is moderately affected by hepatitis C" and then,
24 if we go over to the last page, it says "My life is
25 not noticeably affected on a day to day basis by

1 hepatitis C".
2 So the question relates to who drew up this
3 guidance and how that came about.
4 **A.** So this -- again, before I took over the directorship
5 of the scheme, but my understanding is that following
6 the clinical review group and the financial review
7 groups, the programme team that was set up by Scottish
8 Government in order to establish SIBSS, part of their
9 work was to deliver the various guidance documents and
10 I believe that this was part of that work, that they
11 would then produce all to be signed off by Scottish
12 Government.
13 **Q.** Do you know whether or not the beneficiary or
14 membership community were consulted on what is in that
15 guidance?
16 **A.** Yes, I believe that they were and it was done through
17 the advisory group, which was set up as part of that
18 programme of work and some of those members on the
19 advisory group were also members on the clinical
20 and/or financial review groups.
21 **Q.** What the scheme provides is that members can
22 self-certify the impact that their infection has had
23 on their life.
24 **A.** Yes.
25 **Q.** What would you say are the benefits to that process,

1 that self-certification process, as opposed to one
2 that needs to be evidenced by a medical practitioner
3 or clinician?
4 **A.** I think first and foremost to highlight that we trust
5 our members to make their self-certification and that
6 it will speed the whole process up. So if there is
7 a change in their circumstances and they recertify to
8 a higher grade, then it allows us to make payments --
9 the appropriate payments more quickly, therefore
10 supporting the member.
11 **Q.** Are there any drawbacks to the self-certification
12 process?
13 **A.** From our perspective, working on the assumption that
14 we trust our members, then we don't see why we would
15 introduce additional bureaucracy which could
16 potentially slow things down -- we don't think that
17 would work.
18 **Q.** We heard evidence this morning that if somebody wants
19 to move from one category to another, ie from say
20 moderate impact to severe, that actually they are
21 required to provide some substantiating evidence from
22 a clinician. Is that right? Is that your
23 understanding of how recertifying works?
24 **A.** Yes, that's my understanding.
25 **Q.** Given what you have just said about the benefits of

1 the self-assessment, has that additional requirement
2 created any difficulties or any problems that you're
3 aware of, either from SIBSS' perspective or that
4 you're aware of from members' perspective?
5 **A.** Not necessarily from SIBSS' perspective but some of
6 the feedback we got in the 2020 membership survey
7 highlighted that some members found the guidance
8 confusing on self-certification, and one of the
9 actions which we completed only last week was to
10 create a small animation video type explanation to
11 help people through the self-certification process.
12 I believe when I submitted my last statement update to
13 you I said I would get that to you as soon as it was
14 complete. I believe it completed on Friday so I will
15 include that with any follow up from today that is
16 required.
17 **Q.** I'm just going to ask you some questions about the
18 discretionary grant giving -- discretionary grants
19 available.
20 In particular, is this right to understand that
21 there are one-off grants that are given on
22 a discretionary basis and income top-up that are given
23 on a discretionary basis?
24 **A.** That's correct.
25 **Q.** Is it also right to understand from your witness

1 statement that it's the Scottish Government that
2 decides whether or not a particular grant -- whether
3 it's one-off or income top-up, is means tested?
4 **A.** Yes, the policy for means testing is the remit of the
5 Government.
6 **Q.** Now, there's some guidance on one-off grants and we
7 can go to that if it assists but my question relates
8 to what is not in the guidance rather than what is in
9 the guidance. So the guidance doesn't -- is in
10 relation to one-off grants that are means tested and
11 what the guidance doesn't set out is how the scheme
12 assesses whether or not the person should pay for the
13 item that they want themselves or whether or not
14 they've met the means test, if I can put it that way.
15 How does -- the guidance is quite detailed on
16 whether or not the member needs whatever it is they're
17 applying for. How does SIBSS then go on to assess
18 whether or not the person should pay for it themselves
19 or whether, given what SIBSS has learnt about their
20 income and expenditure, SIBSS should pay for it?
21 **A.** So the first part of the process, the team -- my team
22 would speak to the applicant to try and understand
23 what the outcome is required, rather than going
24 straight to a particular solution? So we've got to
25 try and understand, because there may be different

1 ways of achieving what the member needs and then, if
2 then we would look at the requirements, if it was
3 needing to be means tested then we would look at the
4 overall household income and make a judgment based on
5 the level of household income. There are some things
6 in the guidance that -- I don't remember exactly off
7 the top of my head -- there are some things that we
8 don't include in that household income but others that
9 we do.
10 Based on that, we then make an assessment
11 ourselves to decide whether we pay the full
12 requirement or a partial payment.
13 **Q.** Is that based on, effectively, the disposable income
14 that's left after you have taken into account the
15 income and the expenditure and, if there's a surplus,
16 then you would make a judgment on whether or not what
17 they are asking for is affordable within that surplus?
18 **A.** Yes.
19 **Q.** Would SIBSS make a judgment about whether or not
20 something in the expenditure column is frivolous, for
21 example, if there was a high number in there for,
22 I don't know, entertainment would SIBSS adjust their
23 consideration of the affordability of the item and
24 make judgment calls on what's in the expenditure
25 column?

1 **A.** So that's not one that I've come across in my two
2 years but I guess my judgment would be to, again,
3 assess whether it's going to achieve the outcome. As
4 long as the activity is going to deliver or contribute
5 towards the delivery of the outcome required, then it
6 should be considered. I guess if something --
7 I haven't come across a frivolous -- the word you
8 used -- I haven't come across a frivolous request that
9 I can recall in the last two years. It's not --
10 **Q.** So the question isn't about the frivolous request, the
11 question is about whether or not SIBSS makes
12 a judgment about what people are spending their money
13 on when you're carrying out this assessment of whether
14 or not they can afford it?
15 **A.** We make a judgment on whether the money that they are
16 requesting is being requested for the appropriate
17 things. I think that's the judgment we would be --
18 does the activity or the service or product or aid,
19 whatever it might be, does it add value to get us to
20 the outcome? That's the judgment.
21 **SIR BRIAN LANGSTAFF:** I think you may be talking about two
22 separate things. You're talking about the need for
23 the outcome, whatever it may be. I think Ms Scott is
24 asking about -- not about that but about the
25 affordability of it for the individual. And she's

1 suggesting that if you've evidence that somebody would
2 have the resources if they hadn't spent it on
3 something else which, on -- most people perhaps,
4 without any explanation, might think is frivolous,
5 then why should SIBSS pay for the desired outcome
6 because the person couldn't afford to pay for it
7 themselves? That's the point, isn't it?
8 **MS SCOTT:** It is. Thank you, sir.
9 **A.** Apologies.
10 **SIR BRIAN LANGSTAFF:** Don't apologise.
11 **A.** Then, yes, we would be making a decision on that to --
12 if it's something that would otherwise be reasonably
13 be expected to be paid by a member of the public, you
14 know, any other member of the public, then we would
15 make a decision on that as not being within our --
16 within the requirement. Is that closer? Does that
17 answer the question, sir?
18 **SIR BRIAN LANGSTAFF:** Well, it was counsel's question.
19 I wanted to make sure you weren't at cross purposes on
20 it. So do you want to re-ask it, having had that
21 answer?
22 **MS SCOTT:** Well, I don't know. I don't know that I need
23 to press it any further, sir. I'm not sure it is
24 entirely an answer to my question but I'm not sure if
25 I can put it any better than you have, sir.

1 **SIR BRIAN LANGSTAFF:** Well, I did not ask the question
2 I just restated it but -- I suppose as an example,
3 Mr Bell, suppose you have someone who says, "Well,
4 I have a young family, I have particular needs, the
5 illness has caused me to need to do a lot more washing
6 than I otherwise would so I need a washing machine,
7 I need to replace it more often than most people
8 would, so I have this additional expense, and it's
9 quite a large item for the washer-dryer, let's say,
10 than I need."
11 Now that's something which a lot of people have
12 to afford themselves out of their income but they are
13 not in the same circumstances, they don't have the
14 same need for it. How would you set about approaching
15 that?
16 **A.** So in that specific example that would probably be
17 awarded, similar to as -- as people's conditions
18 progress, we might need additional mobility aids, we
19 might need other adaptations to houses. Those would
20 all be acceptable because it relates to the condition.
21 There's a -- and as you say, if there's increased wear
22 and tear because of the -- the condition is generating
23 that activity, then that would be -- the decision
24 would be: yes, that would meet the threshold. And we
25 would award.

1 **SIR BRIAN LANGSTAFF:** Now suppose that the outcome, then,
2 is something which doesn't on the face of it relate to
3 the condition, but someone is saying, "Well, it's
4 because I spent the spare money that I had on buying
5 my washer-dryer that I no longer have any money to
6 afford this, which is the sort of thing that any
7 normal ordinary family not suffering from illness
8 might buy". What would you say about that?
9 **A.** That's I think where we get into that benefit of the
10 doubt position, and we would say yes. And I think
11 that's why benefit of the doubt -- this is just my
12 opinion but I would imagine that is why benefit of the
13 doubt has been applied in the criteria rather than the
14 slightly higher threshold of balance of probability.
15 And that's how I personally would use the criteria and
16 the benefit of the doubt.
17 **SIR BRIAN LANGSTAFF:** Thank you.
18 **MS SCOTT:** I'm just taking that example one stage further.
19 If the person was asking for the washer-dryer because
20 they needed it for their condition but you looked at
21 the income and expenditure and, but for the fact that
22 they had spent £10,000 on, I don't know, something
23 that was considered to be frivolous, I can't think of
24 an example at the moment, they could have afforded it
25 themselves, would that impact on your decision-making?

1 **A.** I'm not -- I don't believe -- well, I haven't come
2 across that one -- that position. So hypothetically,
3 potentially, but we don't necessarily go into every
4 detail of people's expenses. You know, we look at the
5 general household income and make -- try to make
6 a balanced judgment. But we do use the benefit of the
7 doubt approach where at all possible because we're
8 trying to get the best outcome.
9 Again, from my personal perspective, I would be
10 wanting to make sure that whatever we are giving is
11 contributing towards something, an activity, a service
12 or an item, that will help the overall, I guess,
13 outcome, which could just be quality of life, you
14 know, improving that quality of life for the member.
15 **Q.** You tell us in your witness statement that since the
16 self-assessment for the hepatitis C payments have come
17 in, you have only had five applications for
18 discretionary one-off payments. Is that right?
19 **A.** I believe that's correct, yes.
20 **Q.** Do you have -- can you help us on why you think that
21 is?
22 **A.** In terms of?
23 **Q.** Why there have only been five applications since then?
24 **A.** In terms of self-assessment, if an individual -- so
25 an individual can self-assess at any time. We --

1 I think we're coming up to the three-year point where
2 we'd expect a number of self-assessments to be
3 reviewed after the three years and so I think there
4 might be something to do with timeline or just the
5 fact that people's conditions have not deteriorated
6 over the first couple of years of the scheme.
7 **Q.** I'm going to ask you a couple of questions about the
8 discretionary income top-up grants that are available.
9 Is this right, it's available for two categories of
10 people. First of all, those who need to take time off
11 work for treatment for hepatitis C, typically, and
12 secondly for those on low incomes, and it's means
13 tested, so that their income is topped up to
14 70 per cent of net median UK household income.
15 **A.** That's correct.
16 **Q.** I'm just going to take you to two documents and just
17 see if you can help us with the numbers claiming. The
18 first is the Freedom of Information request,
19 SIBS0000123. If we go to -- we can see on the first
20 page a little bit further down, the date responded is
21 5 September 2019. The details -- information
22 requested:
23 "Details of the numbers of beneficiaries of
24 [SIBSS] who were in receipt of specific one off grants
25 or other available fundings, such as: Income Top-up

1 support application for living cost supplements or
2 support and assistance grants used towards the cost of
3 social care and the care of infected victims such as
4 additional funding to support respite care, additional
5 care support?"
6 If we over the page to page 2, we can see the
7 response at the top half of the page, "Response,
8 "Question 1"., it's got "Category", Income Top-Up
9 support, 50; Living Costs Supplement, 213, and One-Off
10 Grant, 10. Just pausing there, the living cost
11 supplement that is a non-means tested supplement
12 provided, is it, to anyone that has an annual payment;
13 is that correct?
14 **A.** Yes, I think the living cost supplement also includes
15 an element of what the other schemes would have,
16 winter fuel allowance for example. The living costs
17 supplement, I believe, incorporates some of that.
18 **Q.** So we can see there that on 5 September 2019 there
19 were 50 people claiming income top-up support and the
20 next document I want to take you to is the minutes of
21 advisory group in April 2021, and that is WITN4728036.
22 You see there "Minutes of the advisory group,
23 8 April 2021", and if we go to the last page of --
24 sorry, the third page of that document, and there's
25 the last bullet point at the top of the page there:

1 "Annual Payment/Income Top-Up -- SB [I think
2 that's Samantha Baker] advised that with the Annual
3 Payment going forward it was hoped this would remove
4 the need for the income top up. Currently only
5 member of the scheme was receiving this."
6 Can you tell us why the figures have reduced so
7 drastically between September 2019 and April 2021?
8 **A.** I believe it's because the payments that the members
9 are receiving takes them above the threshold for
10 requiring an additional top-up.
11 **Q.** In terms of the future of the income top-up, is it
12 your understanding that that's going to be reviewed?
13 **A.** My understanding is it will be reviewed on the -- on
14 the announcement from 25 March, if that's enacted,
15 which we believe it will be, by Government, then the
16 increased levels to parity would, under the current
17 criteria, remove all our members from the need for the
18 income top-up.
19 **Q.** Just picking up another point just on that document,
20 if we go up to the previous bullet point:
21 "Means Tested Discretionary Payment for Children
22 (already in English Scheme) - DFS asked the group if
23 a formal review was required of the discretionary
24 scheme as the main payment was increased. He advised
25 that he had been made aware of a payment for Children

1 in the English Scheme (up to age 18 and anyone under
2 21 in full-time education) and asked if some of the
3 funding for the Stage 1 'no noticeable impact' group
4 could be used for this. SB confirmed that until
5 recently, she was not aware of this. She added that
6 she would look to discuss this with DHSC to consider
7 whether it would be permissible and new Ministers when
8 in post. DFS and TL added they would look into
9 potentially how many members could be affected."
10 Is there anything else to report in relation to
11 that? Is that still under consideration?
12 **A.** That's under consideration. I think you'll note from
13 the date of the meeting was shortly before the
14 pre-election audit period came in, so we've not been
15 able to have those discussions with Government until
16 last week, when the election was completed.
17 **Q.** I've just got two brief topics to ask you about. The
18 first is in relation to the other services that SIBSS
19 provides, so not financial services but other
20 services. When I find the document.
21 It might be helpful to look at the action plan
22 arising from the 2020 member survey, which is at
23 WITN4728013.
24 We spoke about this briefly earlier. That's the
25 front page of it. If we go to the -- if we go,

1 please, to page 16 -- I'd better start at page 15:
2 "We asked scheme members: Are there any services
3 that SIBSS does not currently provide which you will
4 like SIBSS to make available in future?"
5 And at the bottom it says:
6 "Members said:
7 "71 per cent are happy with the current level of
8 support from SIBSS and did not think there were other
9 services which should be available. However, 12%
10 would like SIBSS to provide additional services."
11 And then over the page there's an "Action Plan"
12 arising from that.
13 The second bullet point down there:
14 "Mortgage support - for members applying for
15 a mortgage we provide a letter to lenders on request
16 to give them reassurance that members receive regular
17 payments. We will highlight this service in our
18 newsletter."
19 Is that a service that you have offered to
20 members, as far as you're aware, from the beginning?
21 **A.** As far as I'm aware that's been from the very start,
22 yes.
23 **Q.** Then there's a reference then to prescription
24 prepayment certificates for English residents. There
25 doesn't seem to be an action in relation to the

1 Scottish residents there.
2 **A.** All prescriptions are free in Scotland.
3 **Q.** And then "Support groups", you list support groups on
4 your website, help with insurance costs, and we heard
5 some evidence about this this morning, the action
6 point there is:
7 "We will explore this issue with insurance
8 suppliers to ensure that members are being treated
9 fairly."
10 And we heard some evidence about that this
11 morning.
12 There's an item, funeral costs, and then on
13 benefits adviser, exploring whether there are suitable
14 benefits advisers available.
15 And we heard evidence from Mr Neil Bateman
16 earlier this year that he was contacted by SIBSS in
17 August 2021. Was that as a result of this survey that
18 he was contacted and has begun working with some of
19 the members there on benefits advice, giving benefits
20 advice?
21 **A.** Off the top of my head, I don't recall the name but
22 that's possible that the team have been trying to
23 engage as many people as possible to help with these
24 and also to develop the action plan for going forward.
25 **Q.** Does SIBSS offer or signpost or provide grants for

1 members to receive debt advice?
2 **A.** I'm not sure about debt advice. We certainly signpost
3 to people like Citizens' Advice, and counselling,
4 et cetera, we do as well. We've also helped with
5 people who have a challenge with DWP because of their
6 SIBSS payments, which should not be considered by DWP.
7 So we've written to DWP on members' behalf, but
8 I don't recall specifically about debt advisers or
9 certainly I don't think so.
10 **Q.** So that brings me on -- your last answer brings me on
11 to my last question, which is in relation to the
12 information -- the advice, rather, that you, SIBSS,
13 has been given by the DWP about the requirement for
14 members to declare their SIBSS payments to the DWP.
15 It is right to understand that the DWP have told SIBSS
16 that the members must declare their SIBSS payments to
17 the DWP to avoid being called in for interview for
18 fraud when data-matching exercises are carried out.
19 Is that correct?
20 **A.** Yes, that's correct.
21 **Q.** And that you have informed your members of their
22 obligations to do that?
23 **A.** Yes, we have, and indeed we have -- as I said, we've
24 had members contact us where, for whatever reason, DWP
25 have taken their SIBSS payment into account when

1 dealing with their benefits, and we've had to write to
2 DWP to remind them of the arrangement that SIBSS
3 payments should not be considered when DWP are doing
4 their assessments.
5 **Q.** So if members are having difficulties with the DWP,
6 one of the things they could do is notify SIBSS and
7 SIBSS may be able to help them out?
8 **A.** Yes.
9 **MS SCOTT:** Sir, those are the questions that I had for
10 Mr Bell. I've had some questions in from Core
11 Participants but they will need an opportunity to
12 provide me with more questions to ask.
13 **SIR BRIAN LANGSTAFF:** How long do you think you might
14 need?
15 **MS SCOTT:** Probably 20 minutes, I should probably.
16 **SIR BRIAN LANGSTAFF:** If we say quarter to 5. Let me
17 explain Mr Bell, the Core Participants to the Inquiry
18 have a right through their legal representatives to
19 put further questions through counsel. It's obviously
20 sensible to field those questions now and ask you to
21 come back into the hot seat at quarter to 5.
22 **A.** Yes.
23 **SIR BRIAN LANGSTAFF:** Thank you very much. Quarter to 5.
24 **(4.27 pm)**
25 **(A short break)**

1 **(4.47 pm)**
2 **Questions from the Core Participants**
3 **MS SCOTT:** I've got a handful of questions from Core
4 Participants. First of all, we heard evidence this
5 morning that this SIBSS -- sorry, we looked at the
6 terms of reference this afternoon to see that the
7 SIBSS Advisory Group's role was limited to having an
8 input on operational and not policy matters. Is that
9 right?
10 **A.** That's correct.
11 **Q.** Who made that decision?
12 **A.** That decision would have been made when the group was
13 originally formed up back in the pre-April '17 period.
14 I would imagine signed off, again, like the other
15 criteria, by Scottish Government. The project team
16 would have pulled it all together and then drafted the
17 documents but it would all be signed off by
18 Government.
19 **Q.** Do you know whether this a formal mechanism for the
20 beneficiary community to provide their views about
21 policy directly to the Scottish Government?
22 **A.** I'm aware that the representative groups who are also
23 represented on the advisory group have direct
24 correspondence and discussions with Government and
25 it's clear from the discussions when we had the

1 advisory group that they talked outside of the
2 advisory group, they'd obviously had direct
3 conversations, but we have no role in facilitating
4 that directly.
5 **Q.** So do you have -- does SIBSS input into Scottish
6 Government decision-making about policy?
7 **A.** If we find -- we do have an input and we -- through
8 our quarterly meetings, and occasionally, if required,
9 in between those, we can feed into Samantha Baker, the
10 leader of the team up at Government we tend to deal
11 with, and we speak to her on a regular basis.
12 I do know that -- one example -- before my time,
13 but one example where the SIBSS team spoke to Scottish
14 Government colleagues. There was a particular case
15 which led to one of the two complaints we've had over
16 the three years, and that complaint led to the
17 Government changing policy. I think we touched on it
18 earlier. It was around the cohabitee rather than
19 civil partnership. I believe that's what that example
20 was around. So that was fed in by SIBSS as
21 a potential problem. Government took it on,
22 considered it in their own -- through their own
23 governance and decided, in that case, to change
24 policy.
25 **Q.** So is this right, that through the advisory group, the

1 beneficiaries' views about operational matters are
2 filtered -- are provided directly to the Government,
3 but in relation to matters of policy they can be
4 provided to the Government by SIBSS if SIBSS is
5 involved in discussing policy with the Government?
6 **A.** Yes, yes.
7 **Q.** But there isn't actually a formal mechanism in which
8 SIBSS is involved of giving the Government the
9 beneficiary views on matters of policy?
10 **A.** Only through -- so the formal mechanism would be our
11 feedback to the Government at our quarterly meetings.
12 That would be the mechanism.
13 **Q.** Can I just ask you some questions about something
14 you've already given evidence on but just to clarify
15 your evidence. It's in relation to the widows
16 applying to become members of the scheme. So in
17 relation to a widow whose deceased partner is
18 hepatitis C stage 1, the requirement -- who is not
19 receiving -- and who before their death was not
20 receiving annual payments from the scheme, would need
21 to make an application to become a member of the
22 scheme themselves; is that right?
23 **A.** That's my understanding.
24 **Q.** We looked at the policy and what the widow or
25 partner -- widow/widower/cohabitee/civil partner needs

1 to show is that the hepatitis C directly contributed
2 to their partner's death?
3 **A.** That's my understanding.
4 **Q.** So if, for example, the partner died as a result of
5 a road traffic accident, so unrelated to the
6 infection, what would SIBSS do? Would they not accept
7 the partner on to the scheme because they didn't meet
8 the eligibility criteria?
9 **A.** I've never come across that position, that situation.
10 I think I would want to go back to the document and
11 review the document to find out exactly what we can
12 and can't do on that.
13 **Q.** I don't know if it's helpful to go to that now. Let
14 me just find it for you.
15 It's WITN458007, so I think it's the first
16 paragraph there:
17 "If a person's husband, wife ... (... was not
18 entitled to annual payments at the time of their
19 death) and was a Scottish beneficiary ..."
20 Then missing out the words in brackets:
21 "... then they can still apply for an annual
22 payment if they were married to or in a civil
23 partnership with the deceased beneficiary, were still
24 living with them at the time of their death and have
25 not since remarried. However, there will also need to

1 be sufficient evidence that, on the balance of
2 probabilities, Hepatitis C ... directly contributed to
3 the spouse or civil partner's death."
4 **A.** Yes. So the black and white answer to your question
5 would be no, they wouldn't. But, you know, what
6 caused the road traffic accident? If they have
7 conditions, you know, fatigue and -- chronic fatigue,
8 et cetera, et cetera, due to their condition, did that
9 contribute? These things are never as black and
10 white. So I would want to try and understand the
11 circumstances rather than -- before making a hard
12 decision on that.
13 **Q.** So SIBSS would look widely at the question of direct
14 contribution of the infection to the death?
15 **A.** Yes. Unfortunately, if there was absolutely no
16 evidence for any -- you know, if their condition was
17 not a factor in the reason behind the accident then
18 the decision's probably no. But I think we'd want to
19 look at that first rather than just taking it that --
20 your hypothetical question as a black and white
21 question. I don't think we would do that. We'd look
22 further at it.
23 **Q.** Then in your evidence earlier, did I understand it
24 correctly in this way, that if this evidence of
25 a direct contribution, that the hepatitis C made

1 a direct contribution to the person's -- to the
2 member's death, SIBSS would be looking at the clinical
3 information that would be given both on the death
4 certificate and from the clinician who's providing
5 evidence to look at what level of payment and what
6 level of annual payment the widow should receive,
7 because it may be that there's sufficient information
8 to show that, in fact, the deceased member was at
9 stage 2, albeit not receiving stage 2 payments, and so
10 that would impact on what the widow/widower/partner
11 could receive; is that right?
12 **A.** That's correct. That's why we do the more detailed
13 investigation.
14 **Q.** I asked you some questions about those applicants who
15 apply to the scheme and don't have medical records
16 that evidence the treatment that they allege caused
17 them their infection, typically hepatitis C. Are you
18 able to tell us what proportion of those applications
19 are successful? So no evidence of transfusion in the
20 records?
21 **A.** Not off the top of my head. I'd have to look at the
22 detail.
23 **Q.** Is that data that is captured by SIBSS so is it easily
24 obtained or would it be a question of going back and
25 looking at all of the applications?

1 **A.** Yes, we'd go back through the applications and look at
2 the detail.
3 **Q.** Just a bit of detail on how such applications are
4 assessed. We looked at the guidance and we looked at
5 the five criteria whereby SIBSS assesses whether or
6 not the lack of supporting evidence is fatal to the
7 application. How is evidence in the form of witness
8 statements treated on such an application? How do you
9 establish the general credibility of an applicant on
10 a paper application?
11 **A.** So we take the applicant's statement. Obviously, if
12 there's no evidence at all, medical evidence at all,
13 then we seek advice, as we've already explained, from
14 Professor Hayes as to the probability of some of it.
15 So to take your example of a road traffic accident,
16 and if someone had received surgery after such an
17 event, then you might expect a potential transfusion
18 or a blood product of some sort might have been used,
19 so we would -- it then comes down to the detail of the
20 statement, and we may have to follow up and go back to
21 the applicant and ask for a bit more detail to make
22 sure that if the detail in the statement is -- comes
23 across as credible and that the clinical advice is
24 that that procedure would likely -- or probably
25 require or use blood product of some sort, then

1 obviously we can then make the award.
2 So it comes back to the -- we may have to go
3 back to the applicant and ask for more detail. And in
4 the event of not being successful, of course, there's
5 an independent appeals process that we would then
6 advise them about. And that they can also have other
7 witness statements to -- as well, and we've
8 certainly -- I know the appeals panel has heard
9 different verbal witnesses of what was seen, which
10 would give the panel a -- maybe more detail than we
11 were getting on a witness statement, about the --
12 which just builds the picture to make it a bit more
13 credible. And that's certainly, I think, been the
14 case, without going into specific details.
15 **Q.** If the advice from Professor Hayes is it's not
16 clinically plausible that this procedure would have
17 required a blood transfusion, is that an end of the
18 application? Is that fatal to the application or do
19 you still go on to look at the credibility of the
20 information being given by the applicant?
21 **A.** I certainly had one case where I have made a decision
22 to end the application at that process, once it had
23 come back as being improbable that a transfusion or
24 blood product of any sort would have been required for
25 the injury sustained and the subsequent treatment that

1 injury acquired. So that means, in the absence of any
2 other evidence and the clinical input, that's one case
3 at least I can remember saying no and not accepting.
4 **Q.** Is this right, it's not necessarily fatal to the
5 application but it would be very difficult for it to
6 survive both the absence of medical records and
7 a clinical implausibility from Professor Hayes?
8 **A.** Yes, that's correct.
9 **Q.** What information do you seek in cases where -- in
10 cases of doubt about local transfusion practice at the
11 material time? So, for example, would you seek
12 information or evidence about a general policy in
13 a particular hospital or area where -- in which the
14 applicant says that they received their treatment?
15 **A.** I guess that would go -- we do routinely ask Scottish
16 National Blood Transfusion Service who provide all the
17 hospitals with the blood product. We would routinely
18 ask them for any evidence that they might have or any
19 records of a direct transfusion because often they
20 might have records that hospitals may have already
21 removed but also they would then be in a position to
22 give us any specifics about regional variation, if
23 indeed there was any regional variation at the time.
24 **Q.** Can you recall getting such information or evidence
25 from the Scottish National Blood Transfusion Service?

A. I don't recall anything around regional variation at all.
Q. Or particular policies in hospitals --
A. No.
Q. -- or transfusion practice over a particular period?
A. No, certainly not in my two years, that's not come across my desk, as far as I can recall.
MS SCOTT: Those were the questions, sir, that I had -- I was going to ask from the Core Participants.

Questions from SIR BRIAN LANGSTAFF

SIR BRIAN LANGSTAFF: Yes, thank you.
Just a couple of small questions. First of all, picking up a question which Ms Scott was asking you a moment or two ago, appeals from a refusal by the scheme to accept a beneficiary, have you any sense as to what proportion of the refusals which are appealed are appealed successfully?
A. I couldn't give the exact number but I would feel it's less than 50 per cent but I could get the exact numbers -- I thought we had provided that in the evidence that --
SIR BRIAN LANGSTAFF: You may well have done. It's something which I haven't had time to check, so I thought I would ask you off the top but -- roughly you think it's less than half?

A. Less than half, sir, yes.
SIR BRIAN LANGSTAFF: The other question is very much a point of little detail, and you just may be able to assist me as to how the scheme works. We looked at earlier the definition of "dependant", which was a child under 21 -- 21 or under and in full-time education. In Scotland, certainly it used to be the case that many students, would-be students left school at the age of 18, in order to go to university, which was then generally a four-year course. Is that still the case?
A. It is, Sir Brian.
SIR BRIAN LANGSTAFF: So, in the usual case, if this is the usual case in Scotland, somebody would be over 21 probably, 18 when they leave school, 22 when they leave university, if they've gone straight into university without any gap in between, how would they be funded, if at all, during the last year of their university career? Would they simply not get anything or would they -- would that be a case for discretionary grant and, if so, on what basis?
A. I think that would be -- I would want to have a discussion with Government colleagues to see what latitude there is in the definition within the scheme document and whether, because they remain as a 22-year

old potentially still in full-time education, whether that would allow us to make the payment. So that's a conversation I would want to have with Samantha Baker up in Government to clarify what flexibility I would have in the scheme document.
SIR BRIAN LANGSTAFF: It probably follows from your answer but you may be able to confirm it that it hasn't yet occurred?
A. That's -- certainly not in my two years, sir, no.
SIR BRIAN LANGSTAFF: Thank you very much for that. That's all that I have to ask.
MS SCOTT: Sir, Mr Bell, in your witness statement you say there have been nine appeals and you provide information in relation to eight of them, three successful and five unsuccessful. Does that sound right?
A. That sounds correct.
Q. Mr Bell, is there anything you wish to add to your evidence?
A. I think, if I may, Ms Scott and Sir Brian, I'd like to take the opportunity publicly to thank my team, the SIBSS team. It's a small team but they care and they do an awful lot and I think it's worthy of a thank you publicly.
I'd also like to thank the advisory group and

our members for all the feedback and advice and guidance we get from them, whether that's through the routine meetings or indeed through our surveys, because all of that input gives us a better picture in order to help us improve and, despite the fact that we have got some good results in our surveys, there's definitely room for improvement.
And I guess my final point would be to thank you for the opportunity of giving evidence because going through this process from the sort of late last summer, building my original statement and up including today, I guess it's been really good for me to get a bit of a deep dive in a lot of areas that don't routinely come across my desk, and so having the opportunity to go through that has helped, and we've definitely identified areas for improvement through that journey.
So it's really -- it's to thank those involved and to commit that we continue to try to improve as we go forward. That -- I think that's all I wanted to say. Thank you.
SIR BRIAN LANGSTAFF: It's very generous of you to thank us when it is for us to thank you for coming to give your evidence. It has helped me certainly to understand more about the way in which SIBSS works, to

1 have an insight into you as director and what you say
2 about your team and to be reassured by the sense that
3 you've given of looking continuously for ways to
4 improve what you can do.
5 I'm sorry that we've detained you for longer
6 than we might have done. You've started a bit late,
7 for reasons which were unavoidable. We've detained
8 you, I hope, not too late from getting back home from
9 Gyle but we've also left you with some homework to do,
10 I think. You have offered on a number of occasions to
11 fill in with some further information. I, for one, am
12 looking forward to the animated version that you
13 promised to send and which I have a sense I might
14 enjoy watching and understanding what people see. So
15 thank you for that, thank you for being here remotely,
16 as it is, and good evening to you.
17 Now, Ms Scott tomorrow.
18 **MS SCOTT:** Yes, tomorrow we have witnesses from Northern
19 Ireland, so we begin with the Minister, followed by
20 evidence from --
21 **SIR BRIAN LANGSTAFF:** That's Mr Swann, is it?
22 **MS SCOTT:** Yes, Mr Swann, that's right, followed by
23 evidence from Ms Redmond.
24 **SIR BRIAN LANGSTAFF:** Yes, well, 10.00 tomorrow in that
25 case. Thank you very much.

1 10.00 tomorrow.
2 **(5.10 pm)**
3 **(Adjourned until 10.00 am the following day)**
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