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INFECTED BLOOD INQUIRY

FIRST WRITTEN STATEMENT OF WILLIAM WALDEGRAVE

Contents

Section 0: Opening Comments

0.1. My name is William Arthur Waldegrave (Lord Waldegrave of North Hill). I was the Secretary of State for Health between 2 November 1990 and 9 April 1992. I provide this statement to the Inquiry in response to a Rule 9 request dated 9 December 2021 and I have followed the section headings in the Inquiry's request. My date of birth and address are known to the Inquiry.

0.2. The issues that are the subject of this Inquiry represent one of the most tragic episodes in the history of the NHS. The effects of the infected blood disaster are still felt by those who suffered from it directly and indirectly.

0.3. Reviewing the internal Government papers from the time, it will strike many that the language used was often unemotive and bureaucratic. It is the language of 'resources', of 'precedent', of 'lines to take', of the balance between competing claims, and so on. That language is typical of its time for the machinery of a large government department and the world of NHS administration. What the written records do not capture is that, from my own direct experience of those working on these issues at all levels of seniority, they were deeply conscious of the plight of those whose lives had been so dreadfully impacted by infected blood and blood products. In light of the testimony to this Inquiry of the victims (a word I use deliberately), "expressing sympathy" does not really meet the need nor, I am sure, bring any comfort. But when I say that I wish to express my sympathy it is truly meant.

0.4. The early months of my tenure as Secretary of State saw the settlement of the HIV litigation involving those infected with HIV through infected blood products and their dependents. As I shall address later in this statement, when even people of reasonably good will towards the government thought that we were doing the wrong thing in not coming to a settlement of that litigation, I felt that we ought to listen. That indeed was my own view too, and I made it almost my first priority on arriving in the Department of Health. I wanted there to be an appropriate settlement rather than a drawn-out litigation process (including a

lengthy trial and potential appeals), during which patients would die and there would be stress and uncertainty for those infected and their families.

0.5. In common I am sure with very many other witnesses whose involvement was many decades ago, my own memory independent of the written records is limited. However, having received the Inquiry's request, in preparing this statement I first consciously thought about what I could remember about the issues being raised by the Inquiry before looking at the detailed documents. Quite independent of the records I have now studied, I do recall coming into office with the hope that an appropriate settlement could be reached without the claims having to proceed to court.

0.6. While I am heavily reliant on the written records, they are not complete. I have done my best to answer the questions raised by the Inquiry with the documents available to me. If further documents are drawn to my attention I may need to supplement or amend this statement. In most cases, the versions of submissions annotated by me with my contemporaneous views do not seem to have been the ones routinely filed for retention, which is a pity though on some submissions I can see my endorsed comments or decisions.

0.7. Save where it is necessary to give particular context, I have tried not to dwell in this statement on the myriad other issues and emergencies, as well as strategic reforms, with which we as health ministers necessarily had to be involved. The Chairman will nevertheless understand that is the context in which the events being considered by this Inquiry occurred. The available papers, focussed as they understandably are on the infected blood issues, do not really capture the scale of other health-related events that were occurring in parallel. One striking example of this was the First Gulf War. The war fighting phase started in January 1991. We were faced with daunting warnings of the potential for mass casualties including from chemical and biological agents and the health-related planning for this was a substantial part of the conflict preparations. We were also in a period of financial restraint. Soon after I became Secretary of State, a Departmental press release dated 8 November 1990 indicated that the

Department had been given a high priority by the Government, but that it had been an "exceptionally tight Public Expenditure Survey" [DHSC0032206_324]. And overshadowing all NHS policy making at the time was the huge and extremely controversial programme of structural reform initiated by my predecessor, which Prime Minister Thatcher asked me urgently to review, with the clear implication that I could halt it if I wished. That culminated in a meeting with her at 10 Downing Street (to which I was accompanied as I remember it by the Chief Executive of the NHS) very shortly before Mrs Thatcher resigned on 22 November 1990. This obviously involved me in intense work on matters of which I had no background experience at all. I had previously been working more or less 24/7 on the preparations for the military campaign to oust the Iraqis from Kuwait.

Section 1: Introduction

1.1. I am asked about my professional qualifications and for a brief overview of my career. The Inquiry also asks me to address my roles in committees, parties, societies *etc.*, and business or private interests that may be relevant to the terms of reference.

1.2. My academic background was in classics and philosophy. Having had an early interest in, and ambition for, a life in politics, this was followed after a period in the Civil Service quite swiftly by political roles. Accordingly, I did not bring any particular scientific / medical qualification or expertise to the role of Health Secretary, though I had a level of industrial experience with GEC (see below) and an interest in science policy.

1.3. After my post-graduate study in the US, I initially entered the Civil Service in the Central Policy Review Staff of the Cabinet Office, known unofficially as the 'Think Tank' (1971 - 1973). In the Autumn of 1973, I left the Civil Service, to succeed Douglas Hurd as Ted Heath's political secretary. The role involved assisting in the Prime Minister's relationships with the Conservative Party; its political planning committees; the party-political content of speeches; the organisation of political tours; and political advice. After the February 1974 election, I continued to work for Ted Heath as the Head of the Leader of the Opposition's Office. Following the Conservative Party leadership election, from 1975 until 1981 I worked for GEC Ltd at GEC Gas Turbines Ltd, near Leicester, and in the head office in London.

1.4. I was elected to Parliament in 1979 as the MP for Bristol West, the seat I held until the 1997 election.

1.5. I had the following appointments in Government:

(1) **15 September 1981 - 13 June 1983:** Parliamentary Under-Secretary of State, Department of Education and Science.

(2) **13 June 1983 - 2 September 1985:** Parliamentary Under-Secretary of State, Department of the Environment.

(3) **2 September 1985 - 24 July 1988:** Minister of State for the Environment and Countryside, Department of Environment (various changes of areas of responsibility within this period to include planning (from 1986) and housing (from 1987)).

(4) **26 July 1988 - 2 November 1990:** Minister of State, Foreign and Commonwealth Office.

(5) **2 November 1990 - 9 April 1992:** Secretary of State for Health.

(6) **10 April 1992 - 20 July 1994:** Chancellor of the Duchy of Lancaster.

(7) **20 July 1994 - 4 July 1995:** Secretary of State for Agriculture, Fisheries and Food.

(8) **5 July 1995 - 1 May 1997:** Chief Secretary to the Treasury.

1.6. I was made a Life Peer in 1999.

1.7. My other experience in summary is as follows (I have marked those directly relevant to the pharmaceutical industry*)

(1) Fellow, All Souls College, Oxford (1971 – 1986 and 1999 – date)

(2) Inner London Juvenile Court, Justice of the Peace (1975 – 1979)

(3) Waldegrave Farms Ltd, Non-Executive Director (1975 – date)

(4) Biotech Growth Trust (formerly Finsbury Life Science Investment Trust plc) Non-Executive Director (1997 – 2016) Chair (2012 – 2016)*

(5) Dresdner Kleinwort Wasserstein, Executive, investment bank (1998 – 2003)

(6) UBS, Executive, Chair, European Financial Institutions Group (2003 – 2012)

(7) Henry Sotheran & Co Ltd, Non-Executive Director (1998 – 2015)

(8) Bristol West plc (formerly Bristol and West Building Society), Non-Executive Director (1997 – 2006) and Bank of Ireland UK Holdings, Non-Executive Director (2002 – 2006)

(9) Bergeson Worldwide Gas ASA, Member, Remuneration and Nomination Committee (2006 – 2008)

(10) Teijin Ltd, Member, International Advisory Board (2006 – 2008)

(11) Fleming Family and Partners, Non-Executive Board Member (2008 – 2012)

(12) GW Pharmaceuticals plc, Independent Member on Board of Directors (2017 – 2021) *

(13) Coutts and Co, Chair (2012 – date); Director (2012 – date).

1.8. Since 2009, I have been the Provost of Eton College.

1.9. In wider public life, I have also held the following positions almost all of which are unlikely to be relevant to the Inquiry but which I set out for completeness:

(1) Reading University, Chancellor (2016 – date)

(2) IBA Advisory Council, Member (1980 – 1981)

(3) Bristol Cathedral Trust, Founder Trustee and Chairman (1989 – 2002)

(4) Rhodes Trust, Trustee (1992 – 2011); Chair (2002 – 2011)

(5) Beit Memorial Fellowship, Trustee (1998 – 2006)

(6) Strawberry Hill Trust, Trustee (2002 –2014)

(7) Royal Bath and West Society, President (2006)

(8) Lewis Walpole Library, Yale University, Board Member (2008 – date)

(9) Dyson School of Design Innovation, Trustee (2007 – 2008)

(10) National Museum of Science and Industry, Chair (2002 – 2010)

(11) Mandela Rhodes Foundation, South Africa, Trustee (2003 – 2011)

(12) Cumberland Lodge, Windsor, Trustee (2008 – 2016)

(13) Royal Mint Advisory Committee, Chairman (2011 – 2021)

(14) Royal Society, President's Advisory Committee member (2012 – date)

(15) Holyport College Academy Trust, Member (2013 – date)

(16) Wellington Resettled Estate, Trustee (and associated roles with Wellington Estates Holdings Limited and Wellington Estates Barn Limited) (1981 – date)

(17) Dorney Lake Trust, Director and Trustee

(18) The Poor's Estate Charity, Eton, Chair of Trustees

(19) Eton College Services Ltd., Director and Trustee

(20) The Henry VI Charity, Trustee

(21) St Mary the Virgin, Primrose Hill, Trustee

(22) The Manifold Trust Charity, Trustee

(23) Coutts Foundation Charity, Chair (2016 – date)

(24) Trustee of the Guy Foundation (2021 – date)*

(sub paragraphs (17)-(22) above, cover the same time period as my Provostship of Eton.)

1.10. I have not given previous evidence or been involved in previous inquiries, investigations, criminal or civil litigation in relation to the human immunodeficiency virus ("HIV"), hepatitis B virus ("HBV") or hepatitis C virus ("HCV") infections in blood or blood products. As regards variant Creutzfeldt-Jakob disease ("vCJD"), I gave a number of written statements to the BSE Inquiry and also gave oral evidence on 1 December 1998. I exhibit at [MHRA0018946_174 and MHRA0035160_032] a copy of the statement and transcript.[1]

1.11. Section 6 of this statement addresses the questions asked of me by the Inquiry about Hepatitis C Virus screening. Amongst other things, the Inquiry has referred me to the March 2001 judgment of Mr Justice Burton in *A and others v The National Blood Authority*. I should mention that Sir Michael Burton is a close friend of mine (an exact contemporary at school at Eton) and former colleague as a Fellow (governor) of Eton of which I am Provost.

[1] Also available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20060525120000/http://www.bseinquiry.gov.uk/evidence/trans/transcripts.htm

Section 2: Decision making structures

2.1. As Secretary of State, I was accountable to Parliament for all matters within the remit of the then Department of Health. The Department was responsible for the NHS and public health in England. Many matters were delegated to junior ministers who had their own portfolios or areas of responsibility, but the Secretary of State remained accountable to Parliament for everything in the Department.

2.2. Many issues relating to blood and blood products would have been handled by the more junior ministers. However, I remember being particularly involved in seeking and achieving a settlement with the representatives of those affected by HIV infection by contaminated blood products. Following my appointment as Secretary of State, I led a change of policy from that of my predecessor. I thought it right to seek an out of court settlement with the haemophiliac victims. This was a high priority of mine when I took up office. After the change of Prime Minister, I was able to carry through this change with the support of the Prime Minister, John Major. I will return to this in Section 4 of this statement.

2.3. As I explained in giving evidence to the BSE Inquiry, as Secretary of State I had to have an agreed hand-out of responsibilities to junior ministers, which had to be approved by Downing Street. My Ministerial team throughout my tenure as Secretary of State comprised:

(1) Virginia Bottomley, Minister of State (shortened in many documents to MS(H))

(2) Stephen Dorrell, Parliamentary Under-Secretary of State (in the Commons) (shortened in many documents to PS(H))

(3) Baroness (Gloria) Hooper, Parliamentary Under-Secretary of State (in the Lords) (shortened in many documents to PS(L))

All three of these ministers had served under my predecessor Ken Clarke and thus were already in post when I arrived as Secretary of State. As a new Secretary of State (and new to the Cabinet), it was helpful that the rest of the Ministerial Team were already established in their roles in this way, having

already served under Mr Clarke. We were four Ministers in total; in later years for my successors, the number of health ministers was increased. Virginia Bottomley as Secretary of State had two Parliamentary Under Secretaries of State in the Commons, a total of five ministers. By Alan Milburn's time it was six ministers, including two at Minister of State level.

2.4. Without consulting the records, I was not able reliably to recall who had responsibility at junior ministerial level for blood and blood products. This does not suggest a lack of priority or importance, only the significant passage of time and the very many different policy issues which, between us as ministers, we covered in the Department.

2.5. From the records it is apparent that at junior ministerial level, Baroness Hooper continued to lead on blood, blood products and the transfusion service when I was Secretary of State, as I believe she had done under Mr Clarke. On occasions, she referred particular decisions upwards to me, before taking forward the policy decision. As I address in section 3, an example of this was in moving towards the establishment of the National Blood Authority ("NBA"), which was principally handled by Baroness Hooper but with my direction on some aspects.

2.6. As Minister of State, Virginia Bottomley also had some involvement, for example:

(1) Arising from her wider responsibility for AIDS, Mrs Bottomley was involved in correspondence with The Rev'd Tanner of the Haemophilia Society on the then US travel restrictions on those infected with HIV [DHSC0041453_023].

(2) While I led on the settlement of the HIV litigation, its profile meant that Mrs Bottomley also had some involvement, for example [WITN52885288002] – was a note on haemophilia and HIV infection which Mrs Bottomley's Private Office sent to my Private Secretary, with a view to it being provided to Conservative MPs (23 November 1990). Similarly, Mrs Bottomley was also involved in correspondence as the

pressure mounted to extend the payment scheme to those infected by blood transfusions.

2.7. From the papers I have seen, Stephen Dorrell was less involved though he answered some relevant Parliamentary Questions ("PQs") and correspondence. On PQs on the blood transfusion service, for example, Mr Dorrell would have answered because it fell within Gloria Hooper's area of responsibilities, but she was in the House of Lords.

2.8. There were strategic issues for which I took the lead, where officials would in the main come to my Private Office directly. When I came into office the biggest strategic policy issue facing me was whether to continue with, or to seriously change, the major structural reforms of the NHS initiated by my predecessor. Prime Minister Thatcher asked me to review the policy and revert to her with my opinion, which I did. Then, when I had decided to continue with them, I had to oversee the immense task of carrying the reforms through and winning support for them in the teeth of political and British Medical Association opposition. To this I soon added a policy of initiating a 'Health of the Nation' campaign, the first of modern times, which involved very widespread consultation and action. Another immediate and continuing high profile issue was the winning of good Public Expenditure Survey Committee ("PESC") settlements in the annual spending negotiations with the Treasury. The settlement of the HIV litigation was a high profile and specific issue on which I arrived with a desire to change existing policy, which is why some submissions on that aspect of blood and blood products were coming to me directly in my first days as Secretary of State.

2.9. The Inquiry asks about the process by which information and issues would be brought to my attention. There were many elements to this:

(1) On policy areas on which I personally led; officials would put submissions directly to my Private Office if they required a decision from me. Unless my Private Secretaries considered the submission required further work or revision, that type of submission would normally be

provided to me personally, although my Private Office would exercise judgement as to the timing of doing so.

(2) Even submissions addressed to my Private Office (rather than merely copied to it) may not have been shown to me depending upon their content and the assessment of my Private Office staff, though clearly submissions requiring decisions from me, or important updating information would normally have been included in my Red Boxes. Part of the skill of a good Private Secretary is to stop the Minister becoming overwhelmed by Ministerial papers. Sometimes where the Private Secretary was clear what the Minister's views were, he/she might take it upon themselves not to show the Minister the minute.

(3) Junior ministers and officials would use their delegated authority to deal with large numbers of secondary matters, or primary matters where policy was clear and did not need to be referred upwards. However, they could refer matters upwards to me if they were concerned, if they just felt I needed to be aware, or if they wanted to check that I took the same view.

(4) Many submissions and other documents would be sent to the junior ministers or very senior officials. In some cases (but not always) my Private Office would be on the copy list, while the submission would be principally addressed to the appropriate senior official or junior minister's Private Office. My Private Office, in consultation with senior officials would make decisions on what – from the immense flow of such information as well as other internal and external information which came into my office – should be drawn to my attention and if so, the timing of so doing.

(5) There is inevitably a degree of judgement involved for officials in deciding what matters need to be raised with ministers, and similarly as regards what matters need to be drawn to the attention of the Secretary of State. But they would include: issues of strategic policy (e.g. NHS reform); issues of major public health concern; issues of high public or political prominence; and matters dealing with significant spending.

(6) Issues would also be brought to my attention by MPs and Peers (face to face in Parliament or by letter) and the media.

(7) Like every other MP, constituents' letters and constituency surgeries brought issues to my attention directly (my constituency contained, as well as the normal range of urban voters, major hospitals and a medical school).

(8) I held weekly meetings with my team of ministers and with the three Permanent Secretary level officials reporting to me. These were the Permanent Secretary (Sir Christopher France, then Sir Graham Hart) the Chief Medical Officer (Sir Donald Acheson, then Sir Kenneth Calman); and the Chief Executive Officer of the NHS (Sir Duncan Nichol). At all of these meetings there would be discussion of the various pressures and issues facing the Department, and which should be handled by me or delegated to other ministers or officials.

Unusually for a Minister, I had early experience of life as a Civil Servant which was broadly speaking helpful in understanding the Civil Service approach and the mechanisms involved in the decision-making process.

2.10. I believed then, and still believe, that these processes were effective in informing me of key issues, and that suitable briefing was provided where it was needed. It should be noted that this was not a one-way process. Strategic policy, and some specific policies, were set by me as Secretary of State and officials would understand that they had to report upwards to me on my priorities – for example NHS reform, the Health of the Nation campaign or in specific areas such as the preparation of the NHS for a Gulf War which, as I have indicated, was expected to produce many casualties. The settlement of the HIV litigation was one such area where officials did provide me with such updates on progress.

2.11. As I have indicated, the three most senior officials were:

(1) The Permanent Secretary (for nearly all of my period as Secretary of State, Christopher France but Graham Hart took over towards the very end of my period as Secretary of State),

(2) The Chief Medical Officer (Donald Acheson then Kenneth Calman);

(3) The Chief Executive of the NHS, Duncan Nichol.

In simplified terms, Christopher France led on policy matters including policy for the NHS; Duncan Nichol had executive responsibility for management of the NHS; and the CMOs had the overview on medical advice with emphasis on public health (and were of course also the chief medical advisers to the Government as a whole as well as being the CMO for the Department of Health).

2.12. The Inquiry also asks me to identify the senior civil servants within the Department with whom I principally dealt in relation to blood products, pharmaceutical licensing, self-sufficiency, and hepatitis and AIDS. As I explained to the BSE Inquiry, I am very bad at remembering names. Beyond my recollection of the three most senior civil servants, I am entirely reliant on the documents for the names of the officials who were working in these areas. Based on the documents:

(1) In order of seniority, those dealing with the HIV litigation on the administrative side of the Department were: Strachan Heppell (Deputy Secretary just below Permanent Secretary level who headed the Health and Personal Services Group, and whom I do remember); Dora Pease (Head of Health Aspects of Environment and Food EHF) and Mr Dobson, and more junior to him Mr Canavan and Mr Burrage (EHF1). Mr Powell in the Solicitor's Division was the solicitor dealing with it. While medical officers were copied in, this was an issue being led by the administrative side of the department. Mr Scofield was involved in early 1991 in the extension of the payments scheme to blood transfusion cases.

(2) The same administrative team reporting to Mr Heppell were involved in the liaison with the Macfarlane Trust which I have addressed in section 5 of this statement.

(3) Mr Malone-Lee of the NHS Management Executive had a senior oversight on the proposals for creation of the NBA, with – at a more junior level – Mr Dobson and Mr Canavan also being involved in that issue.

2.13. As regards the Welsh Office, the Scottish Office and the Northern Ireland Office, most of the liaison on blood-related issues (as in other areas) would have been at the level of officials. The Department of Health led on the overall financial settlement on PESC which had consequential impacts (discussed with them) for the other countries. In that context, there was some interaction with the other Secretaries of State or their ministers.

2.14. As I shall address in Section 4 of this statement,

(1) There was also some interaction arising from the separate Scottish HIV litigation particularly concerning their timetable towards settlement. An example of this is Ian Lang's letter to me of 17 January 1991 [DHSC0003660_009];

(2) With the benefit of the documents from the time, I can also see that:

(a) The Secretaries of State lent support to my attempts to persuade the Treasury of the case to extend payments to HIV transfusion cases (see paragraphs 4.138, below);

(b) I was alerted to the possible need for a separate Scottish panel to decide the Scottish cases, 13 February 1992 [WITN5288003].

2.15. I have no unaided memory of the three territorial departments influencing blood policy directly. But since liaison was mostly at officials' level, this does not mean that they did not have influence. It is also, I am afraid, not possible for me to remember informal interactions with the relevant Secretaries of State, for example in the margins of Cabinet meetings or in the House of Commons or elsewhere. I should add that, inevitably, all ministers have colleagues with whom they are closer than others. Ian Lang, the Secretary of State for Scotland, was a friend and political ally and someone with whom I would have had regular informal exchanges. Peter Brooke (Northern Ireland) and David Hunt (Wales) were also friends as well as colleagues and I might very well have discussed issues informally with them.

2.16. I have no unaided memory of my having interactions on blood-related issues with the 'health-related bodies' in the other three nations, as opposed to their territorial departments.

Section 3: Safety of Blood and Blood Products

3.1. I am asked what advice, information or briefing was provided to me when I first became Secretary of State about the National Blood Transfusion Service, risks of infection from blood or blood products (in particular the risks of transmission of hepatitis) and the nature and severity of different types of blood borne hepatitis.

3.2. It is relevant context that I became Health Secretary in the Cabinet reshuffle in the aftermath of the resignations of Nigel Lawson and Geoffrey Howe, rather than following an election. The appointment came as a surprise to me. Officials usually prepare a set of briefings for incoming ministers ahead of an election. In cases like mine, where you take up a new ministerial post as a result of an unexpected reshuffle, the process is of necessity more ad hoc because there would not, I think, have been a prepared set of briefings. You would expect to be given briefings on the background to key areas as they first arose for consideration. This is not to suggest, however, that the briefings were any less thorough.

3.3. When I came to the Health Secretary role, the HIV litigation was something I wanted to address. This is borne out by the fact that within four days of my appointment I had requested and received briefing about it: see Mr Canavan's submission of 6 November 1990 [DHSC0004365_008] with its four attachments [DHSC0046962_374], [DHSC0046962_182], [DHSC0046964_003] and [DHSC0046962_187]. To put this in context, I was appointed on the afternoon of Friday 2 November 1990, and (to the best of my recollection) I did not arrive physically in the Department until Monday 5 November. It is clear, therefore, that this briefing on the HIV litigation was among the first, if not the first, for which I asked. So long after the events, I think this early written submission is the best guide to the information with which I was provided. However, there would have been meetings and discussions in addition. In particular, the contemporaneous documents refer to my being briefed '...on the haemophiliacs with AIDS issue' on 7 November 1990, and in the context that

appears to refer to verbal briefing at a meeting. I shall return to this in Section 4 of this statement in addressing the HIV litigation.

A Public Relations Company's correspondence about autologous blood transfusion

3.4. The Inquiry refers me to a letter addressed to me dated 28 August 1991 from a public relations advisor (Julie Owen from the company 'Counsellor') advocating that information on the advantages of autologous blood transfusion should be made more widely available and suggesting the opportunity to meet [DHSC0002435_128]. She sent a similar letter on the same date to a number of other Ministers. An official, John Rutherford, replied on 16 September 1991 in relation to the similar letters sent to Virginia Bottomley, Stephen Dorrell and Baroness Hooper [DHSC0003594_076]. Following an earlier holding reply, on 9 October 1991, my Diary Secretary (Oonagh Whitehead) replied to the letter addressed specifically to me. She reminded Ms Owen that the Department's views had been set out in the response of 16 September 1991, and that *"It is not thought that a meeting with Mr Waldegrave could add to those views*" [DHSC0003594_074].

3.5. The Inquiry asks if I was informed of the matters relating to autologous blood transfusion raised by Ms Owen and if so whether I took a view on it. While I cannot be sure, I expect that this correspondence would not have been raised personally with me. My Diary Secretary's reply appears to have been based on advice from Mr Rutherford dated 26 September 1991, which read:

"Officials advise against this suggested meeting.

"Counsellor" is a public relations company. We do not know who their clients are here but they undoubtedly have autologous blood transfusion equipment they wish to promote in the NHS.

The letter to S of S was also sent to MS(H), PS(H) and PS(L). Officials answered these in one reply. (copy attached). There was also a PO Case from the Rev Martin Smyth MP (POH 6/2034/36). The Department's views have been fully covered in this correspondence. A meeting would give publicity to Counsellor's case and could be awkward for S of S.

A suggested reply declining the invitation is attached." [DHSC0003594_075]

3.6. In the scenario where a Departmental official had already replied to a public relations company's correspondence, and officials' advice was against a meeting, it would have been within the discretion of my Private Office to decline the meeting without raising the matter with me in person. It should be noted that my Private Office's response did not say that it was *my* opinion that a meeting would not add to the views in the earlier written response. It would have been entirely appropriate for my Private Office not to seek my views on a PR company's request for a meeting. I have no recollection of this correspondence now, and even if I did see it, I am afraid that I simply cannot recall now what view, if any, I formed at the time.

Establishment of a National Blood Authority

3.7. The Inquiry draws to my attention that Baroness Hooper and I were sent a submission from Mr Dobson dated 12 July 1991 concerning the future management of the NBTS and CBLA, which included a recommendation that a National Blood Authority be established [DHSC0004245_017]. That submission invited our decision on whether:

(1) to set up a National Blood Authority, *"...as a contractor for blood and plasma supplies, embracing the non-industrial role of the CBLA and the NBTS Directorate*"

(2) BPL should be "... *set up as a separate accounting centre within the CBLA from 1 October 1991*" and

(3) to "*change the status of BPL and if so, to*

- *make it an NHS Trust*
- *license it to commercial management*
- *sell it or seek commercial partners in a jointly-owned company;*
- *if they agree that there should be a brief period of formal consultation on these proposals."*

Mr Dobson stated that officials were unreservedly in favour of setting up a National Blood Authority and to 'decouple' BPL from the CBLA to allow it to operate on a more commercial basis. He suggested that the privatisation of BPL would also be in the interests of the NHS but could be politically sensitive, although it was felt that it could be presented in a positive way (see §2 of the submission).

3.8. On 16 July 1991, Gloria Hooper put her own submission to me on the future arrangements [DHSC0004245_004]. Baroness Hooper referred to the fact that we had touched on this subject "… at 'Ministers' the other day." I believe that to be reference to the weekly meeting of Ministers to which I referred in paragraph 2.9(8) above.

3.9. Baroness Hooper said that she saw no difficulty with the first proposal, the recommendation to create an NBA.

3.10. Baroness Hooper described the second proposal in the following terms,

"(ii) to "decouple" BPL from CBLA to allow it to seek new markets for products not derived from British plasma, thus enabling the BPL plant to be used to full capacity. The first step would simply be a matter of changing CBLA's internal accounting procedures to show BPL as a separate cost centre, but the proposers suggest that the full benefits of this decoupling would be realised only if BPL was privatised. Some commercial firms have already shown interest."

On this proposal, Baroness Hooper's views were stated as follows,

"In contrast [to proposal (i)] *proposal (ii), though it also offers clear benefits to patients, could be politically controversial. It would be tempting to postpone a decision on this aspect, but officials advise that this would be a particularly good moment to attract a suitable commercial partner and that the opportunity to do so may not last indefinitely. My judgement is that we should accept both proposals and, by announcing them simultaneously, seek to emphasise the overall benefits to NHS patients of the combined change but I would welcome your views."*

3.11. Baroness Hooper's submission was endorsed with two handwritten comments:

(1) The first appears to have been from my Private Office, I think Paul Ahearn, stating,

"SofS

Any hint – even a bogus one – of privatisation will of course lead to a political furore. Last year we had a silly but quite damaging row about this. Is it worth it I wonder?"

(2) The second comment is my own, "This is very dangerous political territory. Privatisation is totally out. I think we should only do the Authority. WW."

3.12. The next day, 17 July 1991, Paul Ahearn my Private Secretary replied to Baroness Hooper's Private Secretary and Mr Dobson's underlying submission of 12 July, noting,

"The Secretary of State has studied your Minister's submission of 16 July which covered John Dobson's of 12 July. He is content to combine the functions of the NBTS National Directorate and the CBLA into a new national blood authority but does not wish to go any further in pursuing options (ii) and (iii).

If your Minister wishes to pursue the proposal to decouple BPL from CBLA with the Secretary of State please let me know and we shall arrange a meeting. Secretary of State is not at all attracted to the possible privatisation of BPL". [DHSC0004245_003]

3.13. To a large extent, this note speaks for itself. The proposal to create the NBA had widespread support and (at least as presented to me) appeared relatively uncontroversial. I do not now recall the 'decoupling' point. It may well be that, while I was not immediately persuaded of the clear benefit in decoupling BPL from the CBLA, I was open to persuasion on this, hence the suggestion that a meeting be arranged if Baroness Hooper did wish to pursue that option. I believe that I was "not at all attracted" to privatising BPL because of the wider sensitivity of privatisation in relation to the NHS. The Labour Party was

campaigning against the establishment of NHS Trust hospitals on the grounds that Trusts were 'privatised' (which they were not and are not). Reading the papers now, the less firm indication against the more modest step of "decoupling" BPL from CBLA may have arisen from the concern that it would be perceived as a steppingstone towards such privatisation, although I cannot now be sure that was my reasoning.

3.14. In relation to these exchanges, the Inquiry notes that Mr Dobson's submission had described the NBTS as a 'national service in name only', given that the Regional Transfusion Centres were managed by the Regional Health Authorities. I am asked whether I was aware then or subsequently of why that situation had persisted until 1991.

3.15. As with other aspects, I considered this part of the Inquiry's request before looking at the contemporaneous documents and I regret that I had no independent memory of this issue at all. I am therefore entirely reliant on the documents. In terms of the information that was made available to me, Mr Dobson's submission itself is – I believe – the best guide. Paragraph 4 of his submission of 12 July 1991 covered the background of the decentralised nature of the blood transfusion service with an overview of the position since 1987, without going into a wider historical analysis. He referred to a Departmental study from 1987 that had shown inefficiencies within and between RTCs and explained that the National Directorate had been set up in 1988 to address these. While it was assessed to have had some success, Mr Dobson noted that its role was a co-ordinating one alone, and that the Directorate considered that they were nearing the limit of what could be achieved within the voluntary structure (submission, §4). Our focus would have been on the weakness of the current structure, and the options for reform, rather than a full historic account going back decades.

3.16. The Inquiry asks what I understood the advantages and disadvantages of an NBA to have been. I am afraid that I am again having to rely on the documents from the time rather than any current recollection. Mr Dobson's submission was

suggesting that there would be benefit to patients in terms of more consistent quality, as well as lower prices for blood and blood products. He pointed to quality standards at §6.1 and cost effectiveness at §6.2 as being the key two areas which would benefit from a stronger central role. The submission was in favour of the NBA having a contracting rather than management role for the new central body, pointing to both the earlier Ernst & Young report commissioned by the National Directorate, and officials' own views that the national contracting authority was the most appropriate way to tackle the problem areas (submission §§7-9). Mr Dobson did not identify any obvious downsides to the proposal for the NBA as a national contracting body, although the submission noted that a consultation exercise would be advisable. From common experience, where a service had very considerable regional autonomy, proposals for a different / more powerful central body were always open to the objection that the regions were being deprived of control. Centralisation did not always improve things; "devolution vs centralisation" is an enduring issue in management theory. However, §9 of the submission made the point that the proposal would still permit genuinely local management issues to be managed at local level. Moreover, it was said that 'informal soundings' had suggested that the proposal would be welcomed by health authorities as well as clinicians.

3.17. The Inquiry asks whether at the time or now, I had any views on whether it would have been preferable for a national body to have been created at an earlier stage. The background – at least as presented to me in Mr Dobson's submission – may well suggest that it would have been desirable to have had a stronger central body much earlier; that is to some extent supported by the firmness of officials' recommendation in favour of the NBA proposal. However, I am conscious of the risk that with any reform, it can always be asked, 'why was this not done sooner?' And Mr Dobson was indicating that the National Directorate had been established in 1988 to try to remedy the problems, even though it had only been partially successful. Therefore, while the Inquiry invites my views on this, I am not really in a position to comment on the rights and

wrongs of whether action should have been taken at an earlier stage to create a body like the NBA.

3.18. For completeness, from the available documents I would note as follows regarding the steps taken to further the proposals:

(1) Mr Dobson reverted to Baroness Hooper on 26 July 1991, with amended proposals for reform of the BPL and its relationship with the CBLA [DHSC0014938_067], although this was not copied to my Private Office at the time.

(2) With the approval of Baroness Hooper, a consultation exercise on the creation of the NBA was conducted: see the submission to Baroness Hooper of 12 August 1991, (again not copied to my Private Office) [DHSC0004369_031, DHSC0004369_032 and DHSC0004369_033].

(3) On 14 November 1991, Mr Canavan put a submission to Baroness Hooper and me [DHSC0006858_081]. The Chairmen of the Regional Health Authorities were reported as arguing that there were wide ranging concerns and that more time was needed to evaluate the proposal. Officials were in favour of: still pursing the basic idea of an influential NBA; setting up a working group to review the detailed mechanisms and resolve the concerns; and pushing back the implementation from April 1992 to September 1992.

(4) On 20 November 1991, my Principal Private Secretary responded to Mr Canavan [WITN5288004]. He noted my concerns that if the Regional Directors of Public Health and the Regional Transfusion Directors were not on board, this was a substantial group against the principle of the proposal. It seems that my initial inclination was to want to talk this through more with officials before setting up the working group. From the documents, it is apparent that the matter was discussed that day at my meeting with Regional Health Chairmen, though I do not recollect that now.

(5) On 21 November 1991, I have seen that Mr Malone-Lee reported to colleagues that the Chairmen of the RHAs had been more supportive of the NBA proposal than their previous letter had suggested. He recorded

my agreement that the proposals should *"... be looked at in slower time and should not be launched until [I] was satisfied about the political sensitivities."* [DHSC0006858_055] My reference to 'political sensitivities' here was a reference not to party politics but to the (small 'p') politics of securing sufficient support for the reform.

(6) On 21 January 1992, Baroness Hooper then updated me in writing on the proposals [WITN5288005]. While noting the increased reported support from RHA Chairmen and Regional Directors of Public Health, she also referred to the ongoing concerns about the operational details. Baroness Hooper was in favour of indicating that Ministers accepted the principle of the idea of the NBA and of setting up a technical working group to resolve the concerns on operational details. I endorsed this with the comment that, "The Regional Chairmen were happy with the policy but very sensitive about doing things now. Please check with the lead Chairman that this timing is satisfactory to him & his colleagues. I do not want a specious row on blood [? money][2] now." My Private Secretary passed these views on to Baroness Hooper in a written note on 29 January 1992,

"The Secretary of State has seen your Minister's submission of 21 January. His recollection is that the Regional Chairmen were happy with the policy but were sensitive about timing in that they did not want to push on with it now. He would be grateful if Mr Malone-Lee would check with Sir Michael Carlisle as lead Chairman for his view on timing and if he would ask him to sound out his colleagues for their views. He would like this pursued quietly." [WITN5288006]

(7) On 4 February 1992, Mr Malone-Lee reported back to me having spoken to the senior figures involved:

"The position of RHA Chairmen is that they are content with the decision to establish a National Blood Authority for which there is

[2] I am not entirely confident of my own handwriting here – if this does read 'blood money', it is likely that the sensitivity in my not wanting a 'specious row on blood money now' was that this was an important stage in the negotiations around the extension of the HIV payment scheme to blood transfusion patients (see Section 4 of this statement).

now a wide measure of support. They believe that it should not be established until later in the year, the other side of a general election. That is the intention.

The current plan is that a technical working group should now be formed to sort out some of the detailed issues before the NBA's role and responsibilities can be finally determined. The Authority itself would not be established until October. RHA Chairmen are content with this pace." [WITN5288007]

My Private Secretary noted on this, "*Mike M-L seemingly drafted PS(L)'s submission. Content to proceed quietly?"* and I ticked this comment to confirm that I was content to proceed.

(8) Accordingly, on 11 February 1992, my Private Secretary informed Mr Malone-Lee that I was now content to proceed as Baroness Hooper had suggested in her submission of 21 January [WITN5288008]. It was noted that care would be needed over the answer to a PQ on the topic since we did not yet wish to make the announcement but could not be disingenuous in holding over the announcement.

Section 4: HIV Haemophilia Litigation

Initial briefings on the HIV litigation

4.1. I am asked about my knowledge of the HIV litigation before I became Health Secretary. So far as I can remember, I had no more and no less knowledge of the issue than what I had read, heard and seen in the media. In so far as I remember, though I may be wrong, I had not had constituency cases specifically relating to the litigation which I would have raised with predecessor ministers. I did however come to office clear in my own mind that I thought the policy of non-settlement ought, if possible, to be changed, and the briefing I received did not alter that.

4.2. A personal influence sticks in my mind. Before I had physically arrived at the Department to take up the appointment as Secretary of State, my late mother said to me words to the effect, '*You must try to settle this issue'*. My mother's views also reflected my own. As I have mentioned in my opening comments, when even people of reasonably good will towards the government thought that we were doing the wrong thing in not coming to a settlement of the litigation, I felt that we ought to listen. That was my mindset as I arrived in the Department.

4.3. The first briefing I received in relation to the HIV litigation appears to have been the written submission from Mr Canavan dated 6 November 1990, to which I have already referred at paragraph 3.3 above. Mr Canavan's submission comprised a short covering note to Mr Dobson and Mr Alcock (the first of my Principal Private Secretaries) [DHSC0004365_008] and four attachments:

(1) 'HIV/Haemophiliac litigation – general background note' (Item A) [DHSC0046962_374];

(2) 'HIV/Haemophiliac litigation – key facts' (Item B) [DHSC0046962_182];

(3) A copy of Strachan Heppell's submission to the CMO, Virginia Bottomley and Ken Clarke of 24 July 1990 (Item C) [DHSC0046964_003]. Beyond Item C as provided to me by the Inquiry, Mr Heppell's submission had a number of attachments to it: the underlying note from Mr Dobson

[DHSC0004360_147]; the statement from Mr Justice Ognall inviting settlement (Annex A) [WITN5288009]; and a summary of views of Regional Directors of Public Health (Annex B) [DHSC0046962_186].

(4) Present position on HIV/Haemophilia Litigation (Item D) [DHSC0046962_187].

4.4. I cannot of course now independently remember reading these documents and sadly the copies provided do not seem to contain my annotations. However, it is clear that my office specifically asked for the briefing (Mr Canavan starts by saying, "*As requested, I enclose briefing material on this issue …*"). Considering the date of my appointment and the intervening weekend before I physically arrived in the Department, this would have been one of the first, if not the first, briefing on a specific topic which I had requested. Given that fact, and my interest in the issue, I am confident that I would have read this written briefing as soon as practicable after it arrived. I cannot remember, beyond what the papers show, who contributed to this written part of the briefing.

4.5. I have been provided with a minute from a CP Kendall to Mr Brownlee dated two days later, 8 November 1990 [DHSC0020866_101]. This minute was not copied to my Private Office as it appears to be a minute between officials in two Finance Divisions.

4.6. I have been asked a number of points about this minute and it may be convenient if I set it out in full. Mr Kendall wrote,

> *"I mentioned to you that Mr Waldegrave was briefed on the haemophiliacs with AIDS issue yesterday [7 November 1990]. There was, I think little formal difference between his line and Mr Clarke's: that it would be sensible to reach a settlement with the plaintiffs if that can be done at acceptable cost. Behind that similarity however lay a greater inclination to settle, and I suspect some willingness to settle at a somewhat higher cost.*
>
> *2. The question of finance was touched on without being fully explored. Mr Waldegrave seemed to accept that he would need to approach*

Treasury for additional funding, having been assured by me that existing programmes would not be able to find the sums involved. He seemed fairly optimistic (somewhat more than I am) that the Chief Secretary would agree to find extra funds but seemed also to take the view that if he tried and failed this would strengthen his position with his colleagues if the political fall-out later was overwhelming.

3. It also became clear at the meeting that meetings between lawyers are continuing, and the plaintiffs solicitors are likely to suggest that their clients would accept a settlement on the right terms. It is thought that they will suggest about £40m. Whether this is an opening bid to be increased "in the light of the client's resistance to such a small sum" or something that could be negotiated downward, is unclear.

4. After the meeting Mr Heppell was unwilling to commit himself to the next step, awaiting further information on the lawyers' meeting (expected today). It is quite possible that we will soon move to a submission reporting an offer from the plaintiff's side, linked to a draft letter to Treasury. At that stage I think we will need to include something on the inability of existing programmes to accom[m]odate that sum, and cover the suggestion (that will surely come from the Treasury) that some contribution should be made.

5. You may wish to start thinking about this, but I will let you know when something more definite is available."

4.7. It is apparent from this minute, in addition to the written briefing material from Mr Canavan dated 6 November 1990, that I attended a meeting on 7 November 1990 where the issues were discussed, and I received a verbal briefing. This would have been one of my first policy discussions after arriving in the Department. Mr Kendall's minute would suggest that both he and Mr Heppell were at the meeting on 7 November. As the Inquiry will appreciate, Mr Kendall's minute is not – and did not purport to be – a formal record of the meeting held on 7 November to discuss the litigation.

4.8. I am sure that others would also have been at the meeting. There is a minute dated 7 November from Ronald Powell the solicitor dealing with the litigation to Mr Dobson, referring to the meeting with me that day [DHSC0046962_068], and a note of the conversation that Mr Powell had had with the Department's counsel Justin Fenwick [WITN52880010]. From that minute, it may well be that Mr Powell and Mr Dobson were intending to be at the meeting with me on 7 November 1990 as well but obviously I cannot say for sure. Mr Powell's minute is consistent with paragraph 3 in Mr Kendall's minute in suggesting that the meeting with me on 7 November covered some level of update on the ongoing discussion between the counsel instructed for both sides.

4.9. In the absence of any further record being available for the meeting of 7 November, I am afraid that I cannot assist with any more detail as regards who attended, who spoke, and the briefing provided. However, so far as I can tell, Mr Canavan's submission (which was sent to me), and the respective minutes of Mr Kendall and Mr Powell (which were not sent to me) are likely to reflect the sort of information with which I was being provided at the meeting on that date.

4.10. The Inquiry asks which Minister had responsibility for the decision-making on the claim at this stage. As this was a high-profile issue on which I had views as the incoming Secretary of State, I had taken responsibility for reviewing the policy, having consulted my ministerial team, as well as Christopher France and Donald Acheson.

4.11. As regards my position on the litigation following the early briefings I received, I have already indicated that I entered the Department with the hope that I could change the policy in that I wanted a reasonable settlement to be reached without the claims having to proceed to court. I am sure that that hope was reinforced by my reading of Mr Justice Ognall's remarks and the opinion of the Regional Directors of Public Health and the briefing I was given at the meeting of 7 November. I think I independently remember that a preference for settlement was also the opinion of the CMO, Sir Donald Acheson. He was a man whose 'moral compass' I remember quickly coming to admire.

4.12. I am invited to comment on the first paragraph of Mr Kendall's minute, which I have set out in full at paragraph 4.6 above. I think Mr Kendall was accurate in perceiving that I had a greater willingness to settle than Mr Clarke, and at a higher cost. However, it is not really for me to judge by how much or in what respect this differed from my predecessor's opinion. It is also right to say that I was more willing to settle the claims than Mrs Thatcher. On 7 November 1990, the Lord Chancellor's Department copied my Private Office into their reply to Mrs Thatcher's PPS, addressing the Prime Minister's request that the final trial hearing be expedited [WITN52880011]. That corresponds with my understanding that Mrs Thatcher was content that the matter be fought out in Court.

4.13. The Inquiry also asked about paragraph 2 of Mr Kendall's minute. I cannot really comment on whether Mr Kendall's minute accurately reflects what was said at the meeting of 7 November. If I had been told that there was no scope within existing budgets to fund the settlement, then I probably would have been minded to accept that I would need to approach the Treasury for additional funding. It is hard for me to comment on Mr Kendall's perception that I seemed to take the view that if I tried and failed with the Treasury, "*...this would strengthen his position with his colleagues if the political fall-out later was overwhelming.*" I have no recollection of this now. I recall that my thinking was that it was right to try to achieve the settlement. I would have wanted to try to get funding from the Treasury to the extent necessary, to achieve that aim. In those circumstances, it is certainly possible that I felt that if I was going to be refused permission to settle (either because there was a refusal to fund it, or others were against me) I would have wanted it on record that I had explored the issue fully with the Treasury. I perhaps sensed that there might later be political fall–out if there was a refusal to settle: for example, if this was followed by a later U-turn and an eventual settlement later on. In such a scenario, I would have wanted to have pressed - and to be seen to have pressed - for a settlement all along, including by raising it with the Treasury.

4.14. The Inquiry refers me to a Medicines Control Agency minute from Mr Gutowski dated 7 November 1990 [DHSC0046962_367]. I would note as follows:

(1) This minute was neither addressed nor copied to my Private Office and I have no reason to think that I would have seen it at the time;

(2) I am asked about Mr Gutowski's opening sentence, "*I am informed by Mr Burrage (EHF) that defensive briefing has been prepared for the new Secretary of State and we will be kept informed of any inclination of any change of policy*". This appears to be Mr Gutowski recounting what Mr Burrage had understood about the briefing prepared for me (quite possibly – though I cannot say with any confidence - a reference to Mr Canavan's briefing of 6 November 1990). It seems as if officials had got wind of my desire to change the policy. The Inquiry asks about the phrase "defensive briefing". This is prone to be misunderstood. It is really a term of art, referring to briefing aimed at defending existing policy from its critics. It is in the nature of government that almost any policy will have critics: this one had effective and plausible critics (which to some extent included myself). Until I achieved a change of policy, obviously briefing would defend the existing policy. Reviewing the written briefing of 6 November 1990, I think this can to some extent be said to be 'defensive briefing' within the civil service use of that term (rather than in any pejorative sense).

(3) As regards paragraph 2 of Mr Gutowski's minute and the reference to the advice from counsel "as requested by Secretary of State", the Inquiry queries whether this request was from me or from my predecessor Mr Clarke. Based on Mr Gutowski's minute alone, the absence of reference to "former Secretary of State" or similar might tend to suggest that the request was from me. However, the Inquiry refers me to Mr Heppell's minute of 18 October 1990 which shows that Mr Clarke had requested counsel's advice on liability [DHSC0046936_041]. Moreover, I had only become Health Secretary on 2 November 1990, so there had been little time for me to commission advice and for counsel to have reverted by 7 November 1990. Yet further, Item D to Mr Canavan's submission of 6 November 1990 had referred to "The latest opinion from Counsel given

last week" (my emphasis added). That is too soon to have been advice commissioned by me. From the papers available to me, it would seem that this is likely to be referring to the advice from counsel dated October 1990, which was of course before I arrived at the Department [DHSC0007039_001]. However, it is also notable that counsel had spoken to his opposite number on the day I was appointed and met him at 8 a.m. on Monday 5 November, the day I arrived in the Department[3]. There seems to have been some urgency in this. Regardless of the identities of the Secretaries of State, the very fact that there had been a change of Secretary of State may have given additional impetus to the negotiations.

(4) The Inquiry asks about Mr Gutowski's statement that:

> *"On the question of the introduction of heat treatment Counsel expects the allegation to fail but warns that there must be the possibility that a Court could rule that the introduction of a heat-treated product could have been brought forward by a few months. Counsel feels that although April 1985 was the earliest date that could have been achieved for the product to become available in England and Wales, an area of vulnerability exists in that home produced heat-treated product was made available earlier in Scotland. Although this small window of opportunity could exist the plaintiffs would have to show that it would have been reasonable to carry out a process which may have inactivated or reduced the effectiveness of the Factor VIII with no certainty that it would have eliminated the virus."*

I have no specific recollection of the particular area of 'vulnerability' in the terms being here described by Mr Gutowski. However, I am sure that counsel's assessment of the litigation risk that was reported to me must have been part of my overall consideration of whether the government should offer a settlement. Mr Canavan's briefing of 6 November 1990 at item D, had included that:

[3] This can be seen from Mr Powell's telephone note of 7 November 1990 [DHSC0004365_043] to which I have already referred, though it was not copied to my Private Office.

> *"The latest opinion from Counsel given last week is that the Government defendants should be able to defeat the plaintiffs' claims. However they cautioned there are a number of areas of risk and therefore it would be unwise to proceed on the assumption that all the plaintiffs' claims will certainly fail."* [DHSC0046962_187].

4.15. The Inquiry refers me to a minute from Ms Stuart to Mr Kendall dated 9 November 1990 [DHSC0020866_100]. This appears to be a minute between two officials in the Finance Divisions with Ms Stuart commenting upon a report in The Independent about a letter from the Prime Minister to Alf Morris MP. This minute was not addressed nor copied to my Private Office and I have no reason to believe that I would have seen it at the time.

4.16. The relevant earlier letter from the Prime Minister to Alf Morris was dated 2 November 1990 [HSOC0012332]. Mrs Thatcher's letter, while expressing concern for those infected and stressing the support that was to be kept under review from the Macfarlane Trust, ended with a statement of her view that, "*The question of compensation has to remain a matter for the Courts to decide".* I was aware that this was the Prime Minister's view. The letter was dated the very day that I became Secretary of State and I think it impossible that I should have seen the letter before it was sent. In fact, I understand (but only from documents that have now been shown to me) that Mrs Thatcher's reply appears to have been based on a draft prepared by the Department of Health and sent on 29 October 1990 [WITN5288012] [WITN5288013]. I also understand (but again only from documents that have now been shown to me), that the wording of Mrs Thatcher's letter was very similar to those sent by the Health Ministers in late October 1990 in response to other correspondence (see for example Virginia Bottomley's response to Sir Hugh Rossi of 29 October) [WITN5288014]. Given that Mrs Thatcher's letter was heavily based on a Department of Health draft provided before my appointment, and that similar wording had been used by Health Ministers themselves, I think it very unlikely that Mrs Thatcher's Private Office would have felt the need to consult mine on its use on 2 November 1990; it was the maintenance of existing policy.

4.17. The Independent article on 9 November 1990 started with the assertion that "The Prime Minister yesterday blocked any chance of William Waldegrave, the new Health Secretary, reaching an out-of-court settlement for haemophiliacs with HIV or AIDS" [DHSC0020866_103]. The article was factually correct in stating that the Prime Minister had said that she considered that the question of compensation rested with the Courts, but that had also been said by the Health Ministers prior to 2 November 1990. I therefore see no grounds to suggest that this can fairly be read as Mrs Thatcher seeking to pre-empt the situation let alone 'block' me. Nevertheless, I was aware that the Prime Minister's view was in favour of letting the Courts decide the matter, and I would have known it would be a sharp battle (but not an impossible one) to get her to change her mind on something which she had defended in public.

4.18. The Inquiry has asked me to consider the letter to me from the Haemophilia Society dated 3 November 1990 [HSOC0017272] and my response of 26 November 1990 [DHSC0004365_032]. In paragraph 2 of the Haemophilia Society's letter, the Vice Chairman Mr Cowe sought to correct false assumptions that he considered the Department had made. He stated that "*The most serious of those relates to the fact that it has been alleged from within the Department that 'The Haemophilia Society' has named an acceptable sum for an out of court settlement.*" I am unable to recollect now one way or the other my knowledge at the time (if any) as to whether anyone in the Department thought, or had assumed, that the Haemophilia Society had named what they considered to be an "acceptable sum". Looking at it now, my reply of 26 November 1990 was trying to draw a line under any discord on this point by saying that I fully accepted what the Society had told me about its own position on the litigation. I note however that Mr Heppell had minuted my Private Secretary Mr Ahearn on 20 November 1990 attaching a draft of the reply that I eventually sent [DHSC0004365_033]. On the specific point about whether the Haemophilia Society had suggested a settlement figure, Mr Heppell advised,

> *"6. …The Department has not said that the Society has suggested a sum for out of court settlement, although the General Secretary, Mr Watters,*

says he has seen correspondence from Mr Clarke to this effect. We have no trace of this. The most we know of is a Sunday Times article in which Mr Clarke attributed to that paper a report that the Haemophilia Society believed that £90m should be paid."

4.19. The Inquiry asks about paragraph 5 of my letter in reply to the Haemophilia Society, in which I addressed the suggestion of using an intermediary. I said that I was doubtful that this would be a helpful way forward. [DHSC0004365_032]. I am now unable to recall the reason for my doubt and Mr Heppell's submission does not provide any insight into this. It may be that I assumed that counsel for both sides could negotiate satisfactorily without an intermediary, but I stress that that is current supposition or reconstruction on my part rather than any actual memory. I note also that I did not completely close the door to this concept, stating that if the Society wanted to let me have more details on what they had in mind on an intermediary, I would be ready to consider it.

4.20. The Inquiry asks about my relationship with Mr Cowe and other members of the Haemophilia Society. I am afraid that I do not recall the individual officers of the Society now. My recollection is a general one; that they were people trying to do their practical best for those whom they represented.

<u>The settlement proposals</u>

4.21. On 9 November 1990 Mr Dobson sent a minute to Mr Heppell and my Private Secretary which attached a proposed scheme of compromise which had just been received from the plaintiffs [DHSC0046962_067] [DHSC0003654_117]. I think it virtually certain I would have seen the document headed 'Proposed Heads of Compromise' or been verbally briefed on its contents. On the same date, Mr Heppell minuted my Private Office updating me on the settlement litigation with some initial comments but promising further advice [DHSC0003937_020]. I can be certain that I saw this minute because the copy provided to me bears my handwritten annotation agreeing to the proposal by

my Private Secretary of an early meeting with the Department's counsel, Andrew Collins QC.

4.22. On 12 November 1991, Mr Canavan provided further advice on the settlement proposal to my Private Office, cleared through Mr Dobson [DHSC0046962_028]. Again, I think it likely that I would have seen this or at least been briefed on its content however I cannot be sure.

4.23. I have no independent memory now of what I thought about the level of settlement. As the Inquiry has raised with me, I note that Mr Heppell's initial reaction was that "The proposals as they stand look on the high side". Given the passage of time, I am reliant on the documents themselves and find it difficult to recall my views on the proposals contained within them. While it is not based on any direct memory, I think that my reaction would have been one of delight that an offer had been made at a level that was not impossible to deliver.

4.24. I did share the views of Mr Heppell and Mr Dobson that it was very important to get an assurance from the plaintiffs' solicitors that the vast majority of their clients would sign up to it. I would have known that any chance of winning permission from the Prime Minister and the Treasury would require that the great majority of plaintiffs would agree to the proposal.

4.25. I was not in a position to know first-hand what individual plaintiffs were aware of in relation to the proposed settlement or the extent to which they were in support of it. I was reliant on what counsel, solicitors and others advised as to the views of the plaintiffs. The documents make it clear that this was being handled through the plaintiffs' counsel having discussions with the Department's counsel.

4.26. Mr Canavan's minute of 12 November 1990 referred to the fact that it would be difficult to fund the settlement through Departmental resources as the budgets for 1990-1991 were already fully committed. He refers to the fact that there were

no funds for payments to haemophiliacs other than £2 million in Centrally Financed Services ("CFS") for payments under the arrangements made with the Macfarlane Trust. CFS was a relatively modest part of the overall Department of Health budget allocation that was used to fund certain services financed centrally and directly by the Department rather than through the NHS / Health Authorities. Mr Canavan noted that CFS was a small budget and could not absorb any additional payments well above the provisional allocation for 1991-1992. It was clear to me that I would have to win additional money to fund the proposals from the Treasury via the Chief Secretary (Norman Lamont until 28 November 1990, succeeded by David Mellor).

4.27. The Inquiry asks what my views were on Mr Canavan's observations in his minute of 12 November 1990 concerning restricting Category G claimants to sexual partners and excluding parents, siblings and others. I am afraid I have no recollection of whether I had a particular view on that aspect and if so, what it was.

4.28. As noted above, in response to Mr Heppell's minute of 9 November 1990, I had agreed with my Private Secretary's suggestion of an early meeting with the Department's counsel, Mr Collins. The Inquiry refers me to the handwritten notes [DHSC0020866_083] [DHSC0020866_084]. Those notes support the fact that the meeting did happen and that it took place on 19 November 1990. However, I am unable to recall this meeting and am therefore unfortunately unable to assist the Inquiry on the detail of what was discussed. I would have expected a record to have been taken of the meeting but the filing and retention of such records was not something in which I was involved.

4.29. The Inquiry refers me to Mr Collins' note, dated 19 October 1990, setting out an account of his meeting earlier that day with Rupert Jackson QC, lead counsel from the plaintiffs [SCGV0000230_018]. It seems from the handwritten minute at [DHSC0020866_083] that this was part of the documents collated ahead of my meeting with Mr Collins on 19 November 1990. As I have explained, I do not recall the meeting itself, but I am sure I would have seen this

document and discussed it with counsel, even though I have no separate memory of doing so. The Inquiry asks for my observations on the note. Looking at it now, counsel had obviously been exploring with his opposite number where a fair settlement might lie. At pages 4 and 5 of the note, Mr Jackson is recorded as being of the view that claimants with negligence cases against individual health authorities for clinical mismanagement should be able to proceed with their claims but required to give credit for the sums already received out of the proposed settlement figure. Mr Collins said that he was "not sure about that" and suggested such plaintiffs must decide whether to accept a payment and settle the whole claim or to pursue the health authority alone if they felt they had a case. I have no independent recollection of this difference of view between counsel, nor do I feel able to offer any reliable comment now as to what view (if any) I formed at the time on the mechanics of how these claims for case-specific acts of negligence should be allowed to proceed.

4.30. The Inquiry draws my attention to the press release from the Haemophilia Society dated 22 November 1990. [HSOC0012354_002]. This referred to the newly formed 'All Party Group for Compensation' composed of twenty-eight MPs drawn from every party. I am asked if I had any dealings with this group. I do not specifically now remember this group, but it is very likely that I would have spoken to some of its members in the lobbies at Westminster. I believe the group were part of the steadily increasing external pressure for some change in the government's policy.

4.31. I have been asked about the briefing material that Mr Dobson sent to my Private Secretary Mr Alcock dated 23 November 1990 in advance of my planned meeting with the Chief Secretary [DHSC0003654_115]. I would certainly have seen this briefing material. Briefing of this kind with draft speaking notes / key points to take would normally be produced only after either I, directly in a meeting, or my Principal Private Secretary, had passed at least an outline of my own views to the officials who were preparing the briefing. To some extent therefore, this briefing material would have been an expression of my own views, with additional arguments or detail raised by officials to help me win the

argument. I think the bullet points on the first page well summarize the best arguments for winning the internal argument to change the policy. As I have tried to make clear above, I thought it right to change the policy in order to bring to an end an extremely stressful and unpleasant process for the victims while delivering a reasonable settlement quickly. The moral case for the proposal – that sense that it was 'the right thing to do' – was not spelt out in those terms in this briefing. But it was the underlying rationale for wanting to change the policy. The arguments in this briefing were being assembled for delivery to try to win over the Treasury, and the focus was necessarily on the financial aspects and the opportunity to end the litigation on reasonable terms.

4.32. The Inquiry asks in particular about the line taken in the briefing note for not making a lower offer. Again, I do not remember this now, but I think I would certainly have agreed with this line. Just as we were proposing to be firm that there was no scope for a higher figure for the plaintiffs, so I think it would have been right not to try to haggle for a lower offer.

4.33. I would not, of course, have used the speaking notes other than as an aide memoire in the oral debate with the Chief Secretary. Reading it now, I do not think that the second paragraph of the background section really reflects my position very well. Mr Clarke's position, as I understood it, perhaps wrongly, was that we should not offer to settle because the chances of the government winning were high. But as is often the case in briefing notes, it is the conclusion and main points which matter. I did not have time to redraft every official note so that every sentence of it was one with which I would agree. In any debate with a highly intelligent Chief Secretary to the Treasury, who would be well briefed himself, neither side would be following a script. Importantly, I was clear that it was the right thing to do. We would concentrate on the essentials: namely, on my side, that I believed there was a chance, which might not recur, of settling at a not unreasonable level; that the Department would need additional funds to pay for it; and that we could deal with the arguments about the setting of precedents because this case was uniquely awful in context and history.

4.34. On 5 December 1990 Mr Dobson provided my Private Secretary with supplementary briefing ahead of the meeting to address points that had occurred in discussions at officials' level [DHSC0003383_006]. He also addressed options for how any settlement would be presented.

4.35. The Inquiry asks whether by this time I had reached a decision on whether to propose settlement of the claim. My position at that time was that I did want to settle, but of course achieving this was dependent upon getting the funding and agreement from the Treasury and the Prime Minister. As the Inquiry is aware, these events were occurring against the backdrop of Mrs Thatcher's announcement that she would not contest the second leadership ballot (22 November 1990) and John Major becoming Prime Minister (28 November 1990). Although I have no independent memory now and it is not in the papers, I think my assessment would have been that I had a good chance of getting the support of the new Prime Minister. On present day review, the arguments in favour of settling are as I have set out at paragraph 4.31, above. I do independently remember that I was anxious to get the settlement agreed as quickly as possible in case the plaintiff victims changed their willingness to settle.

4.36. Beyond what is in the papers, where two alternative options were presented to me in Mr Dobson's briefing of 5 December 1990, I have no recollection of how I thought the settlement should be presented.

4.37. The Inquiry has provided me with three Treasury documents that were prepared in relation to the proposed settlement. As these were Treasury minutes and briefings, they were of course not seen by the Department of Health.

4.38. The first document is a minute from Mr Edwards to Noman Lamont dated 26 November 1990 [HMTR0000002_009]. At paragraph 5(ii) Mr Edwards stated that he understood:

"…from DH that there are more than 500 sufferers who might in principle have contracted the virus after the stage at which hospitals might reasonably have been expected to use different forms of treatment, even though there must be a very high probability that the vast majority of these cases would have contracted the virus well before that point".

I have no memory of whether I saw this figure. If it came from the Department and was accurately reported, I may have heard or seen it at the time, but I cannot be sure this long after the date and I have not seen reference to that figure within the Department of Health papers currently available.

4.39. The second document is a further minute from Mr Edwards dated 29 November 1990 again to the Chief Secretary but by now David Mellor had taken over that role. [HMTR0000002_011]. Within the passage at paragraph 14-15 there was further reference by Mr Edwards to the figure of 500:

"14. As the date of the trial has approached, DH's legal advice appears to have become more cautious. Their legal advisers now see the plaintiffs' cases as falling into three broad categories:

i. between 20 and 30 cases where medical negligence would be quite likely to be established;

ii. a minority of further cases where infection is likely to have occurred at the end of 1984 or in 1985, where the chances of success on legal grounds were more like 60/40; and

iii. the majority of the cases, where the legal case looked strong but judges would do everything in their power to be as favourable as possible to the haemophiliacs.

15. A further problem, as DH now see things, is that the dividing line between categories ii. and iii. above would be somewhat arbitrary. There was room for debate on the date by which health authorities ought to have known better than administer untreated Factor VIII. In addition, the dates at which individual haemophiliacs actually became infected could in many cases not be established with certainty. DH seem now to fear that, on a very unfavourable construction, the minority cases at ii. above could rise to around 500."

Again, I cannot now reliably comment on whether or not I had heard this figure of 500 in internal discussions in the Department. What is perhaps of note in this second minute from Mr Edwards is that the figure was said to have been based on a Department of Health fear "*on a very unfavourable construction*" that the cases in category *(ii)* could rise to 500. I would observe that I can see why it would have been in the interest of winning the argument with the Treasury for a settlement, for Departmental officials to talk up the risks of losing in court, within the bounds of truthful estimates of probabilities.

4.40. The Inquiry raises the fact that at §16 of this minute Mr Edwards commented that the Treasury's own legal adviser considered that the Department of Health's legal advice was *"...likely to err on the gloomy side..."*. As stated above, I would not have seen this minute but again I can see why there may have been an element of the Department of Health talking up the risks. I do not now recall whether I was aware that the Treasury held this view that the Department of Health legal advice erred towards the gloomy side. But in any event, my reasons for supporting the settlement were not driven by a fine assessment of the legal risks. I had decided to try to change the policy to achieve a settlement. I believed – and was concerned - that the case would be long and drawn out. The legal assessment was that we were still likely to win[4] but if so, the victims might well appeal (equally the Department might well appeal had it lost at first instance). I recognised that while these extremely stressful proceedings were in train, victims would be dying without the benefit of additional help, and that the public and many MPs and others would rightly think that the Government was behaving inhumanely. I shared that opinion. So it was not because of any exact calculus of the chance of losing that I wanted to settle; I was still firmly being advised that we would probably win. I was clear in my mind that settling was the right thing to do. There was another related consideration pointing towards settlement. While I could not guarantee exactly what would happen if the Government won the litigation, it was quite likely that

[4] I note that in the submission of 5 December 1990, our Junior Counsel was cited as having advised that it was prudent to assume a one-third chance of losing, "...although his estimates of the individual components (taken at fac[e] value) imply a figure closer to one in six" [DHSC0003383_006].

we would still consider making some further ex gratia payment. But it was all too foreseeable that there would then be considerable pressure for such payments to be modest (perhaps another £10 million in total), which I would have found an undesirable outcome in all the circumstances. For all these reasons, within the political and fiscal boundaries, I wanted to achieve a more meaningful settlement that would achieve payments quicker and avoid the objectionable prospect of drawn-out litigation.

4.41. The Inquiry raises the further fact that paragraph 26 of Mr Edwards's minute of 29 November suggested that it would be important for Treasury Ministers to insist on a number of points if they were prepared to contemplate the pursuit of an out of court settlement. Mr Edward's fifth point for Treasury Ministers to insist on was,

> *"DH to assess and minimize the risks that any haemophiliacs who did not accept the deal (for example, haemophiliacs not previously known or a handful of troublemakers) would have access to legal aid to pursue cases against the Government subsequently".*

I do not have any recollection of this. This was a Treasury minute that I would not have seen. I do not believe or understand that it was open to the Department of Health to influence access to legal aid. However, what *was* envisaged on legal aid was set out in my later letter to the Prime Minister of 7 December 1990 [HMTR000002_019]:

> *"plaintiffs' Counsel would need to advise his clients that the offer provided a reasonable basis for discontinuing the Court action. This advice would be passed on to the Legal Aid Board which should in practice prevent legal aid for any resumed action." (§7)*

If – as we were hoping would be the case – the parties could agree on what were seen as reasonable settlement terms, it would seem quite appropriate that the plaintiffs' side should report that view to the Legal Aid Board and for that to be taken into account by the Board itself in assessing the ongoing funding of the litigation. But that would then be a matter for the Board, not the Department of Health.

4.42. The third Treasury document the Inquiry draws to my attention is a minute from RB Saunders to the Chief Secretary, Mr Mellor, dated 3 December 1990 [HMTR0000002_014]. This appears to have been a supplement to the earlier Treasury briefings ahead of the meeting with me.

4.43. The Inquiry asks me to review these Treasury minutes with my combined experience as the then Health Secretary and a later Chief Secretary, and to indicate if there is anything that I find surprising in them. On the whole, I do not find them very surprising. The change in policy I was seeking to make carried a risk to public expenditure control – there was an element of departing from precedent in agreeing to a payment scheme to fund financial assistance to both litigants and non-litigants, notwithstanding the advice that the Department would be more likely to win the litigation. The concerns about the proximity to no-fault compensation were obvious and it would have been right for the Treasury to argue the case for restraint.

4.44. I have been directed to a minute dated 18 December 1990 from Mr Heppell to Mrs Firth (Finance Division A) [DHSC0003383_003]. Mr Heppell's minute sets out a timetable of events that led to the announcement by the Prime Minister of the in-principal settlement on 11 December. Mr Heppell's chronology starts with confirmation that the meeting between me and the Chief Secretary Mr Mellor had taken place on 6 December 1990, and we had agreed that the Government should accept the plaintiffs' Steering Committee of Lawyers' offer.

4.45. I do not have any independent recollection now of the meeting of 6 December 1990. In the absence of any surviving minute of the meeting, I cannot help on the detail of what was discussed. The respective briefings for me and Mr Mellor by our respective officials are the best guide but I cannot say which issues were or were not specifically raised or those that were pressed.

4.46. The Inquiry notes that the Treasury minute from RB Saunders of 3 December 1990 had advised Mr Mellor to press me "… about the potential repercussions

of a further payment to HIV-infected hemophiliacs without admitting liability" ((§5) [HMTR0000002_014]). The minute then continued,

> *"6. There are some obvious and immediate cases, notably the 100-200 people estimated to have contracted HIV following blood transfusions. There may also be cases involving other blood-borne diseases, although screening for hepatitis C, for example, has been routine for several years. 7. More generally, however, there is the issue of those who have suffered from unforeseen side-effects of NHS treatment. A few years ago, for example, payments were made in respect of vaccine-damaged children following their failure to establish liability in the courts. Are other further cases likely to come to light? For instance, I believe cases are pending from people who became addicted to benzodiazepines prescribed by GPs. The concern here would be that we might find ourselves on a road which took us inexorably to no-fault compensation without having considered the financial consequences first."*

I am asked if Mr Mellor raised these issues with me. Again, I am afraid that I do not specifically remember. However, I would suggest that the issues of precedent and risk on no-fault compensation were the issues that the Treasury would be almost bound to have raised at the meeting. These concerns did present some risk in terms of a successful agreement being reached.

4.47. My meeting with Mr Mellor on 6 December 1990 was also referred to in my minute to the Prime Minister of 7 December 1990 [HMTR000002_019]. My minute to Mr Major gives some indication – albeit quite broad - as to what had been discussed at my meeting with Mr Mellor the previous evening, for example:

(1) That it had been detailed and we particularly examined the proposal put forward by the plaintiffs' counsel (§2);

(2) The conclusion we had reached was that, provided that the plaintiffs would commit themselves to accept their counsel's proposal, we should be prepared to accept it (§3);

(3) That we had agreed that we should not pass by a possible opportunity to settle this very difficult issue (§6);

(4) That we had agreed, '... that the Department of Health must find the amounts required for settlement of the negligence cases, perhaps some £3-5m, from within existing provision. The remaining £44-46m would be a charge on the Reserve, probably spread between this year and next' (§9).

I think I would also have emphasised at this meeting with Mr Mellor the key concerns I had about the negative impact of inevitably drawn-out legal proceedings, as I have set out in paragraph 0.4, above.

4.48. The Inquiry reminds me that in early December 1990 Mr Major became involved in the settlement negotiations and refers me to a number of documents in this regard:

(1) Hansard extract, Prime Minister's Questions, 4 December 1990 [DHSC0014931_033]

(2) My minute to the Prime Minister, 5 December 1990 [HMTR0000002_016]

(3) My minute to the Prime Minister, 7 December 1990 (and covering minute of the same date) [HMTR0000002_019]

(4) Minute from Dominic Morris to my Private Secretary Mr Alcock containing the Prime Minister's decision, 10 December 1990; [HMTR0000002_020]

(5) A minute from Jeremy Heywood to the Private Secretary of the Chancellor (Norman Lamont), 11 December 1990 [HMTR0000002_021]

(6) Hansard extract, Prime Minister's Questions, 11 December 1990 [DHSC0003654_003]

(7) Plaintiffs' Steering Committee Press Release of 11 December 1990 [DHSC0003654_029]

(8) Letter from Mr Heppell to Mr Edwards of the Treasury, 12 December 1990 [HMTR0000002_023]

(9) Covering note from Mr Canavan dated 12 December 1990 to other DH officials [DHSC0003511_036] enclosing Q&A briefing [DHSC0003511_039] and Annex [DHSC0003654_079]

(10) The minute from Strachan Heppell, 18 December 1990, setting out a chronology of steps leading to the announcement of the settlement, to which I have already referred, [DHSC0003383_003].

4.49. The Inquiry asks why I sent Mr Major my minute of 5 December 1990 [HMTR0000002_016]. I did so to update him on the current position but especially to alert him to what I perceived to be the urgency of the situation. As is apparent from the concluding lines of this minute, I was concerned that the last occasion when a decision other than to fight it out in Court could be taken would be over the ensuing few days. Before sending this minute, I expect that I would already have spoken to him about the matter. I think, reading the papers now, that I feared that the agreement of the plaintiffs' Steering Group might be fragile, and that if the settlement put forward by the plaintiffs' counsel was withdrawn in favour of a higher demand, it would not be possible to win agreement from the Treasury or colleagues, and that the situation might revert to the previous stalemate. My assessment would have been that this would be very bad both for the plaintiffs (who would have to face the trauma of the court cases and the delay that that involved) and for the Government who might face the double danger of having apparently refused a fair offer by the plaintiffs and being seen as continuing with an inhumane policy. I needed the Prime Minister's endorsement to shift the policy towards settlement. I think that settlement of litigation of this prominence would probably have warranted clearance from No.10 in any event, but that was especially so here because this was a departure from Mr Major's predecessor's preferred approach to let the litigation run to trial and let the Courts decide.

4.50. As to why I said, "Political costs are high" I think this is largely self-evident. We were facing public pressure and pressure from parliamentarians. As I have indicated, we were at risk of appearing to have refused a fair offer by the plaintiffs to settle.

4.51. I have made several references already to my further minute to the Prime Minister on 7 December 1990 [HMTR0000002_019]. The Inquiry raises paragraph 7 of this minute where I stated that,

> *"we must not go beyond the £47-£51m figure, which looks generous by international standards when added to the earlier payments from the Macfarlane Trust"*

The Inquiry asks what the basis for this conclusion was. The annex to the Q&A briefing produced for the announcement of 11 December, shows that our compensation was at the upper end of international payments so far as they are recorded in this document [DHSC0003654_079]. This is further confirmed by the figures in paragraph 4 of the minute from Mr Saunders to Mr Mellor dated 3 December 1990 [HMTR0000002_014]. It is perhaps worth noting that the German figures seem to include compensation payments from pharmaceutical manufacturers.

4.52. It can be seen from Mr Heppell's subsequent minute that on Monday 10 December the Prime Minister agreed the proposals in my submission of 7 December [DHSC0003383_003]. It further states that I decided that rather than risk leaks from the plaintiffs it would be preferable if the Prime Minister announced the position during Parliamentary Questions the following day, shortly after the decision had been communicated to the steering group.

4.53. Jeremy Heywood's minute of 11 December 1990 to the Private Secretary of the Chancellor Norman Lamont sets out the Treasury view of a last-minute dispute between us as to the timing and content of the announcement [HMTR0000002_021]. The Treasury did not want the announcement to be made before confirmation had been received from the Plaintiffs' Steering Group of lawyers. Looking at the matter now, I believe that speed was of the essence: there was a risk of leaks and if a public campaign developed pressing the plaintiffs to ask for more, the whole deal might collapse as the Treasury would resist the cost. Since it was an important part of the decision to accept the settlement offer that it should be recommended by the Plaintiffs' Steering Group and shown to be acceptable to the vast majority of plaintiffs, I can understand

that the Treasury may have felt that the announcement was premature. However, I saw it as being very time sensitive for the reasons I have explained. From the available documents, it looks as if the Prime Minister was on the side of pressing ahead with the announcement. The Steering Group's initial press release of 11 December was somewhat non-committal [DHSC0003654_029]. But it did confirm that the figures which they had put forward through their counsel on 9 November had been at a level they would be prepared to recommend to their clients. It was then understood that the Plaintiff's Steering Group would be coming out formally in favour of the proposals the next day.

4.54. The announcement on 11 December 1990 was made initially by the Prime Minister rather than by me [DHSC0003654_003]. This was because it was a high-profile change in a government policy, which his predecessor had recently defended. The policy would not have been changed had not the Prime Minister supported the change. Mr Major, as the Prime Minister, deserved the credit for this.

4.55. The Inquiry asks whether I was conscious of any change of approach arising from the change of Office Holders for those involved in these events: Prime Minister (Mrs Thatcher to Mr Major); Chancellor (Mr Major to Mr Lamont); Chief Secretary (Mr Lamont to Mr Mellor) and Health Secretary (Mr Clarke to me). I have addressed the comparison between Mr Clarke and me at paragraph 4.12. I believe that Mr Major was more sympathetic to a change than Mrs Thatcher would have been. I have no views on the relative attitudes of the different Treasury ministers, but Mr Mellor was clearly persuaded of the need for change. Whether Mr Mellor's acceptance came about from a degree of influence by me, from his own analysis and experience as a former health minister, or from a combination of these two I am not able to say. I have noted that he may have been influenced by his role as a former health minister.

4.56. Following the Prime Minister's initial announcement but still on 11 December 1990 I made a written statement to Parliament about the proposed settlement [DHSC0004415_036]. In that statement I remarked that we believed that:

> *"...our case is legally strong and that the plaintiffs would not succeed in proving negligence on the part of the Department of Health".*

I assume that I came to this conclusion on the basis of the legal advice that I had been provided as to the merits of the Department's case. Within this statement I also made clear that:

> *"... the Government have agreed that payments from the Macfarlane Trust will not affect entitlement to social security and other statutory benefits."*

I have no independent memory now of how easy or difficult this was to achieve. However, I note that paragraph 8 of my minute to the Prime Minister dated 7 December 1990 [HMTR0000002_019] stated that the Secretary of State (Tony Newton) had agreed that the agreed sum to be paid through the Macfarlane Trust would not be taken into account for social security purposes. It may have helped that Tony Newton was a former Minister of State for Health, well versed in the background. Certainly, the papers do not seem to show any insuperable difficulty being raised on the basic principle of Social Security disregard, although the papers show that the detail of this became more problematic later in the negotiations.

4.57. The Inquiry notes that the proposed settlement would have required the formal approval of individual plaintiffs and, in the case of minors, the Court. The Inquiry asks what, if any, steps the Department took to encourage individual plaintiffs to accept the proposed settlement. I would have understood that we needed the overwhelming majority of the plaintiffs to agree to the settlement, since otherwise it would not be drawing the litigation to a close and the Treasury would not have signed up to the settlement. But I would not have expected to have been involved in the detail of how this was achieved, as the contact with the plaintiffs would have been handled through the respective teams of lawyers in liaison with officials. From the available papers, it seems that some measures contemplated towards the end of the settlement negotiations, to encourage the remaining plaintiffs to accept, were not in fact adopted[5]. In

[5] I note that in Mr Dobson's submission of 15 April 1991, Mr Dobson raised the possibility that there may be a need to set up the Macfarlane Trust in 'shadow form' or press ahead with payments to non-litigants in order to demonstrate the Government's wish to make progress and to put further pressure

general terms, I would have expected Mr Collins and others who had contact with the plaintiffs' representatives to put the arguments shown in the papers: namely that the settlement was reasonable and the best practicable solution.

4.58. On the same day as the announcement, The Haemophilia Society published a Press Release [HSOC0012313]. The opening paragraph records their "grave disappointment" at the settlement level. I would not have had prior notice of the wording of a statement like this. While I cannot say that 'grave disappointment' was known to be their reaction, I would say that this kind of reaction would not have been unexpected. Mr Watters' statement went on to make a generous observation about the Prime Minister and me while repeating concern that the settlement "...has been so low". I did not agree with the Society because I thought that the settlement was a reasonable one in all the circumstances, or I would not have supported it. In that regard, it was particularly significant for me that the settlement offer was one which had come from the plaintiffs' own legal representatives. I believe I would also have taken into account the fact that the level of payments appeared commensurate with, indeed towards the upper end of, the response of other countries. The Society referred to the 'ongoing resistance' of the Government to settle the matter out of court. It is correct that the Society had been arguing for a settlement for many months. However, the previous policy to pursue to trial the defence of the litigation had merit and strong arguments behind it (as had been put by Mr Clarke and Mrs Thatcher). I can fully appreciate that this position must have been frustrating for the Society, and I have explained why my own wish was to settle if that was possible.

4.59. Mr Watters wrote to me on 22 January 1991 [DHSC0003657_011] outlining his thanks but also his disappointment as he felt that, whilst the vast majority of members of the Society would accept the settlement offer, they did so with disquiet and resignation as they felt that it would have been financially

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on the plaintiffs' solicitors. But he advised that the time had not yet come for that. [DHSC0020822_075]. Moreover, by 18 April 1991, Mr Dobson was advising against setting any kind of threshold for the number of plaintiffs who would have to accept before payments were made. He suggested that to do otherwise would seem to be grudging and delay payments [DHSC0003662_124].

impossible to fight on. I replied on 18 February 1991 [DHSC0003119_006] expressing my thanks for his generous comments and stressing my belief that the proposals were a fair and reasonable resolution. Looking at the second paragraph of Mr Watters's letter it strikes me as being understandable in its content bearing in mind the membership he was representing. Realistically, it would have been astonishing if the victims had not hoped for more because, as I said in my reply, "*no amount of money can ever fully compensate for the tragedy*". However, this was a litigation compromise based – ultimately - upon figures put forward by the plaintiffs' lawyers who were no doubt conscious of the risks that they faced in losing the claim altogether.

4.60. As to the question of the role that the Society played during the settlement of the litigation, they were representing and seeking to further the best interests of their members. As an organisation I would say that their views carried weight with government as they were a significant representative group. They were part of the public pressure and campaign that contributed to what I regarded as a correct change of government policy.

4.61. In the final paragraph of my letter of 18 February 1991 I responded positively to the Society's request for discussions on treatment and care of people with haemophilia by suggesting a meeting once the settlement was complete. I think it is probably right to say that this was the meeting that eventually took place on 12 November 1991; I cannot see from the available papers that there was another meeting in the intervening period. The briefing for the meeting on 12 November was sent to me on 11 November 1991 by Mr Burrage [DHSC0003594_029]. A note of the 12 November 1991 meeting is at [DHSC0002435_067]. My Private Secretary minuted Mr Canavan the day after the meeting, requesting that officials set in hand the work on the updated Health Circular which was to be conducted as a joint exercise and asked to be kept informed of developments [DHSC0020824_003].

4.62. The Inquiry asks me further questions about the briefing (in the form of Q&A) that was prepared by officials for the announcement of the in-principle

settlement [DHSC0003511_036] [DHSC0003511_039], [DHSC0003511_040], [DHSC0003654_079]. The Inquiry refers me to question (x) of the typed Q&A which was a proposed answer on the differentiation of the position of those persons infected with HIV through blood transfusions and transplants and those haemophiliacs infected through blood products. The answer referred to the fact that the Government believed that haemophiliacs were a very special category due to their serious hereditary condition prior to their infection. The "if pressed" further line suggested that people infected with HIV as a result of a blood transfusion/transplant were no different in principle from other groups of patients harmed as an unfortunate side effect of NHS treatment.

4.63. As I shall address later in this section, those infected through blood transfusions soon came to greater prominence because the campaigns shifted focus quite quickly onto extending payments to this group of HIV patients. Item B to Mr Canavan's early briefing to me of 6 November 1990 had identified the (then) 120 cases of HIV infection through blood transfusion including transplants as one of the "knock-on" effects if Department of Health/NHS liability was established in the haemophiliac litigation [DHSC0046962_182]. So I think it is fair to say that I was made aware very early of the cohort of NHS patients infected with HIV through blood transfusion. However, I think the papers also reflect that this was not nearly as high-profile an issue at this stage (December 1990) as it was to become in the subsequent months. I cannot really add to that. I find it impossible to assess – so long after the events – whether and to what extent I had alighted on this as an issue or the extent to which it may have been addressed in verbal briefings. I will address later in this statement whether action might have been taken sooner in relation to the blood transfusion HIV patient group.

4.64. I am asked to consider the reporting of the settlement in a number of contemporaneous newspapers. An article from The Daily Telegraph from 12 December 1990 [DHSC0032267_105] quotes me as saying:

"I suppose there were a number of fresh minds that came to look at this and that was what helped take things along"

Similar reporting is found in The Today newspaper of the same date [HSOC0022095] and in the Scotsman at [PRSE0001936]. I am sure that my reference to 'fresh minds' included Mr Major; it probably also referred to me and possibly Mr Mellor. Between us, we had changed the previous policy. Some of the papers report my comparing the UK policy favourably with other schemes internationally. However, the quote is reported differently: (i) "he hailed the settlement as the most generous in the world" (The Telegraph [DHSC0032267_105]); (ii) "which he claimed could lead to one of the most generous settlements for haemophiliac victims in the world ...." (The Scotsman [PRSE0001936]). The latter quote was, I expect, the more accurate. I have already explained that the Department's comparative analysis with other countries did indeed suggest that taken with the earlier Macfarlane payments, the UK settlement was one of the most generous (see paragraph 4.51, above).

4.65. The Inquiry also refers me to an article in The Sunday Times dated 16 December 1990 [DHSC0003655_032]. In that article I am quoted as saying that:

> *"[Mr Justice] Ognall's intervention certainly helped to knock people's heads together a bit. He crystallised what ordinary people had been saying."*

It was very unusual for a Judge to call both parties to consider a settlement in a case of such high profile in the way that he did, and in spite of his recognition of the legal strength of the Government's case. Even though the Government's response (before I was in post) was not to offer an immediate settlement, I think the papers reflect that this intervention did help to provide extra reason for both parties to settle. As the papers show, I ensured that he was informed in advance of our change of policy and received a courteous reply from him [WITN5288015] [WITN5288016]. I am not now in a position to calibrate exactly how much Ognall J's intervention led to the settlement but, consistent with my comments to the media, my impression was that it was a meaningful factor. On the Government side it helped to give greater emphasis to grounds for settlement that existed in spite of the strength of the legal defence; the reminder of the moral obligation was powerful. I suspect that for the plaintiffs' advisers, it

would have helped encourage realism and appreciation on the plaintiffs' side of the significant legal hurdles that they faced to gaining compensation through the Courts. My use of the phrase 'knocking of heads together' reasonably summed up the effect of the intervention.

The clinical negligence claims

4.66. Notwithstanding the proposed settlement, there was still the outstanding question of a number of claims for clinical negligence that the plaintiffs sought to continue against Regional Health Authorities ('RHAs'). The Inquiry has referred me to a significant number of documents in relation to this:

(1) Ministerial submission from Mr Dobson, 17 December 1990 [DHSC0003655_028];

(2) Ministerial submission from Mr Dobson, 18 December 1990; [DHSC0004523_114];

(3) Minute from Mr Alcock to Mr Dobson of 19 December 1990, indicating my response to Mr Dobson's submission of 18 December 1990; [DHSC0003655_018];

(4) Minute from Mr Dobson to Mr Alcock, 20 December 1990; [DHSC0003655_003];

(5) Minute from Mr Alcock to Mr Dobson of 3 January 1991, indicating my view on Mr Dobson's minute of 20 December 1990; [DHSC0020866_016];

(6) Minute from Mr Dobson to Mr Alcock, 11 January 1991; [DHSC0003657_102];

(7) Ministerial submission from Mr Dobson, 6 February 1991; [DHSC0004523_107];

(8) Annex to Mr Dobson's submission of 6 February 1991; [DHSC0004523_108];

(9) Minute from Mr Alcock to Mr Dobson indicating my decision on his submission of 6 February 1991 [DHSC0003658_078];

(10) Covering minute from Mr Dobson to my Private Secretary, Mr Ahearn, dated 18 February 1991 [DHSC0041209_128];

(11) Undated summary note entitled "HIV/Haemophilia Litigation: Position at 18 February 1991" [DHSC0041209_130];

(12) Undated summary note entitled "Detailed Issues: Background and Speaking Notes HA Involvement in Main Settlement" [DHSC0041209_129];

(13) Minute from Mr Dobson to Mr Ahearn, 25 February 1991; [DHSC0003548_015];

(14) Note attached to Mr Dobson's minute of 25 February 1991, entitled "Clinical Negligence Cases: Background and Speaking Note" (Flag A); [DHSC0003548_016];

(15) The letters (dated 7 February 1991 and 13 February 1991) annexed to the Note at [DHSC0003548_016]; [DHSC0002432_017] and [DHSC0003548_016];

(16) Note attached to Mr Dobson's minute of 25 February 1991, entitled "Other Issues: Background and Speaking Note" Flag B); [DHSC0003548_019];

(17) Note attached to Mr Dobson's minute of 25 February 1991, entitled "HIV/Haemophiliac Litigation, Position at 22 February 1984" (Flag C); [DHSC0003548_020];

(18) Minute from Mr Alcock to Mr Dobson, 27 February 1991, indicating my position in a meeting with Bruce Martin that day [DHSC0004523_054];

(19) Minute from Mr Dobson to Mr Powell, 27 February 1991 (although this was not sent to my Private Office, the inquiry notes that paragraph 1 related to my meeting with Mr Martin that day) [DHSC0004523_055].

4.67. The Inquiry refers me to the document entitled "Clinical negligence cases: background and speaking notes" [DHSC0003548_016] which was attached to Mr Dobson's covering note of 25 February 1991. That set out two broad options on co-ordination between the Department of Health and the HAs:

"5…(i) HAs would maintain their present coordinating machinery but would determine negotiating tactics on individual cases on purely commercial criteria (apart from the need to honour previous agreements with the Medical Defence Organisations to take into account the

reputations of the clinicians involved). The Department would distance itself from the further handling of the cases; or

(ii) HAs would through the coordinating machinery determine the initial negotiating position, and (in discussion with DH) the limit to the settlement they would be prepared to finance, on each case. If the HA solicitors were unable to reach agreement with the plaintiffs within these parameters, they would refer directly to DH for further instructions. DH would fund (by top-slicing from regional allocations) any additional amounts needed to reach a settlement within a total budget agreed with ministers."

4.68. On 27 February 1991, my Private Secretary noted that at the meeting with Mr Martin that morning, I had confirmed that we should go for option 5(ii) [DHSC0004523_054]. He went on to record that Mr Martin said that it should be possible to pursue this approach discreetly once it was made clear to the parties concerned what was intended.

4.69. Mr Dobson's minute of 27 February 1991 to Mr Powell of the legal division was not addressed or copied to my Private Office, and I have no recollection of this now [DHSC0004523_055]. However, I note that in the first paragraph of this minute it is recorded that I expressed a preference for:

"...DH to continue to be involved in determining the negotiating [tactics] on individual cases ... It was agreed that, if this option was not to encourage the plaintiffs to hold out in the expectation of much more generous settlements, the department's role should not be visible."

4.70. I think the reason for wanting the Department's role in the negotiations not to be visible and that its involvement should be approached discreetly is fairly clear from these documents. The concern was that if the Department was seen to be directly at the negotiating table, this was likely to encourage higher bids on the grounds that it would be perceived that the central Department had deeper pockets. At the same time, however, the Department undoubtedly did have interests in the clinical negligence cases. First, the Department was the

ultimate funder, even if the settlement and costs were met by the applicable Health Authority (because we funded the RHAs). Second, the RHAs were negotiating with the Department over an equitable way to split the damages settlement and the costs of these actions between themselves and the Department. So, the Department was going to be paying for some of the cost more directly (even if this might have to come from top-slicing of the RHA allocations). More fundamentally, there were wider political issues in play in these individual claims because of the policy imperative to seek a resolution to the litigation as a whole, with a strong preference that this be done to the same timescale. As paragraph 4 of the 25 February 1991 background / speaking note made clear,

> *"…the NHS had a corporate interest beyond the short-term interests of individual HAs in seeing an early end to the negotiations; and that although ministers may be best placed to articulate that corporate view, naturally they would want to take full account of the views of RHA chairmen in doing so."*

4.71. On account of the time that has elapsed, I cannot now remember directly any of these interactions with RHAs. Reading the documents now, I note that part of the central/regional interchange was about resources, and where they should come from. The RHAs were seeking to establish ground rules for costs, with their preference being to meet the costs up to a fixed ceiling of £1.8 million and for the Department to fund the rest. The Department could not countenance such an open-ended commitment as there was no 'new money'. The Department was seeking an arrangement whereby if the cost of settlement ended up exceeding that which the RHAs would have paid on a purely commercial basis, then it was that 'top-up' figure that the Department would finance. I regret that I have no notes, other material or recollections to draw on to take matters further than what can be seen in the written record.

Further discussions with the Treasury

4.72. The Inquiry refers me to the period beginning in March 1991 when there was a series of exchanges between me and Chief Secretary over how the HIV settlement would be funded. The Inquiry has drawn my attention to the following documents:

(1) Letter from David Mellor to me dated 11 March 1991 [DHSC0003659_032];
(2) Letter from me to David Mellor dated 25 March 1991 [DHSC0003660_007];
(3) Minute from FK Jones to Mr Dickson dated 27 March 1991 [HMTR0000002_064];
(4) Letter from David Mellor to me dated 28 March 1991 [CABO0000044_008];
(5) Minute from Mr Kendall to my Private Secretary Mr Alcock, 19 April 1991 [DHSC0003662_101];
(6) Undated draft letter from me to David Mellor [DHSC0041209_045];
(7) Letter from me to David Mellor dated 22 April 1991 [DHSC0003662_079];
(8) Ministerial submission from Mr Kendall to my Private Secretary Mr Alcock, 26 April 1991 [DHSC0041209_018];
(9) Minute from Mr Dickson to Mr Grice and the Chief Secretary dated 29 April 1991 [HMTR0000003_002];
(10) Letter from David Mellor to me dated 1 May 1991 [DHSC0003100_001];
(11) Undated letter from me to David Mellor [DHSC0003664_168];

4.73. The Inquiry specifically asks about the letter I wrote Mr Mellor on 25 March 1991 [DHSC0003660_007]. It appears that my, as well as Mr Lang's, understanding of the agreement of the Treasury differed from the understanding that Mr Mellor and/or his officials had formed. I had clearly understood that compensation costs and reasonable legal expenses for the plaintiffs (except for the negligence cases) would be funded from the Reserve. As I made clear in my letter, I could not defend meeting legal costs at the expense of patient care, especially when budgets were going to be under pressure. I was concerned that the line being

taken by the Treasury went against my understanding of what had been agreed. I would note, however, from my Treasury experience there are Treasury accounting principles that can seem harsh when first encountered. For example, it was generally the rule that funds not spent in one calendar year in a budget had to be surrendered back to the Treasury; similarly, an agreement to call on the Reserve in one financial year did not mean that it could automatically be carried over to the next year if the funds were not spent in the first financial year. Here, however, my understanding was that we had agreement from the 7 December letter that the sums would be "...probably spread between this year and next'. If the resources could not be found, then the settlement could not be paid. I doubted that the Treasury would allow that to happen, but while there was uncertainty on the funding it was problematic because final agreement could not be struck and indeed any final offers would have to become contingent upon Treasury approval.

4.74. Regarding KP Kendall's submission to my Private Secretary of 19 April 1991, [DHSC0003662_101], §6 of the submission not unreasonably concluded that the ways forward were very limited. Option (d) "in negotiation, to back out from the settlement offered to the haemophiliacs" was not a serious option as the author of the submission immediately recognised, *"... this "option" cannot be a serious one at this stage*". I read the use of quotation marks around the word "option" as indicating that this was an option only as a matter of theory – it would never have been seriously contemplated, and certainly not by me.

4.75. I am asked to comment on the difference between the draft letter [DHSC0041209_045] and the final letter as on sent on 22 April 1991 [DHSC0003662_079]. I agree that paragraph 3 of the draft letter does not appear in the final sent version. Paragraph 3 makes reference to the fact that if the Department unexpectedly underspent on its programmes then the spare Departmental resource could go towards funding the settlement. However, if this did not materialise then I wanted assistance from the Treasury in funding the settlement via the Reserve. I have no independent recollection of why paragraph 3 was not included in the as–sent letter. It is a reasonable inference

that I wanted a tougher negotiating position than officials. That is perhaps borne out by the fact that Mr Dickson saw fit to advise Mr Mellor in his submission of 29 April that, "… *we understand that Mr Waldegrave feels strongly about it*" [HMTR0000003_002].

4.76. In that same submission, Mr Dickson noted that the Treasury resisting the use of the Reserve immediately entailed a risk that payment to the Macfarlane Trust could be delayed, threatening the goodwill gained from agreeing the settlement (§10). The Inquiry asks if it was my opinion that this course by the Treasury could cause such delay. I did consider that this could have caused delays. Mr Dickson's minute makes it clear that I was very angry about this (as above, "… *we understand that Mr Waldegrave feels strongly about it*", and, "*Mr Waldegrave has not responded well to this suggestion and believes that you are going back on an earlier commitment*"). The language about my strength of feeling is unusual, I would say, for an official Treasury minute. I think I certainly made myself clear and my views known on this.

4.77. I would however add this. While it may look as if Mr Dickson was arguing for the hard line, reading between the lines, it may be that he was advising (or at least giving every opportunity) for the Chief Secretary to retreat; his final paragraph restates the risks rather than the benefits of the proposed course of action. It can be read as Mr Dickson saying that the fiscal rule book suggests withholding use of the Reserve but before we deploy that line, Chief Secretary needs to confirm that he is really prepared to run the risks this entails. Again, that is an observation with hindsight based on my own Treasury experience – I would not have seen this at the time.

4.78. In any event, Mr Mellor (to my mind unsurprisingly) agreed to the access to the Reserve as set out in his letter of 1 May 1991, 'for a maximum of £47 million' [DHSC0003100_001]. I cannot speak for Mr Mellor as to his reasoning in taking this line. However, he was, in my experience, a sensible Chief Secretary and this was the sensible decision to make.

4.79. I wrote in response to Mr Mellor's offer of £47 million from the Reserve; the available version does not appear to be dated [DHSC0003664_168] but was based on a version provided to me in draft on 9 May 1991 [DHSC0003664_150]. The unredacted version bears my signature so it certainly should have been sent, and it ought to have been issued on or shortly after 9 May 1991, depending on precisely when the submission was physically put to me for approval.

4.80. As the offers and payments commenced so quickly after agreement with the Treasury, the Inquiry asks if delays to the payments were caused by the internal governmental negotiations. It does not look to me from the papers that delays were caused by this exchange or the negotiations about access to the Reserve. A minute from my Principal Private Secretary to Mr Kendall dated 30 April 1991, shows that he had "chivvied" the Treasury the previous day, and that I was "*...not prepared to delay sorting this out much longer*" [DHSC0041209_010]. The next day, Mr Mellor did indeed reply with the positive response to which I have already referred. Therefore, it seems to me that Mr Mellor's decision avoided delays that would very likely have ensued had he not conceded on the access to the Reserve. There is reference within the papers to delays on the part of the plaintiffs' lawyers but I am not in a position to judge whether or not that was objectively the case.

4.81. The Inquiry raises the reference in my undated May letter to the fact that the total costs of settlement would "almost certainly" exceed the initial estimate. It is correct that my letter to Mr Mellor dated 2 December 1991 [DHSC0002921_009] makes this point. The same letter makes the comment that I had "topped up the haemophiliacs money by £3million because numbers and costs were higher than expected." That suggests that the balance was found from within the Department of Health's existing budgets, but I do not now recall from which budget, or with what other savings, we were able to manage this.

4.82. The Inquiry asks if I have any further comment on the discussion I had with the Treasury. I would only comment that these sorts of exchanges between the major spending departments and the Treasury were not uncommon. It was normal for a spending minister who believed in the value of their department's programme to seek to maximise Treasury funding when new spending needs arose – they would naturally want to avoid squeezing their existing spending. It was equally the job of the Chief Secretary to question and push back on behalf of the taxpayer, but to concede when the case was good and fitted with the government's priorities. The relationship between a major spending department and the Chief Secretary is always one of a continuing haggle, with both sides using the best arguments they can find. But as is clear from Mr Dickson's minute, any justified accusation of bad faith would be a serious matter, as departmental relations between great spending departments and the Treasury are a matter ultimately of continuing trust.

<u>The negotiations leading to the final settlement terms</u>

4.83. The Inquiry refers me to the fact that representatives of the Department and other Central Defendants in the litigation negotiated with representatives of the plaintiffs about the terms of the final agreement in the months following the announcement of the agreement in principle in December 1991. The Inquiry has drawn my attention to a series of documents relating to these negotiations:

(1) Mr Heppell's minute to Mr Alcock, 14 December 1990 [DHSC0003664_173];

(2) Daily Mail article, "Anger over AIDS payout delays for NHS victim, 8 April 1991 [DHSC0003661_066];

(3) Covering minute and briefing provided to me on the Daily Mail article, 8 April 1991 [DHSC0006473_049];

(4) Letter to me from Jack Ashley MP, 11 April 1991 [DHSC0014965_093];

(5) Sunday Times article, "Red tape holds up £42m Aids payout", 14 April 1991; [DHSC0002433_108];

(6) Minute from Mr Dobson to Mr Alcock on the Sunday Times article, 15 April 1991; [DHSC0020822_075];

(7) Briefing for No. 10 Downing Street, 15 April 1991; [DHSC0041209_050];

(8) Minute from Mr Dobson to Mr Alcock, 17 April 1991; [DHSC0003662_109];

(9) Draft letter A attached to Mr Dobson's minute of 17 April 1991; [DHSC0003662_110];

(10) Draft letter B attached to Mr Dobson's minute of 17 April 1991; [DHSC0003662_111];

(11) Letter from Mr Thompson (the Department's Senior Solicitor) to the Editor of the Sunday Times, 17 April 1991: [DHSC0003661_008];

(12) Covering minute from Mr Dobson to Mr Alcock concerning the submission of 19 April 1991; [DHSC0003662_089];

(13) Ministerial submission from Mr Dobson, 18 April 1991; [DHSC0003662_124];

(14) Annex A to Mr Dobson's submission of 18 April 1991; [DHSC0003662_091];

(15) Mr Alcock's minute to Mr Dobson, 22 April 1991; [DHSC0003662_080];

(16) Minute and "Best Points" provided by Mr Burrage to No. 10 Downing Street, 23 April 1991; [DHSC0003560_048];

(17) Minute and briefing provided by Mr Burrage to the Leader of the House, 24 April 1991; [DHSC0003662_065] and [DHSC0003658_015];

(18) Letter to me from John Gorst MP, 30 April 1991 [DHSC0014965_021];

(19) Letter from Mr Powell (Department Solicitor) to the Solicitors for the Plaintiffs, 1 May 1991, attaching correspondence and the Main Settlement Agreement [HSOC0023174];

(20) Hansard, 3 May 1991 [DHSC0032157_112];

(21) My response to Mr Ashley's letter, 20 May 1991 [DHSC0014965_092];

(22) Hansard, 10 June 1991 [DHSC0002451_011].

4.84. I would not have been involved in the details of the negotiation. My expectation would have been to be advised if there were any important difficulties arising. Mr Dobson's minute to Mr Alcock of 18 April 1991 [DHSC0003662_124] is an example of exactly that occurring. He updated me on the position reached on the negotiations and provided me with a list of the main issues that were outstanding.

4.85. As was conventional, briefing would also have been provided if media articles raised new points or allegations. Mr Canavan's minute of 8 April 1991 to Mr Ahearn in my Private Office is an example of that, as he was addressing the Daily Mail's allegations of government delay [DHSC0006473_049]. It would have been natural, and I think correct for me to ask whether there was any substance in a media accusation of this kind. It is certainly not unknown for the media to uncover failings in a department.

4.86. The Inquiry asks whether there were other matters on which I ought to have received further information. It is impossible now to say what additional unknowns I might have been unaware of.

4.87. The Inquiry invites my observations on the allegations that payments were being unduly delayed by government actions or "red tape"; and more generally on the time taken to reach the terms of settlement.

4.88. The records show that I sought – and received – reassurance that the Department was not causing delay. Mr Ahearn annotated the Daily Mail article of 8 April with the observation,

> *"J Canavan – advice please, by 12 April. SofS is reasonably relaxed as he does not think the claims [of undue delay] have any substance but he seeks reassurance."* [DHSC0004366_069]

The observation that I was "*reasonably relaxed*" is only made in the context that I did not believe that there was substance to the criticism about delay. That would have been my genuine understanding at the time. I was of the opinion that the Department was committed to following through with its

promise to pay for the settlement in the terms agreed. But I wanted the accusation checked.

4.89. The briefing note in response from Mr Canavan to Mr Ahern dated 8 April 1991 [DHSC0006473_049] was clear. The headline response on the line to take was that:

> *"There has certainly been no delay by civil servants or Government lawyers. There have been numerous exchanges at meetings, by letter and by telephone between Government lawyers and members of the plaintiffs steering committee. But this is a complex settlement and, understandably, both sides want to be satisfied that it is right before it can be concluded".*

The background note gave what seems to me to be reasonably convincing explanations of the time payments were taking (see further paragraph 4.92, below). The same can be said of Mr Dobson's response to my Private Office (with copy briefing supplied to No. 10) sent on 15 April 1991 in response to the Sunday Times' article of the previous day [DHSC0020822_075] [DHSC0041209_050].

4.90. It was in the interest of the Department to get the money paid as soon as possible, both for humanitarian reasons and because the funding from the Reserve could not be carried automatically over the year end.

4.91. I note that in Mr Dobson's minute of 15 April 1991, paragraph 4 reflects an idea that seems to have been put forward by me that a government lawyer should put the Department's side of the story. Mr Dobson's advice was against this on the basis that,

> *"…although I think we have a good story to tell, on this issue the public is not disposed to believe the government's case. I suggest that the best course would be for ministers to say in general terms that*
>
> *a. the government has done all it can to speed the settlement*

b. *given goodwill on both sides payments could begin within a couple of weeks [ie within days of the Court hearing on 1 May]*

but to avoid getting drawn into matters of detail."

I would note that Mr Dobson's comment that "*I think we have a good story to tell*" is in an internal minute to my Private Office. I have no reason to doubt that this reflected officials' genuinely held belief that there had not been undue delay. In the event, it seems that the Department's senior lawyer Mr Thompson did write to the Sunday Times: [DHSC0003661_008]. So long after the events, I am unable to recall why it ended up being decided that Mr Thompson should write to the Sunday Times, notwithstanding Mr Dobson's written advice of 15 April; but I do not think he would have been asked to write unless we were confident that there was a clear and proper basis to deny delay by the Government.

4.92. As to why it took the time it did to reach the settlement, the same contemporaneous papers (such as the background section to Mr Dobson's minute of 8 April) are the best explanation for this. He stated,

"On 11 December 1990 the Government agreed in principle to proposals costing £42m put forward by the plaintiffs' lawyers. Since then the detailed terms of the settlement have been under discussion with the plaintiffs lawyers. The main items have been the legal form of the settlement document, the deed for the new Macfarlane Trust which will make the payments, definitions of categories of plaintiff, the social security disregard, questions whether allegations of a general nature can be used by the plaintiffs in medical negligence cases. Particular problems arose over the social security disregard where the plaintiffs asked for additional disregards. A compromise has now been put to them. The medical negligence issue seems to be the main focus of the allegations in the 'Daily Mail' article and is covered below.

In the course of the discussions, Departmental lawyers have met members of the plaintiffs' steering committee of solicitors on at least 7 occasions, including appearances at court. There have been much

written correspondence and numerous telephone calls. The discussions are almost complete.

As part of the terms of settlement all claims will be discontinued save those that involve allegations of medical negligence against a specified doctor (eg that he prescribed an unsafe product at a time when a safer one was available). Discussions have taken place to limit the allegations that can be continued in this way so that no allegations of a more general nature are brought into such cases by the back door. The type of allegations that will be allowed to continue of (sic) almost been agreed by counsel for the plaintiffs.

Recently it became clear that plaintiffs solicitors had done little work in categorising their clients for payment purposes and marshalling the supporting evidence. The onus is on them to bring this to a satisfactory state and payments can only be made after this work is complete. It is hoped that a Court hearing can be held on 1 May to finalise the settlement." [DHSC0006473_049].

Beyond what was being said at the time in this and similar contemporaneous minutes, I think I can only give broad observations based on my general experience. While I am sure it is always possible to do things more quickly, my experience of complex legal matters is that if care is taken, time is also taken.

4.93. I would make one further general observation. It is a great pity that minutes like that from Mr Heppell to my Private Secretary of 14 December 1990 are shown in such a way that it is not clear whether my Private Secretary showed it to me, or whether I had any comments on it if he did [DHSC0003664_173]. Consistent with what I have set out in paragraph 2.9 above, I would assume that a minute of that kind addressed to 'you', my Private Secretary ("*This is to keep you up with the state of play*"), is leaving the judgement to him as to whether he showed it to me. In all probability he would have done but of course now I have no memory of this one way or the other.

4.94. The Inquiry raises:

(1) The condition of settlement whereby those seeking payments (unless they had outstanding clinical negligence claims) had to undertake not to bring fresh proceedings against the Defendants or any other government department in respect of HIV or viral hepatitis infection arising from the use of blood products or cryoprecipitate administered before 13 December 1990 [HSOC0023174];

(2) The fact that those accessing funds from the Macfarlane (Special Payments) (No.2) Trust were required to sign a waiver to similar effect. [MACF0000086_225].

4.95. When I first considered the Inquiry's request for a statement, and thought about my independent recollections without reference to the contemporaneous documents, I had no recollection of this issue or of it being specifically drawn to my attention. Additionally, from the available papers, the detail of the undertaking (and specifically that it came to cover hepatitis infection) does not appear to have been drawn specifically to my attention or raised for a Ministerial decision. Notably, it did not feature at all, as one of the main issues outstanding on the detailed settlement, in Mr Dobson's submission of 18 April 1991 [DHSC0003662_124][6].

4.96. I am asked what knowledge I had of these provisions. The papers show that the general concept of a waiver of litigation rights was touched upon in some of the submissions that came to me: see for example paragraph 5 of Mr Dobson's submission of 17 December 1990 [DHSC0003655_028] and paragraph 8 of his further submission of 11 January 1991 [DHSC0003657_102]. The only comments I can meaningfully make on this are from my general experience:

(1) I think it would have been generally understood that the purpose of the settlement was to draw the litigation to a close. It was in the nature of an out of court settlement to end the litigation aspect of the dispute. In that context, I would not understand it to be unusual to include a term preventing further future litigation, or that non plaintiffs being given an ex

[6] For completeness, I note that it was not referenced in the submission / situation report of 22 March 1991 either [WITN5288017]

gratia payment would, in consideration of such a payment, also waive their future litigation rights. Hence references such as that in Mr Dobson's submission of 17 December 1990 would not, I think, have struck me as surprising. When touched upon in submissions, the concept of a waiver was not being raised as being anything unusual or controversial.

(2) If the precise nature of such a provision was a significant hurdle in the negotiations then I would have expected to have been told that was the case. It does not appear that I was so informed. I assume (but cannot comment further from my own direct knowledge) that this was because the provision was not raised as a major area of disagreement.

(3) If this was a problematic element of the agreement for the plaintiffs' side, the plaintiffs would presumably have been advised about it by their own lawyers. I have no insight into any discussions that took place between the plaintiffs and their lawyers.

Settlements in Scotland and Northern Ireland

4.97. I am referred to a number of documents concerning the settlement of the Scottish and Northern Irish Haemophilia / HIV Litigation:

(1) Letters from AJ Tyler of Balfour and Manson Solicitors to me [MACK0000111] and to the Secretary of State for Scotland (Ian Lang) [PRSE0003064] dated 12 December 1990;

(2) Minute from GW Tucker to PS/Secretary of State for Scotland (dated 14 January 1991 [SCGV0000231_033];

(3) Letter from Ian Lang to me dated 17 January 1991 [DHSC0003660_009];

(4) My letter to Ian Lang dated 30 January 1991 [DHSC0003660_010];

(5) Letter from David Mellor to Ian Lang dated 31 January 1991 [DHSC0003657_019];

(6) Letter from Ian Lang to David Mellor dated 15 February 1991 [HMTR0000002_045];

(7) Draft Minute of October 1991 [SCGV0000235_143].

4.98. I am asked about the extent to which I consulted the Secretaries of State for Scotland and Northern Ireland before accepting the agreement in December 1990. I have addressed my general recollection of liaison with the territorial departments in Section 2 of this statement, see paragraph 2.13, above.

4.99. Officials would, I hope, have co-ordinated with their territorial opposite numbers. In addition to that, looking at it now, I expect that I would have had some informal contact with Scottish, Welsh and Northern Irish Secretaries of State but I cannot assert that I did in fact do so, and I have no positive memory of it now. I note that the surviving records show that the focus of consultation – which was fast-moving - was between my Department, No. 10 and the Chief Secretary to the Treasury. The papers show that the English legal cases were more advanced than those in the other countries; but that the assumption was that we would proceed on a UK wide basis. Unless I was informed to the contrary by my officials, I think I would have assumed that this was acceptable to the other territorial departments.

4.100. The draft minute of October 1991 was internal to the Scottish Office [SCGV0000235_143]. Paragraph 7 of the draft minute suggested that the settlement announced by the Prime Minister on 11 December 1990 had been arrived at without "our" (i.e. Scottish Office) knowledge of the terms and without the involvement of the Solicitors representing the Scottish Steering Group. As against that,

(1) Ian Lang's letter to me of 17 January 1991 did not in terms make any complaint about lack of consultation between my Department and his [DHSC0003660_009].

(2) My statement of 11 December 1990 included the comment that, "*The Government would apply the outcome of any settlement to all parts of the United Kingdom*". I would have expected that to have had at least some level of clearance from the territorial departments.

(3) Ian Lang's letter to David Mellor of 15 February 1991 refers to his understanding of what was agreed at the time of the December 1990 announcement [HMTR0000002_045]. That perhaps is some indication

that the announcement was not made wholly without liaison with his department.

However, I think it also fair to interpret my own letter to Mr Lang of 30 January 1991 as indicating my strong belief that the terms of settlement would need to be the same for all plaintiffs (English and Welsh, Scottish and – by extension - Northern Irish), even though the in-principle agreement was one that had been reached in the English and Welsh litigation negotiations [DHSC0003660_010]. See too my comments on Mr Lang's letter of 17 January as conveyed to Mr Dobson by my Private Secretary on 21 January 1991 [DHSC0041437_058] and Mr Canavan's minute of 25 January 1991 [DHSC0003657_026]. I think it was realistic to have concerns that if the Scottish settlement differed from that in England – even if only on the basis of allocation of funds to different categories rather than the overall sums provided – this might have re-opened the whole issue. I clearly thought that there would be a risk of English litigants being worse off than Scottish litigants in the same category rejecting the settlement, and the same in reverse for any Scottish litigants worse off than English litigants in the same category. Reading the documents now, it appears that I could see the sense in permitting a little longer for Scottish litigants to take advice given that their litigation was not as far advanced, but I wanted to avoid the risk of divergence in the settlement terms.

4.101. While I do not recall this issue having prominence, I expect that we could have handled this better, and I include myself in that. Certainly, from the records to which the Inquiry has directed my attention, there would appear to have been little formal involvement of the Scottish and Northern Ireland Offices early in the process. I can only assume that this arose because the English cases were more advanced, and perhaps because of the fast-moving nature of the liaison between the Department, the Treasury and No 10 to secure the settlement. I cannot imagine that any conscious decision would have been taken not to involve the Scottish and Northern Ireland Offices. But from the records I have been shown, perhaps we should have involved them earlier, having regard to their own litigation and the plaintiffs involved there; but I think it very likely there were informal discussions between Secretaries of State.

4.102. The Inquiry raises three further aspects here.

4.103. First, I am asked about David Mellor's letter of 31 January 1991, which the Inquiry describes as hinting at a reversal of the Treasury's position of allowing access to reserve funds for the devolved schemes [DHSC0003657_019]. I do not now recall this suggestion of (specifically) the Scottish Office absorbing the Scottish litigation costs from their own existing budgets as something that caused particular problems or any delay in the negotiation; I am afraid I simply have no independent memory of this now. I have addressed the further exchanges with the Treasury leading to Mr Mellor's letter of 1 May 1991 and my reply at paragraph 4.78, above.

4.104. Second, I cannot recall whether I in fact received any letter from Mr Lang as was being suggested in the draft minute of October 1991 [SCGV0000235_143]. I am advised that the Inquiry has disclosure of the surviving records and I understand that electronic searches have not revealed a surviving copy of any such letter from Mr Lang to me. It may be that this issue was instead raised at officials' level. I understand that there was an exchange of letters on this issue between Mr Tucker from the Scottish Office and Mr Dobson from the Department of Health on 9 October [SCGV0000235_139] and 11 October 1991 [SCGV0000235_130]. I have not seen any documents showing that this came to me for decision, and I cannot therefore say what my position on Scottish Category G claimants was at the time. Looking at it now, there seems to me to be force in the points which Mr Tucker was making, and I note that Mr Dobson's reply was supportive of the compromise approach Mr Tucker had put forward.

4.105. Third, I am asked what role or influence the Welsh Secretary, David Hunt, or the Welsh Office had in the settlement of the HIV litigation. I think it is fair to say that my and the Department's approach was principally driven by English concerns. But my general sense now is that territorial ministers were supportive and think it likely there were informal Secretary of State level contacts.

HIV Transfusion Scheme

4.106. During the period when I was Secretary of State, we were eventually successful in extending the payment scheme for haemophiliacs infected with HIV under the Macfarlane Trust, to those infected with HIV through blood transfusions under what became the Eileen Trust. A turning point in this was my approach to the Treasury in December 1991, a little short of a year after the announcement of the in-principle decision to settle the HIV litigation. I argued at that stage that we should recognise the needs of those infected by HIV through blood transfusions in the same way as we had recognised the needs of haemophiliacs infected through clotting factors.

4.107. The Inquiry asks me first to consider a number of letters, articles and government papers in the period before I approached the Treasury in December 1991:

(1) Letter from Brian G Donald of J & A Hastie Solicitors dated 18 December 1990 [DHSC0003657_119];

(2) Letter from John Marshall MP to Sydney Chapman MP dated 8 January 1991, copied to me [DHSC0042272_145];

(3) Letter from Robin Cook MP dated 31 January 1991 [DHSC0002850_004];

(4) My reply to Mr Cook dated 7 March 1991 [DHSC0003560_032];

(5) Letter from Allen McKay MP dated 30 April 1991 [DHSC0014965_101];

(6) The Times newspaper article dated 11 May 1991 [DHSC0006473_028];

(7) Letter from Rosie Barnes MP dated 13 May 1991 [DHSC0002882_002];

(8) Letter from Graham Ross of J. Keith Park & Co. Solicitors dated 16 May 1991 [SCGV0000237_173];

(9) Letter of Virginia Bottomley to Graham Ross dated 6 June 1991 [DHSC0002879_002];

(10) The Observer. newspaper article dated 26 May 1991 [HSOC0001454];

(11) Letter to Miss SM Edwards dated 26 May 1991 [DHSC0002863_005];

(12) Hansard, 18 June 1991 [HSOC0001432];

(13) Covering Minute and briefing for No. 10 Downing Street from Mr Burrage, DH dated 24 April 1991 [DHSC0003560_046], [DHSC0020822_051] and [DHSC0002872_011];

(14) Submission and draft Minute from Mr Kendall to Mr Sands (Private Secretary to Virginia Bottomley, Minister of State for Health), 20 May 1991 [DHSC0003406_004] and [DHSC0003355_008];

(15) Minute from Mr Jex to Mr Alcock, 22 May 1991 providing the submission of 20 May 1991 to the Minister of State for Health to me, with a request for my views [DHSC0003663_014];

(16) Minute from Mr Jex to Mr Kendall, 27 June 1991 [DHSC0006927_065] .

4.108. The Inquiry asks how much I knew about the position of the "non-haemophiliacs" who had developed AIDS before I received the correspondence referred to above. I am afraid that I find this impossible to answer. Because the haemophiliac HIV litigation was in a relatively advanced position and because I wanted to change policy in relation to it, it was my immediate focus and the focus of the submissions coming to me from officials. I have already referred to the early briefing from Mr Canavan dated 6 November 1990. I have also referred to the fact that Item B to that briefing identified the (then) 120 cases of HIV infection through blood transfusion including transplants as one of the "knock-on" effects if the Department/NHS liability was established in the haemophilic litigation [DHSC0046962_182]. So, I think it is fair to say that I was made aware very early of the cohort of NHS patients infected with HIV through blood transfusion. However, so long after the events, I am not able to give any kind of timeline as to how my knowledge of the blood transfusion cases developed. Looking at the papers now, it is clear that one effect of the announcement of the December 1990 in-principle settlement for haemophiliacs infected by HIV was to emphasise by contrast the case of those infected by blood transfusion. As the contemporaneous documents make clear, pressure soon mounted for something to be done for HIV infected blood transfusion recipients and the issue took on greater prominence. I note, for example, that on 14 January 1991, my Private Secretary was sent a background brief and line

to take in relation to the letter from John Marshall to Sydney Chapman[7] dated 8 January 1991 [DHSC0042272_145]; [DHSC0042272_142] and [DHSC0042272_143]. It can be seen that I had annotated John Marshall's letter and asked for urgent advice on the point concerning blood transfusion patients infected with HIV. See, similarly, the minute from Mr Dobson to Mr Chinque dated 29 January 1991 with a briefing for me on the HIV infected blood transfusion patients, again in the context of Rosie Barnes' Bill [DHSC0002431_013]. As I shall address below, I asked for a further submission in April and again in May 1991.

4.109. Those infected with HIV by blood transfusions were not immediately treated the same because the payments to haemophiliacs infected by HIV arose out of their group litigation, which was high-profile, and when I became Secretary of State we were at a crossroads, having to decide whether to fight the case to Court (Mrs Thatcher's preference) or agree a settlement (my preference, and ultimately that of Mr Major as well). Initially the view was any settlement reached in relation to haemophiliacs infected with HIV should be ring-fenced and treated as an exceptional case. The argument that was said to distinguish the two categories was articulated in the Question and Answer briefing on the announcement of the haemophiliac settlement:

> *"Q. What about people infected with HIV through blood transfusion/transplants?*
> *A. The Government believes that the haemophiliacs are a very special category, because they were already affected by a serious hereditary condition before their tragic infection with HIV. (If pressed: people infected with HIV as a result of blood transfusion/transplants are no different in principle from other groups of patients harmed as an unfortunate side result of NHS treatment.)"* [DHSC0020296]

4.110. The early concern that providing payments to the blood transfusion patients would be moving closer to no-fault compensation was heightened by the

[7] Sydney Chapman was a Government Whip who would have been involved in the response to Rosie Barnes' Bill.

Parliamentary Bill, originally introduced by Harriet Harman and then taken up by Rosie Barnes, for the award of compensation for mishaps during NHS treatment without having to prove negligence. As it was put in a briefing to me on that Bill,

> *"If an exception were to be made for blood transfusion recipients, there would be many other people who could mount an equally good case, eg people who have been injured as a result of medical accidents or as an unintended side-effect of medical treatment. Any extension beyond haemophiliacs would make it harder to resist general "no fault" compensation for medical accidents and would undermine the Government's stance on the Rosie Barnes bill." (29 January 1991,* [DHSC0041437_018]

As a matter of policy, we saw very great difficulties with no-fault compensation: see my memorandum of 12 December 1990 for the Cabinet Home and Social Affairs Committee (MS(90)(2)) [WITN5288018]. The costs were not the only objection to no-fault compensation but they had been estimated at as much as £300-£400 million (though estimates varied), not including all the administrative costs of running such a scheme.

The Inquiry refers me to John Marshall MP's estimate in his letter of 8 January 1981 that the cost of treating those infected with HIV through blood transfusions '… would be slight – about £15 million.' [DHSC0042272_145]. I am asked if this was my understanding of the potential liability at the time. I cannot say now what my understanding was at that stage (January 1991) of the likely cost. From within the available papers, I note that Virginia Bottomley answered an oral PQ from Gavin Strang on Monday 20 January 1991 (PQ 747). The briefing papers for that PQ included that the cost of extending the payments to those infected through blood transfusions, "*…is not insignificant, and could exceed £10 million…[This overlooks the possible consequences if others regard it as a precedent]".* In the notes for supplementary questions, it was said that, "*The cost is not insignificant. For example, it equates to the cost of eg 1,000 kidney transplants or 500 heart transplants or 300 bone marrow transplants. [Arguments that the cost would be small overlook the possible consequences*

if others were to regard it as a precedent.]" [DHSC0042274_086]. I cannot reliably state now whether I would have been directly aware of this in January 1991 but certainly it would seem that the Department view at the start of 1991 was that the cost could exceed £10 million and that figure was used in some subsequent correspondence. In later submissions, the range was: (i) £1.8m - £5m if limited to domestic transfusion cases, or £3.6m - £10.2m if including all transfusion cases with £3m-5m the most likely cost 'depending on assumptions' (23 April 1991 submission); then (ii) £6m-10.5m (31 May 1991 submission).

4.111. The Inquiry asks about my reply to Robin Cook dated 7 March 1991, and what steps I and the Department had taken to overcome the difficulties involved in distinguishing between those transfused in the UK from those transfused abroad; and between those who were abroad working for a company and those who were on holiday; and the difficulty of validating claims. The available papers do not suggest that options on these specific points and how they might be overcome had come to ministerial level. I have no memory of that now and I cannot say whether officials had started considering how those distinctions could be tackled if the in-principle decision was changed. Looking at the reply as a whole, I think it is plain that at this stage, our stance on resisting the extension to blood transfusion patients was principally based on the central concern that they were in no different position from other groups of patients harmed as a result of NHS treatment. Rather than difficulties that needed to be "overcome", the difficulties of distinction to which the letter alluded, and about which the Inquiry asks, were I think being used as illustrations of the difficult cut-off decisions that would need to be made if the in-principle decision was changed.

4.112. The Inquiry asks about the effect of the campaign in the national newspapers. The reality is that our policy of seeking to ring-fence the special payments scheme for haemophiliacs infected with HIV and distinguishing them from blood transfusion cases was failing to convince. I am sure that media coverage helped us to come to see that was the case. What is far more difficult to recall is my own thinking at this stage of the chronology. As I address below, I came to

press the case for the extension of the payment scheme to those infected by blood transfusion. Reflecting on matters now, I suspect that I may have thought that if I had tried to add the transfusion cases to the haemophiliacs' settlement at the beginning, I might fail to get a settlement for either group; whereas we might succeed on the haemophiliacs settlement alone and could try to come back to the transfusion cases later.

4.113. The Inquiry asks about the reference to the Canadian Government's approach in Rosie Barnes' letter to me of 13 May 1991 [DHSC0002882_002]. It was Virginia Bottomley who replied to that letter: see the response sent on 29 May 1991 [DHSC0002882_001]. On the Canadian Government's approach, Mrs Bottomley said that,

> *"Although Canada has decided to make provision which includes infected blood transfusion recipients, other countries have made no provision at all for any of those infected with HIV as a result of medical treatment. Countries differ in their approach to social benefits, health care and other matters and make decisions in the light of their particular circumstances."*

Although I cannot recall the specifics now, this reply suggests that the ministerial team was aware – at least in general terms – of the Canadian approach, and that there was a variety of approaches being taken in different countries.

4.114. The Inquiry also asks about Virginia Bottomley's reply to Graham Ross of 6 June 1991, and specifically whether this would have been seen and approved by me. [DHSC0002879_002]. I cannot say for certain, but I doubt that the reply would have been seen or specifically cleared by me because it was maintaining what was – at that stage – our established current policy. The minute seeking clearance was dated 5 June 1991 and appears on its face to have gone to Mrs Bottomley's Private Secretary and not to mine [DHSC0003642_037]. I would note that a further issue raised by Mr Ross concerning the difficulty of bringing court cases relating to transfusion cases of HIV because of donor anonymity,

was initially put to Mr Dorrell but then raised with me, and this appears to have been another part of the overall mounting pressure to change the policy.[8]

4.115. More generally, I would note that we were under no misapprehensions in this period about the difficulty of ring-fencing the payment scheme offered to haemophiliacs. We knew that there were forceful arguments that the blood transfusion patients should be treated in the same way. These arguments had been foreseen and raised as part of the argument against settling the haemophiliacs HIV litigation. However, having succeeded in winning the argument over settlement of that litigation, including gaining permission from the Treasury in the face of very considerable concern about setting a precedent for no fault compensation, there was little real alternative in practice other than, initially, to try to hold the line. The correspondence in 1991 shows us trying to do that. We were not seeking to hold the line out of ignorance of the contrary arguments, nor from any lack of sympathy for those infected with HIV from blood transfusions. It was also something that we were keeping under review:

(1) On 22 April 1991, when I agreed to the sending of the Government's final offer on the HIV Litigation, I had asked for a detailed note on the position of non-haemophiliacs infected with HIV; [DHSC0003662_080]. Mr Dobson provided that note on 23 April 1991 [DHSC0003560_051]. £3m-5m was the most likely cost of extending the scheme 'depending on assumptions' (fuller ranges were set out in the annex (£1.8 - £10.2m). But Mr Dobson stressed that the real difficulty would be to re-establish a credible ring fence if the payment scheme were extended. He also noted the Treasury would strongly resist and might even accuse the Department of bad faith in even considering it. My Private Office responded on 25 April 1991 noting that,

> *"The Secretary of State has seen your submission of 23 April and agrees that we need to hold the line on these cases. He has added that we must emphasise the more complex history of what caused these tragic cases and say that the NHS cannot be*

[8] Submission Mr Canavan to Mr Dorrell's Private Office 13 August 1991 [DHSC0003641_004] and note from his Private Office to mine of 19 August 1991 [DHSC0046973_035]

pushed into taking general responsibility for cases like this." [DHSC0002433_058]

The CMO later noted his concern about "spread" to hepatitis cases of various sorts (29 April 1991) [DHSC0002862_006].

(2) However, the papers suggest that we kept looking at the issue. Little more than a month later, a submission of 31 May 1991 from Mr Canavan to my Private Secretary shows that I had again actively sought a note setting out the pros and cons of extending payments to blood transfusion recipients with HIV [DHSC0002913_008], [SCGV0000237_194]. The costs in this submission were put at £6m - £10.5m. The submission indicated that I had called a meeting to discuss the issue, but I cannot now independently recall what was discussed or the conclusion reached. I would infer that at this stage we reluctantly concluded that we had to keep trying to hold the current policy line[9]. It was not until November that the position appears to have started to change (as to which see further below).

4.116. Viewed in hindsight, it may be easy to say that the similarities between the haemophiliacs infected with HIV and those infected through blood transfusions were so great that they deserved parity of treatment and that the unsustainability of this distinction should have been recognised and acted upon sooner. However, that is to overlook the considerable force of the contemporaneous pressure that widening the policy would be an unacceptable further step towards no-fault compensation, the Parliamentary majority being against such compensation. It was far from straightforward to achieve the further change in policy at the end of 1991 / early 1992 (as to which see below) even when the campaign had increased the pressure considerably. I have significant doubts whether we would have succeeded if an attempt had been made considerably earlier, still less if this had been attempted in parallel with the settlement of the haemophiliac HIV litigation.

[9] The fact that I was already reluctant about holding the policy line is borne out by what looks to be a handwritten comment from John Canavan to Charles Dobson that I was "…*very [?twitchy?]* and I think I'll open a book on the date of the cave-in".

4.117. The Inquiry has asked me to consider my letter to David Mellor of 2 December 1991, and a number of related documents. Given the importance of my letter of 2 December 1991, it may be convenient if I set it out in full here:

"Dear Chief Secretary,

BLOOD TRANSFUSION ETC PATIENTS WITH HIV

After last Thursday's Cabinet we had a word about the continuing campaign on behalf of non-haemophiliac patients infected by HIV in the course of treatment - blood transfusion, transplant or tissue transfer - in this country.

I have looked very carefully at this. While I do not think the strength of the case, or indeed its public support, is the same as for the haemophiliacs there is no doubt that there is considerable sympathy for these unfortunate people or that a concession on our part would be widely welcomed. By contrast if we continue to refuse any help there is a real prospect that the campaign will gather pace and become a damaging and running sore over the next few months.

My conclusion is that we should move now to resolve the matter by recognising the needs of these people and their families in the same way as we have recognised those of haemophiliacs. We could do this in one of two ways:-

First, by giving them the same as we gave to the haemophiliacs and their families in the out of court settlement.

Second, by also giving them the earlier help provided to haemophiliacs including if we can arrange it access to the original Macfarlane Trust. This help was in practice, though not formally, taken into account in arriving at the out of court settlement.

If we take the first approach the estimated cost is £10 million. The second would cost an estimated £12 million and bring forward the time when the Macfarlane Trust will need topping up. But the cleanest way of resolving this is to go for the second and I recommend we do that.

A clean resolution will also mean dealing with the cases without intrusive investigation into whether the infection may have arisen in another way.

We did not carry out any such investigation with the haemophiliacs. But we will need to carry out some validation of the cases falling into new categories though only as far as practicable and sensible.

Applying those criteria to existing cases would give us about 75 cases which arose in the United Kingdom.

The criteria will also mean accepting that there is likely to be a handful of cases in future years who will also be eligible for payment.

As to the financing of this, I have already topped up the haemophiliacs money by £3 million because numbers and costs were higher than expected. Nevertheless, I am prepared to pay a third of the £12m costs.

I hope that the other Health Departments will be able to make a contribution in respect of cases arising in their countries and that it will be possible for the treasury to meet the balance from the Reserve.

I am copying this to Peter Brooke, David Hunt and Ian Lang." [DHSC0002921_009]

4.118. The related documents to which the Inquiry has referred me are as follows:

(1) Minute from Mr Heppell to my Private Secretary Colin Phillips, 28 November 1991 [DHSC0002894_011];

(2) Minute from Mr CP Kendall to Mrs Firth, 29 November 1991; [DHSC0002894_001];

(3) Minute from Mrs Firth to Mr Heppell, 29 November 1991) [DHSC0002894_002];

(4) Minute from Mr Heppell to Mr Phillips, 29 November 1991 [DHSC0002537_262];

(5) Minute from Mr France, Permanent Secretary, to Mr Phillips, 2 December 1991 [DHSC0002931_005];

(6) Minute from Ieuan Jones dated 4 December 1991 [DHSC0003577_061];

(7) Minute from Mr Phillips dated 5 December 1991 [DHSC0002537_063];

(8) Minute from Rob Jex (Mrs Bottomley's Private Secretary) to Mr Phillips, dated 10 December 1991 [DHSC0002938_004];

(9) Minute from Helen Bloomfield (APS to Stephen Dorrell) to Mr Phillips, dated 11 December 1991 [DHSC0002537_242];

(10) Hansard,12 December 1991 [DHSC0002437_065];

(11) Minute from Trish Fretten, dated 13 December 1991 [DHSC0002436_070].

4.119. The Inquiry's first question asks why I *"... changed my mind about the efficacy of the transfused patients' campaign"*. In fact, it was not really a question of the 'efficacy' of the campaign or me changing my mind about the efficacy of the campaign. The reality was that the combined increased pressure in Parliament (questions, motions and debates), from the media campaign and from allied correspondence, led me to judge that the government's position was not sustainable. We had tried the policy of holding the line / protecting the ring-fence and it was not convincing public opinion or Parliament. The increasing unpopularity of our stance was – in one sense – useful because it was a lever that I could deploy with the Treasury and others to try to change the policy with which I had become uncomfortable, hence my warning that, *"...if we continue to refuse any help there is a real prospect that the campaign will gather pace and become a damaging and running sore over the next few months"*.

4.120. The Inquiry also asks whose initiative this was. The letter to David Mellor of 2 December 1991 records that he and I had discussed the matter in the margins of the Cabinet meeting the previous Thursday (28 November 1991). As I shall address below, I received warnings against this move from some of my most senior officials. While I do not specifically remember this, I think it is likely to have been my own judgement / initiative that the time had now come when we must move to change the policy. I think the fact that I wrote to Mr Mellor as I did after informally sounding him out in the margins of Cabinet meant that I thought he was open to persuasion on the issue.

4.121. The Inquiry asks to what extent I had consulted the Secretaries of State for Wales, Scotland and Northern Ireland before sending my letter of 2 December to Mr Mellor. I do not now have any independent recollection of this and the written records do not assist. Officials would, I assume, have kept in touch with their opposite numbers. In addition, it is possible that I would have mentioned

it informally to the Secretaries of State to seek support for my approach. If I did not do so, my copying in each of the Secretaries of State of the territorial departments would have been designed both to inform them of my views, and garner their support. As the subsequent correspondence shows, Ian Lang, Peter Brooke and David Hunt did all support my course of action and were prepared for it in detail in relation to funding.

4.122. Strachan Heppell's minute of 29 November 1991 and Christopher France's minute of 2 December 1991 both expressed misgivings (in advance) about my writing to David Mellor in the terms that I did.

4.123. Mr Heppell advised that I would *"...want to reflect on the financial and policy aspects of the letter"* before I wrote to Mr Mellor. On the policy side, Mr Heppell cautioned that,

> *" ... this extension of eligibility will leave us with a less secure ringfence than for haemophiliacs. We believe that two groups of people, those infected with hepatitis and those treated with human growth hormone, are currently preparing legal action against the Department. Both groups will be able to argue that like the HIV cases they were entitled to expect safe treatment. And the hepatitis cases will also be able to point to infection through blood. So we will be more vulnerable than we now are on the no-fault compensation issue."*

4.124. Christopher France noted that he very much shared Strachan Heppell's misgivings on the policy case for a concession. He explained that,

> *"2 It is never very comfortable to resist claims for compensation from those who have encountered major problems through no fault of their own or anyone else. But unless Government is prepared to draw a line and stick to it, it will end up with a de facto (very expensive) no-fault compensation system.*
>
> *3 The ringfence around the haemophiliacs is bound to be attacked, but we are unlikely ever to find a better one if we abandon it. The haemophiliacs were doubly disadvantaged by their existing, hereditary*

disease which already affected their position on employment, insurance and the like. They can be separated from other victims of medical accidents, but the next defensible boundary is not easy to see. I advise long reflection before we move further in to no-fault compensation for medical accidents. Is this really the most pressing marginal case for the deployment of money from the health programme?"

4.125. While I do not now actively remember seeing this advice, I would certainly have done so at the time. This was advice coming from (respectively) the Permanent Secretary and the Deputy Secretary (Grade 2) Civil Servant heading the policy area, both of whom had put their advice in formal minutes. The Inquiry asks why I 'rejected' their advice. They were right to warn me in the terms they did, and I would have taken very serious note of their advice. I would have been well aware of the dangers of widening the policy, and their advice would – appropriately – have been a forceful reminder of those risks. Ultimately, however, it was for ministers to judge the balance of risks. Here the balance was between trying to maintain a distinction between haemophiliacs and blood transfusion patients both infected with HIV by NHS treatment which the 'court of public opinion' rejected, versus the weakening of the defences against pressure for no-fault compensation which we believed to be an unacceptable outcome for the reasons (agreed by Parliament) put forward in opposition to Rosie Barnes' Bill. Such difficult judgements are I think the essence of democratic government. Just as my senior officials were right to warn, I think that the Government was right to concede and run the risk on the no-fault compensation concerns. As I was later to express it to the Chief Secretary, I believed that it was politically and morally the correct course. I was very aware of the particular stigma and fear that surrounded AIDS at the time, and I did see this as a potentially distinguishing feature from other cases raised in the debate on no-fault compensation (see further, paragraph 4.132, below).

4.126. The records show that I formally consulted each of the junior ministers, with my Private Secretary minuting the other Private Offices on 5 December 1991. [DHSC0002537_063]. I note that this was *after* my letter to Mr Mellor, which

may have been because Christopher France's advice of 2 December 1991 came only just before I wrote to Mr Mellor. In any event, I think now that my consulting the other ministers formally in this way was to check that my reading of the necessity and rightness of conceding to the pressure was shared by them. On balance it was, although they were not unanimous. Their views were as follows:

(1) Virginia Bottomley: "*MS(H) …has always been cautious in this area for the reasons outlined in Permanent Secretary's minute of 2 December. However, given the current circumstances she supports moves seeking a further extension*". [DHSC0002938_004];

(2) Stephen Dorrell: "*Without enthusiasm I am in favour of extending the concession to Blood Transfusion etc., victims. The initial concession was a political fix – this would simply redefine what is essentially the same fix.*" [DHSC0002537_242];

(3) Gloria Hooper: "*…I think we should hold the line however difficult this may be. I am not aware of a sudden pressure via correspondence or otherwise."* [DHSC0002537_062]

4.127. They were extremely high-quality ministers. Virginia Bottomley and Stephen Dorrell went on to become Secretaries of State for Health themselves. The fact that Gloria Hooper took a different view (in line with the misgivings expressed by Strachan Heppell) serves to emphasise the contemporaneous significance and force of the concerns about opening the door to no-fault compensation. Not even every member of my own ministerial team was convinced of the case to extend the payment scheme at this time.

4.128. The Inquiry refers me to documents surrounding subsequent exchanges with the Chief Secretary on this issue:

(1) Minute from GF Dickson to Mr Grice and the Chief Secretary dated 3 December 1991 enclosing a draft response to my letter of 2 December [HMTR0000003_043];

(2) Minute from GF Dickson to Mr Grice and the Chief Secretary dated 10 January 1992 enclosing a revised draft response to my letter of 2 December [HMTR0000003_050];

(3) Letter from Ian Lang (Secretary of State for Scotland) to David Mellor dated 17 December 1991 [SCGV0000237_072];

(4) Letter from David Hunt (Secretary of State for Wales) to David Mellor dated 2 January 1992 [DHSC0002717_014];

(5) Letter from David Mellor dated 13 January 1992 [HMTR0000003_051];

(6) Submission from CP Kendall to my Private Secretary, Mr Phillips, dated 17 January 1992 [DHSC0002929_007]. To deal with factual queries raised by the Inquiry on this minute, the reference to "CFS Votes" refers to Centrally Financed Services – see paragraph 4.26, above. The reference to "a bid in PES 1992" was to the Public Expenditure Survey 1992, that is to say the detailed bid that the Department of Health would be making for its share or 'settlement' of the funds allocated to spending departments by the Treasury for 1992/1993.

(7) Minute from JW Grice to the Chief Secretary dated 31 January 1992 [HMTR0000003_055].

(8) Letter to David Mellor dated 27 January 1992 [DHSC0002925_009].

4.129. At the time, I would not have seen the internal Treasury submissions leading to Mr Mellor's reply. My view at the time would have been that it was right to push back hard on those arguments, having ourselves come to the view that the balance of risks favoured extending the payments scheme. But I would add that the Treasury were doing their job here. Unpopular though it may be, they have to analyse critically new significant spending plans, particularly those which may set a precedent leading to even greater future spending. I do not criticise the Treasury for the points they were making. Indeed having later been Chief Secretary to the Treasury myself, I can well understand why they were being made.

4.130. Mr Mellor's reply of 13 January 1992 did express sympathy for the desire to provide compensation for the blood transfusion patients [HMTR0000003_051].

But he went on to express serious reservations about doing so because of the difficulty of ringfencing such payments from other cases of medical accidents. Mr Mellor suggested that we would be taking, "… *a long stride towards no-fault compensation in general."* He then referenced overpayments to doctors and dentists which was going to make a very large call on the reserve. He suggested that this left him no room to help the Department of Health or the territorial health departments by providing access to the Reserve for the blood transfusion payments.

4.131. As to the argument that we would be taking "…a long stride towards no-fault compensation in general", as is evident from the contemporaneous documents, I was well aware of this risk. But I had become persuaded that this risk was now outweighed by the arguments in favour of extending the payments scheme and placing the ring-fence around those infected with HIV by the NHS at a time when HIV and AIDS attracted widespread stigma and fear.

4.132. As to the overpayments to doctors and dentists, I do not now recall the detail of how they had arisen. In the context of the possible extension of the payment scheme to blood transfusion patients, their relevance appears only to have been that the Treasury considered that their impact on the Reserve was so great that there was no room for the Treasury to provide funding for the blood transfusion patients. I clearly felt it was wrong to link the two. My views on this are apparent from my reply of 27 January 1992. I said to Mr Mellor that,

> *"Your letter of 13 January, about the question of how we respond to the pressure on behalf of blood transfusion patients with HIV, linked that issue to the overpayments to doctors and dentists.*
>
> *I cannot accept the relevance of bringing these two issues together in the way you do. The impact on the Reserve this year will be no more than half the figure you quote. The "cumulative overpayment" figure relates to all the years since 1988-89, and is in no way relevant to the funding position this year.*
>
> *Looking beyond this, it is important for us all to recognise that, when we considered the overpayments in November, the decisions then were*

agreed in the light of all the facts as we understood them. There was no condition on your part that these decisions would be read across to other, unrelated issues. You know that I am determined to address the problems which led to the overpayments, and to share our consideration of those points with you and your officials. It would be less than helpful if openness on this issue is seen to affect other, essentially unrelated, questions.

I should repeat that I see the overpayments to doctors and dentists as being in large part an unforeseen consequence of a far more positive response to their new contracts than had been anticipated. We have fairly claimed credit for the resulting benefits to patients as demonstration of our commitment to improving health care. I feel as strongly as you do that we must get the financing of these contracts under better control, and learn the lessons so that the overpayments of recent years will not be repeated. But it would be grossly unfair for faster progress than anticipated in response to the new contracts to be seen to undermine the case for assisting an unfortunate unrelated group.

I hope you can accept that this linkage should not be made. For my part, I recognise the difficulty in providing resources from the Reserve which your officials have explained to mine. I will investigate what scope there may be for longer term action on the blood transfusion patients."

I then added in manuscript the additional observation to Mr Mellor that,

"- Though I remain firmly of the opinion that the provision of £6m from the reserve to match £6m which I believe I can find (just) from existing provision – remains politically and morally the correct course". [DHSC0002925_009]

4.133. Paragraph 5 of Mr Kendall's submission of 17 January 1992 advised me that "*A sum or around £12m … could be found from Departmental Votes in 1992-93 if Secretary of State sees this demand as an overriding priority.*" [DHSC0002929_007]. The Inquiry asks if I saw this as an overriding priority. From the papers (rather than from any current recollection) the answer must be 'yes'. We did go ahead and fund the extension of the payment scheme without

recourse to the Treasury Reserve, albeit that for some weeks we still sought a contribution from the Treasury.

4.134. Even though it was now proposed that a Department of Health budget was to be used, the Treasury would still need to approve it. A spending minister cannot initiate a new policy which the Treasury sees as having wider implications and consequences even if he or she chooses to find the money by less spending on another policy already agreed by the Treasury. That is why Mr Grice's submission to Mr Mellor of 31 January 1992 (of course not seen by me at the time) speaks in terms of Mr Mellor having the option to '*...refuse to allow the compensation*' (§12 of his submission) [HMTR0000003_055].

4.135. Mr Grice referred at paragraph 8 of the same submission to the fact that my proposition (by this time) was that the Treasury should provide £6 million from the 1991-1992 Reserve and that I as Health Secretary would match the figure of £6 million "*with [my] own resources*". I do not now recollect the detail of how this was to be found / saved from the existing Department budget. As is apparent from my letter to Mr Mellor of 27 January 1992, this was not going to be easy – I said that it was something that I could "just" find [DHSC0002925_009]. I doubt that it would have been available immediately.

4.136. I cannot now recall whether and to what extent there was discussion between the Department of Health and the Scottish and Welsh Offices in relation to the offers of contribution which they made as reflected in Ian Lang's letter of 17 December 1991 to David Mellor, and David Hunt's of 2 January 1992 ([SCGV0000237_072], [DHSC0002717_014]). The similarity in the wording of the letters is perhaps suggestive of close co-ordination but I cannot now recall whether that was in fact the case and, if so, whether it was done entirely at officials' level or also involved some ministerial discussion.

4.137. The Inquiry invites me to offer an opinion on whether the offers made by Mr Lang and Mr Hunt would have assisted in reassuring the Treasury about the costs of the scheme. They may have helped but I suspect that their offer of a

third of their respective shares (the same level as I had originally offered to contribute) would not have made a large difference to the affordability of the scheme from a Treasury perspective. More telling may have been the support of all three territorial departments[10] to the principle of extending the payments scheme notwithstanding the risk on no-fault compensation. It was undoubtedly helpful that Mr Lang, Mr Hunt and Mr Brooke were aligned with me on the judgement of where the policy balance should lie.

4.138. The Inquiry refers me to a series of documents that together serve to illustrate the continuing pressures that were brought to bear on the government on this issue leading up to the announcement on 17 February 1992:

(1) Undated letter from Gavin Strang MP, stamped as received on 13 November 1991 [DHSC0002435_013];

(2) Notice of Motion dated 25 November 1991 [DHSC0002913_002];

(3) Note from Sir Michael McNair-Wilson MP dated 16 December 1991 [DHSC0002437_061];

(4) My letter to Sir Michael McNair-Wilson MP of 21 January 1992 [DHSC0041343_070];

(5) Minute from my Diary Secretary to Mr Canavan dated 22 January 1992 referring to the meeting I agreed to have with Sir Michael McNair-Wilson MP and Gavin Strang MP [DHSC0002926_002];

(6) Briefing for my meeting with Sir Michael McNair-Wilson MP and Gavin Strang MP, from Mr Canavan dated 31 January 1992 [DHSC0002923_001];

(7) Parliamentary Question from Sir Michael McNair-Wilson dated 17 February 1992 [DHSC0003625_040];

(8) DH Press Release dated 17 February 1992 [DHSC0002578_001].

4.139. The Inquiry asks what influence the Notice of Motion of 25 November 1991 had on my decision-making and that of my colleagues, and the speed with which the scheme extension was announced. [DHSC0002913_002]. I note that

[10] Northern Ireland did not believe they had any cases at this stage. But Peter Brooke's response of 27 December 1991 supported the principle I had put forward, and agreed to take a share of the cost from the NI budget if such cases came to light: [HMTR0000003_047]

the Notice of Motion of 25 November 1991 came in the same week that I spoke to Mr Mellor in the margins of the Cabinet meeting (on 28 November 1991). It is a reasonable inference, therefore, that this did have a considerable influence, but I cannot now say for certain. It was part of the strengthening campaign rather than a critical development. However, the likelihood of further difficult Parliamentary debates (including in relation to Mr Strang's Notice of Motion) would have informed my warning to Mr Mellor that if we refused any help, there was a real prospect that the campaign would gather pace and become a damaging and running sore over the next few months (see paragraph 4.118, above). By the time of my meeting with Sir Michael McNair-Wilson and Mr Strang, the briefing indicated that the motion had received 235 signatures of whom 40 were Government supporters.

4.140. I am afraid that I do not have any recollection of the meeting on 3 February 1992 with Sir Michael-McNair Wilson and Gavin Strang. Mr Canavan's briefing of 31 January 1992 indicated that Mr Canavan and Dr Rejman would both be attending the meeting [DHSC0002923_001]. A member of my Private Office may have done so as well. I would have expected some kind of note to have been taken at the time, or made shortly afterwards, but I do not retain any papers in relation to this meeting and I understand that none appears to be available from the surviving records.

4.141. When the announcement of the extension was made on 17 February 1992, this was done in answer to a PQ from Sir Michael [DHSC0003625_040]. It was sometimes arranged that announcements such as this would be given in response to an MP who had campaigned on the matter. In answer to a question raised by the Inquiry, I am confident that I would *not* have agreed the extension or even promised that the extension would be forthcoming at the meeting on 3 February 1992 with Sir Michael and Mr Strang. As I shall address below, the extension had not been agreed by 3 February and it took the intervention of the Prime Minister to secure the change in policy. Consistent with this, the briefing for the meeting of 3 February was essentially aimed at assisting to me to defend

the status quo, even though I and senior officials knew that within government, we were pushing for a change of policy.

4.142. The Inquiry asks me to consider the events in early February 1992 when agreement to introduce the scheme was achieved. I am referred in that regard to the following documents:

(1) Minute from Roger Scofield to my Private Secretary Mr Ahearn dated 5 February 1992 [DHSC0044287_011];

(2) Minute from NI Holgate to Mr Grice also dated 5 February 1992 [HMTR0005118_005];

(3) My letter to the Prime Minister dated 7 February 1992 [HMTR0000003_063];

(4) Letter from David Mellor to me also dated 7 February 1992 [CABO0000044_024];

(5) Letter from William E Chapman (Private Secretary to Mr Major) to Paul Ahearn dated 10 February 1992 [HMTR0000003_067];

(6) Letter from William E Chapman to Chris Padwick, Department of Health dated 11 February 1992 [HMTR0000003_066];

(7) Letter from me to David Mellor dated 12 February 1992 [DHSC0002582_003];

(8) Minute from Roger Scofield to my Principal Private Secretary also dated 12 February 1991 [DHSC0020274];

(9) Draft letter and alternative paragraph, attached to Mr Scofield's minute of 12 February 1992 [DHSC0020275] and [DHSC0020276];

(10) Briefing for No. 10 Downing Street and draft announcement, attached to Mr Scofield's minute of 12 February 1992 [DHSC0002582_015];

(11) Draft press release, attached to Mr Scofield's minute of 12 February 1992 [DHSC0002582_007];

(12) Letter from David Mellor dated 14 February 1992 [CABO0000044_030].

In addition to the above, there was a further submission from Mr Scofield dated 6 February 1992, [D DHSC0002602_005], [DHSC0002585_017] and [DHSC0002585_009].

4.143. The Inquiry notes that in his minute of 5 February 1992, Mr Scofield indicated that the Department thought that it would be *"... likely to take three to six months to set a system up and running"* [DHSC0044287_011]. I am asked if this seemed a reasonable length of time. At the time I must have accepted that this was not unreasonable. Looking at the papers now, it was quite a complicated scheme to set up. Mr Scofield's assessment was not unreasoned. His minute set out in summary why this time would be required:

> *"2. The major difficulty is that even among the reported cases the blood transfusion or tissue has not always been confirmed as the source of the HIV infection. We think it will be necessary in many cases to ask a panel to sift the evidence and assess the strength of the claim. It will take time to set up the panel and for it to obtain the necessary records to determine claims. There will be other issues to be resolved such as the conditions to be attached to payment."*

He also set out a potential partial mitigation in cases that had already been validated by the CDSC (see §3 of this minute).

4.144. I wrote to the Prime Minister on 7 February 1992 because I needed his support to help get the Treasury to change their position [HMTR0000003_063].

4.145. The Inquiry asks how instrumental the Prime Minister's support was. Without his support, I could not have introduced the scheme extension. I should add that I would not have seen Mr Grice's minute of 5 February 1992 at the time. From that document, I can see now that Mr Mellor was already indicating, at least within the Treasury, a preparedness to lift his objection provided that I gave an assurance that no further groups would be given similar assistance and provided that we found all the funds from our own existing budgets. [HMTR0005118_005]. That suggests that the Treasury was perhaps already moving towards compromise. The Prime Minister's intervention remained important, and I saw it as such at the time. The Inquiry asks if I was aware that David Mellor's position had changed. I cannot say for sure, but the terms of my letter to the Prime Minister of 7 February do not suggest that I was yet aware of this. It is clear from the papers that David Mellor and I had spoken after

Cabinet on 28 November 1991. I do not have any independent memory of formal or informal discussions at this stage in early February 1992. Mr Mellor had been a Health Department minister previously and would have been well aware of the issues, and I repeat that I regarded him as a sensible Chief Secretary as well. He may independently have come to the view that he would withdraw his objection; I cannot say for sure whether I played a role in persuading him.

4.146. In Mr Mellor's letter of 7 February 1992, he restated his concerns about the difficulty of drawing the line at the blood transfusion cases, and the pressure that would come from other groups [CABO0000044_024]. However, he withdrew his objection on the conditions that I gave a firm assurance that I and the Department of Health would draw the line at this group and "…face up to requests from other groups" and that we funded it ourselves. Mr Mellor's reference to being prepared to be flexible in carrying over money between "this year and next" signalled that if there was underspend on any 1991/1992 spending, the Treasury would view sympathetically a request to carry it over into 1992/1993 to help pay for the blood transfusion scheme. Ordinarily such underspend had to be surrendered back to the Treasury. The Inquiry asks if money from the Treasury Reserve would be made available from April 1992. That was not the meaning of Mr Mellor's comment; he was not signalling willingness to fund the scheme from the Treasury Reserve. As above, he was indicating that if the Department underspent one budget area in the 1991/1992 financial year, he would look sympathetically at a request for the Department to carry that money over into 1992/1993 to help pay for the scheme, rather than having to return the underspend to the Treasury.

4.147. In my reply to David Mellor of 12 February 1992, I expressed my gratitude for the helpfulness of his letter of 7 February. On his two conditions, I said that,

"Drawing watertight borderlines in this area is, as you know, inherently difficult, but the present borderline has not in the event been accepted as reasonable. In my judgement, its replacement by a borderline covering all those infected with HIV by NHS treatment in the UK involving whole

blood/blood products/tissue and organ transplants would be more defensible.

So far as funding is concerned I am grateful for your agreement to be flexible in carrying over money between this year and next. I will as you will appreciate have to review my overall programme again to seek to find savings to accommodate this settlement" [DHSC0002582_003].

4.148. The Inquiry asks on what basis I thought the new drawn borderline would be "defensible". In fact, as above, the phrase I used to Mr Mellor was "more defensible". I still think that was a fair summary of the position, but we were all aware of the risk of further pressure that might come from other patient groups affected by serious adverse consequences of NHS treatment. The Inquiry asks how I had managed to persuade Mr Mellor and the Prime Minister in light of their expressed concerns. I cannot remember now precise conversations on this. Reviewing the papers now, I think I would have been helped by other ministers, senior parliamentarians and letters from members of the public like that that of GRO-A to her MP Chris Patten, on 23 January 1992, and Mr Patten's comment on it in his letter of 3 February 1992 [DHSC0004174_104, DHSC0004174_103]. I also think that a borderline around HIV infection by the NHS was a realistic one for the reasons I have given above at paragraph 4.132 above.

4.149. The Inquiry has noted that Mr Scofield's submission of 12 February 1992 put the options to me of yielding on the issue of funding or pressing Mr Mellor again for a contribution from the Reserve. He warned that the group of blood transfusion victims was not limited in the same way the haemophiliacs were, and it was potentially a more open-ended financial commitment. [DHSC0020274]. I would have considered this advice. The Inquiry asks why I decided against pressing the Treasury further. I suspect that there was an element of 'quit while you are ahead' in this. The Treasury had withdrawn their objection to the principle. I had already accepted that the Department was going to have to find half the cost, and the Treasury was indicating a willingness to

permit some funding carry-over. I doubt that I saw it as being in anyone's interest to prolong the negotiation.

4.150. The outline of the financial payments scheme was sent to me for agreement by Mr Scofield in a submission dated 20 February 1992 [NHBT0015117_001] [DHSC0002642_004]. On 2 March 1992, my Private Secretary conveyed that I was content with the recommendations that had been summarised in paragraph 19 of Mr Scofield's note. He added that I had commented that,'*...careful legal advice will be needed on determinations as in 19i(c) – these decisions will be subjected to judicial review*'. [DHSC0002653_004]

4.151. I am not sure that I can assist the Inquiry much further in relation to the outline of the scheme as it was presented. Again, it is a pity that I do not have my own annotated copy of the submission but, from my Private Secretary's minute of 2 March 1992, it is clear I was content for officials to proceed as Mr Scofield had recommended. Looking now at his paragraph 19,

(1) Point (a) was a point really in favour of certain patients: to include infected non-haemophiliac recipients of fractioned blood products. I cannot now say whether I had prior knowledge of this sub-group of infected patients.

(2) Similarly point (b) was a decision in favour of potential scheme beneficiaries: not imposing a rigid cut-off date.

(3) Point (c) concerned the validation of claims, and it is apparent that I agreed with officials that the balance of probabilities approach was the best option, subject to the caveat about careful legal advice and the risk of judicial reviews.

(4) Point (d) was the recommendation to exclude uninfected relatives from the scheme in the sense that relatives who were not infected could not claim for the fear / distress that they might have been infected. I was being advised (see §12 of the submission) that such claims for the haemophiliacs who litigated were not well-founded in law and had not been paid to those outside the litigation. I was warned that entertaining

such claims in the blood transfusion scheme could prompt claims from the non-litigant relatives of haemophiliacs.

(5) Point (e) was to extend a special needs fund to the blood transfusion patients. This would have struck me as being a matter of parity of treatment with haemophiliacs and I would have agreed with the principle.

(6) Point (f) was another point in favour of the potential beneficiaries, namely agreeing the legal costs of those who had commenced legal proceedings.

4.152. I would not have been closely involved in working out the details of the scheme, which would have been undertaken by officials, possibly also involving junior ministers if necessary. Matters could have been brought to my attention if there was a significant problem or difference of opinion to solve.

4.153. The Inquiry notes that paragraph 5.2 of the annex to the submission referred to the fact that those accepting payment under the scheme would be required to give an undertaking not to pursue legal action against Government or the Health Authorities over matters of policy or broad operational concerns. Mr Scofield's submission did not draw this to my particular attention, nor was it raised as being a matter of contention or concern. I have not seen anything to suggest that I was asked to consider the breadth of the undertaking, nor do I have any recollection of doing so. I cannot say whether I alighted on this point at the time at all. If I did consider this provision, I think I would have understood that the scheme was to be parallel to the haemophiliac's scheme and – as with the haemophiliacs scheme - I would not have seen a provision about the cessation of future legal action (save in cases of individual negligence) as being unusual; see paragraphs 4.94 – 4.96, above.

4.154. To be best of my recollection and belief I did not have any further substantive involvement in the payment scheme for blood transfusion patients prior to the April 1992 election. I expect that I would have been kept informed as necessary as one remains a Minister even after an election is called. I – and the other Ministers – were involved in replies to some outstanding correspondence

regarding the blood transfusion cases, but were now able to refer to the agreement to extend the scheme. A new form of template wording was used for this correspondence to seek to honour and underline the ring-fencing of the new group (i.e. making clear that this was not a step in the direction of no-fault compensation), while conveying the more positive news that the payments would be extended as announced on 17 February 1992. An example of this is the letter I sent to Chris Patten on 13 March 1992 in reply to the concerns he raised on behalf of GRO-A [DHSC0014966_177] (c.f. paragraph 4.149, above).

4.155. The Inquiry asks what influence if any the election had on the decision to implement the scheme. Opposition to the NHS reforms and allegations of underfunding of the NHS were at the centre of Labour's campaign in 1991. I was engaged in defending those issues constantly, and clearly, I wanted to settle any other controversial issues where I legitimately could, and where I thought it right to do so. I was aware that the Government was not persuading the 'court of public opinion' in trying to draw a distinction between haemophiliacs and blood transfusion patients infected with HIV. I did not sense that the Conservative MPs who supported the change of policy were doing so motivated by only election prospects. However, it was undoubtedly helpful to me politically that there were backbench Conservative MPs adding to the intensity of the pressure, and colleagues such as Chris Patten, who was Chairman of the Party, raising constituency cases in persuasive terms.

4.156. Finally in this section, the Inquiry refers me back to Mr Scofield's submission of 12 February 1992 [DHSC0020274]. In the course of his advice on responding to Mr Mellor's condition of an assurance about not extending payment schemes any further than HIV blood transfusion patients, Mr Scofield said:

"So far as assurances for the future are concerned, we can only repeat the line we have taken hitherto that the distinction between recipients of Factor 8 for haemophiliacs and whole blood through transfusion is proving a difficult position to defend and there is little public understanding or sympathy for the Department's position. It would be

possible to aim to confine the class to those who have been infected by HIV through NHS treatment and who are, as a result, likely to develop a fatal illness. Nevertheless, Secretary of State will recognise that the "only for AIDS" line may well prove as difficult to hold in the longer term as the "only for haemophiliacs" line has proved to be, eg if faced with a strong public campaign on behalf of a comparable case. Ministers will need to make clear that they are responding, as for the haemophiliacs, to very special circumstances but that their general policy towards 'no fault compensation' or claims from other groups remains firm."

4.157. I am asked if I considered that the "only for AIDS" line could be held in the future. I think I can only repeat the phrase I used in my reply to Mr Mellor – this was *more defensible*. There was a general recognition that other cases involving other illnesses and conditions would be put forward and most likely seek to use the haemophiliac and now blood transfusion payment schemes as having set a precedent. The Inquiry asks if any "comparable cases" were foreseen by me or brought to my attention. It also asks if non-haemophilia NHS patients who had contracted hepatitis viruses but not HIV, through blood transfusions or blood products, were raised. Looking at the papers now, I think that the earlier submission from Mr Canavan of 31 May 1991 is perhaps a good illustration of what was foreseen at the time [DHSC0002913_008], [SCGV0000237_194]. This is not a document which the Inquiry has specifically drawn to my attention or asked me to comment upon. But I would observe that the note attached by Mr Canavan included a list of arguments against extending payments to blood transfusion cases (see §4 of the note). This included that:

(1) At para 4(ii) "*Extending help to the blood transfusion cases would make it almost impossible to defend withholding it from those few who have become infected with HIV through tissue or organ transplants*" (in the event, of course, we accepted tissue and transplant cases);

(2) At para 4(iii): "*Outside the HIV field there is already public pressure for compensation for those children who received treatment with human growth hormone and who may not be at risk of developing Creutzfeldt Jacob disease… There are some 1800 such people and so far 6 or so*

have died from CJD. However in the absence of a test for CJD during life and the fact that different batches have transmitted CJD, there is the real possibility that all recipients will make a claim as though they would become infected. Moreover, there is a risk that additional people will acquire CJD through corneal and other transplants."

(3) At para 4(iv) "*There are other diseases transmitted through blood and blood products. In particular most haemophiliacs were infected with hepatitis before blood products were heat-treated. This is less serious than HIV and although transmitted sexually a vaccine against hepatitis B offers protection to spouses. Few haemophiliacs will die as a result of hepatitis. However, there are early moves to try to seek compensation for these people. Those accepting the HIV settlement are precluded from raising the hepatitis issue as the arguments are so similar to HIV. However, there are several thousand haemophiliacs who will not share in the settlement and who may feel that they have lost out and press the hepatitis case."*

(4) At para 4(v): "*There are many other examples of drug reaction and medical treatments given in good faith where non-negligent harm has occurred. Those suffering as a result might begin to press for Government compensation. There are already a considerable number of people dependent on the benzodiazepine drugs seeking compensation from the manufacturers."*

4.158. I do not have any independent recollection now of discussion of support payments for those infected by hepatitis through blood or blood products or of this being a particularly prominent issue. However, the available documents tend to suggest that it was understood that those infected with hepatitis C were one of several groups who may be preparing claims and that was indicative of the difficulties of where the ring-fence was to be drawn. I can only say that I thought then that Government had to proceed by examining cases on their merits, and that part of the difficult role of a Minister is that he or she has to decide when to depart from precedent. I still believe that it was right to do so in

these cases, though I am well aware that my successors faced difficult subsequent issues, where the precedent I had set would have been relevant.

Section 5: FURTHER QUESTIONS CONCERNING FINANCIAL SUPPORT SCHEMES

5.1. I am asked whether the Macfarlane Trust fell within the responsibility of a particular Minister and if so which one. I do not now have access to the formal list of subject area designations. In some cases, the responsibilities are straightforward to reconstruct from the documents (such as Baroness Hooper dealing with the reforms that led to the NBA addressed in section 3 of this statement). It is more difficult as regards the Macfarlane Trust. Outside of the use of the Macfarlane Trust in the settlement of the HIV litigation, there do not appear to have been that many submissions on the Trust during my period as Secretary of State. Of those submissions I have seen, some issues of principle and finance came straight to me, but Virginia Bottomley as Minister of State also received some. My best assessment now would be that the financial aspects of the original Macfarlane Trust fell within MS(H)'s portfolio but that the overlap with the HIV litigation, which was high profile, meant that sometimes submissions came to my Private Office. I regret not being able to be more definitive. I have no reason to think that the distribution of portfolios was anything other than well understood and managed at the time, but it is difficult long after the event with imperfect records.

5.2. Once the Macfarlane Trust had been established, its principal relationship with the Government would certainly have been with the Department of Health and not with the Treasury. At working level this would have been with Department of Health officials, but matters of principle and/or concern could be raised by those officials to Ministers as I have addressed in section 2 of this statement, or by the Trust's officers writing direct to us as Ministers.

5.3. The Inquiry asks about the role and importance of the Treasury. The Macfarlane Trust and the Treasury / its Ministers would not have had a direct interface or relationship. Where the Trust felt that more funds were required, its case would be considered first by the Department of Health. The Inquiry asks how the Department and the Treasury would communicate with each other, and with the

Trustees on matters relating to the Trust. Again, I should make clear that I would not expect the Trust to deal directly with the Treasury or vice versa.

5.4. The costs of all services, authorities and charitable services funded or part-funded by the Department would sit within one part of the Departmental budget. Where new or unexpectedly increased costs arose in a particular area, officials would be expected first to consider these carefully to ensure that the cost was indeed necessary and justified. Assuming that there was a good case for such funding, there would be a range of options:

(1) If the spending was not needed within the current financial year, a case for it could be worked up for inclusion in the bid for the next annual expenditure (PES) round.

(2) If the funding was required within the same financial year, it might be capable of being met by savings, underspends, or cuts within the same part of the Department's budget or any reserve funds held within each budget area. If so, this could be managed internally, often by the senior officials controlling the budget for that area.

(3) If not, in consultation with the Treasury, the Department would be able to fund some novel calls for spending or unexpected increased funds for spending by making savings or cuts from one part of its budget in favour of another. However, the Department would need to consult the Treasury on such issues and Treasury approval would be required if the spending was novel or raised a policy issue.

5.5. The overwhelming majority of spending requirements had to be managed and met by one or other of these approaches (or a combination of them). The Department could not exceed the cash limit set for each area of its budget. You could not just spend over your budget and hope that the Treasury would sort it out later.

5.6. The only other option was to make a case to the Treasury for access to the Treasury Reserve. That process is illustrated by:

- the HIV litigation settlement (access to the Reserve ultimately being permitted); and
- the extension of the payment scheme to blood transfusion patients (access to the Reserve being rejected),

both of which I have addressed in Section 4 of this statement, above.

5.7. The annual spending round (PES) was a critical, detailed and complex process as each part of a spending department's detailed bids would be critically analysed by the Treasury. There would be intense negotiations between the Department and the Treasury, the latter's role being overseen by the Chief Secretary. The process led to the allocation by the Treasury to each Department, broken down in detail into the Department's various budget areas. As I have already indicated, exchanges with the Treasury could be robust (on both sides) but underlying this there had to be an understanding of mutual trust and confidence.

5.8. On 28 November 1990, Mr Canavan put a short submission to Virginia Bottomley via her Private Secretary Mr Sands [DHSC0003357_015]. My Private Office was not copied in. The submission sought approval for £120,000 of further funding for the Macfarlane (Special Payments) Trust. This was required because the number of beneficiaries entitled to the £20,000 per person payment was greater than the original estimate, and interest on the Trust's fundholding had only been able to cover some of the additional entitled beneficiaries. Mrs Bottomley was advised that in view of our commitment to the Trust, it would be very difficult to refuse the Trust. She was assured that the funds could be found from within the Centrally Financed Service budget. A handwritten endorsement shows that Mrs Bottomley was content for this payment to be made, but felt that I should also be in agreement before the payment was made. On 5 December 1990, Mr Alcock confirmed that I was also content for the payment to be made [DHSC0003357_014]. I think this submission would have gone to Mrs Bottomley either because the Trust

specifically fell within her area of responsibility or because it fell within her wider financial responsibilities[11].

5.9. The Inquiry asks why Mrs Bottomley felt it was necessary to obtain my agreement. Mrs Bottomley would be best placed to answer that question. If I were asked to speculate on the reason, I would suggest that it may have been because this was late November 1990, when the HIV litigation settlement was a high profile and delicate issue, and it was likely that the Trust would be used in any settlement agreed as the conduit for distribution of the settlement funds. In that context, it may be that Mrs Bottomley felt it better that I was aware of any Ministerial submission / decision relating to the Trust and its funding. I should also add that Mrs Bottomley checking this with me was not out of character. She was a highly effective Minister of State, as reflected in her subsequent promotion to Secretary of State. In my experience, her approach as the Minister of State was to err on the side of caution. She would tend to check, more often than some others might, that I was content with a decision she proposed to take.

5.10. The Inquiry asks what my reasons were for approving the additional funds. We had promised the payments of £20,000. The existing funds were not quite enough to meet the larger-than-expected number of beneficiaries. The shortfall could be found from within the existing budget area. There was no question of our reneging on the promise to pay the £20,000 to each infected patient. This was, in my view, a relatively straightforward decision to make.

5.11. On 12 August 1991, Mr Canavan put a submission to me via my Private Office on two Macfarlane Trust issues [DHSC0003114_005]. The first was to approve a "top-up" of the Macfarlane (Special Payments) (No2) Trust by a sum of £0.88 million (on this first issue, I was also referred to an earlier submission from Mr Dobson of 9 May 1991 [DHSC0003664_150]). The second concerned the original Macfarlane Trust and whether and when to seek additional money for

[11] See also the submission from Mr Canavan to Mrs Bottomley's Private Office dated 14 March 1991 [DHSC0003659_018]. Mrs Bottomley's Private Office replied on 20 March 1991 approving a further increase in the Macfarlane (Special Payments) Trust [DHSC0041209_058].

the funds used to provide weekly payments and grants on the basis of beneficiaries' special need.

5.12. On 15 August 1991, my Private Secretary provided the following response:

"The Secretary of State has seen your submission of 12 August and is content that the additional payment of £0.88 million should be made to the Macfarlane (Special Payments) (2) Trust.

In relation to the original Macfarlane Trust, he is content to continue the policy of support but does not wish to take any initiative at this stage in respect of the commitment to enable the Trust to make more generous payments. Neither does he wish to pursue the PES bid for £6 million to top-up the Trust in 1992/93 but would prefer to defer the bid for new money this year and, if pressed, give general assurances about future funding. He agrees that this should be in the form of a larger lump sum to keep the Trust going for several years.

More generally, the Secretary of State has commented that

"We must get it clearly on the record with the Treasury that we will come back next year, and we are allowed to give the general assurances in paragraph 16 (iv) of this submission." (emphasis added)

[DHSC0003113_015].

5.13. The Inquiry seeks an explanation of my reasoning on both issues.

5.14. On the "top-up" of the Macfarlane (Special Payments) (No. 2) Trust, the issue was a relatively straightforward one. The sum of £42 million (which was to cover both litigants and non-litigants for their fixed payments in the different categories as agreed in the settlement) had proved insufficient. At the time the figure of £42m had been, of necessity, only an estimate. The submission of 9 May 1991 gave early notice that the figure may be exceeded. The submission of 12 August 1991 gave firm confirmation that the figure was going to be higher. This was caused by a higher than predicted number of beneficiaries, and by more beneficiaries being in the higher categories than had been anticipated by the plaintiffs' representatives during the negotiations. It was estimated that the

shortfall would be about £1.6 million but this was uncertain. The proposal was to give £0.88 million straightaway and to address further topping up as the need arose[12]. The submission of 12 August 1991 suggested that funding had been found for this because there was, in effect, surplus from the £1 million provided in the PES 90 allocation to make payments for the £20,000 payments announced in 1989, where beneficiaries had still not come forward. I have no actual recollection of this issue arising. Looking at this now based solely on the papers, I think this would have been a straightforward decision. This was a question of 'fixed awards' promised in the settlement agreement; the payments could not be deferred (nor would we have wanted to defer them) and I was being advised that the moneys could be found from the same budget area.

5.15. As to the second decision (the question of whether and when to apply for more funds for the original Macfarlane Trust) again I have no actual recollection and am reliant on reconstructing what my thought process is likely to have been based on the documents. But this would have been a more difficult and nuanced decision.

5.16. The difficulty here was that in the immediate aftermath of having agreed the £42m settlement, the Treasury were resisting the PES bid for £6m that the Department had made for the financial year 1992/1993 to top up the original Macfarlane Trust. As will be apparent from section 4, above, I do not say this critically of the Treasury since it was their job critically to scrutinise the PES bids in every area. However, in terms of trying to secure the best outcome for the Trust, this was not a good time to go back into 'battle' with the Treasury for more Macfarlane Trust funding. I expect that I would have been concerned that if we pressed ahead the PES bid for £6million for 1992/1993, we might get either an outright rejection or a very limited allocation. That would have been problematic: at this stage we were looking at lump sum payments (rather than annual funding) and a small lump sum awarded in the PES round for 92/93 would have seriously risked no award being made in the following few years

[12] There was indeed a later top-up of £800,000 see Mr Canavan's submission of 3 October 1991 [DHSC0003387_011] and the reply from my Private Office of 7 October 1991 [DHSC0003386_007].

(because the Treasury would rely on the fact that there had been a lump sum top-up the previous year). So, I think my judgement would have been that there was a better chance of getting a more substantial sum for the Trust by deferring when we made the PES bid. I would have judged that the Treasury was likely to have been more receptive to a significant PES bid for the next financial year i.e. 1993/1994. I would have had sympathy with the Trustees' position that their funding pot was reducing year on year, and they needed reassurance as to future funding. However, the Treasury would have pointed to the facts that with an annual spend of £2m or £2.3m pa, and the capital reserves standing at £7.25m, the Trust was not at imminent risk of running out of capital from which to make its payments.

5.17. Most elements of my decision in August 1991 were affirming action designed to help the Trust:

- "yes" to an express policy of continuation of support for the original Trust;
- a requirement from me that we tell the Treasury in clear terms that we would be coming back for more money and that we would be giving assurances to the Trust about future funding being made available; and
- not pursuing the PES bid for 92/93, in the interests of trying to secure a better allocation overall by applying the following year.

The one aspect where I was more restrictive was in not taking any initiative *at that stage* towards agreeing with the Trust that they should make more generous payments. I think I would have assessed that the assurance to the Trust that there would be future funding should have helped them have confidence in their decision-making on allocation of their discretionary funding, at least to the extent that they need not cut back discretionary payments. More generally I think I would have in mind the ever-present difficulty of the very many calls from very deserving causes on the Departmental budget, and perhaps also that the beneficiaries (whether litigants or not) would be receiving the HIV litigation settlement awards as well. However, the main point was that this was not a good time to be trying to get further funds from the Treasury for the Macfarlane Trust and for reasons I have set out, I judged that, overall, the best way to increase the Trust's funding was going to be to make a good bid in the

93/94 PES round. I think it would have been irresponsible of me actively to have encouraged them to increase discretionary payments until I could give a guarantee that extra funding was in place, which at that stage I could not do. I note that based on the assurances I was able to give, the Rev'd Tanner did not feel that the door was closed to their making at least some increases to allow for inflation (see paragraph 5.23(6) below).

5.18. I cannot now remember with whom I discussed this decision. Based solely on my normal way of working, I would be confident that I would have discussed this in ministerial meetings with my team, and particularly with Mrs Bottomley as Minister of State. But I have no positive recollection now of doing so, nor can I recall any input I may have received from my ministerial team.

5.19. The Inquiry specifically asks me about why I added the rider at the end of Mr Alcock's response, to which I have added the underlining in the citation at paragraph 5.12 above ("We must get it clearly on the record with the Treasury that we come back next year, and we are allowed to give the general assurances in paragraph 16 (iv) of this submission"). I think this would have primarily been to make it abundantly clear to the Treasury that there would need to be top-up payments to the Trust in the future and that these could not be netted off from the HIV litigation settlement. The secondary reason was that I did want officials to be able to give reassurance to the Trust about the intention to provide further funding in the future. It would not have been appropriate to give such reassurance that future funding would be provided without having been clear with the Treasury that were doing so. That is why the decision communicated by my Private Secretary was not just to get on record with the Treasury that we would come back the following year *but also* to make sure that it was on record and agreed with the Treasury that we were allowed to give a general reassurance to that effect to the Trust.

5.20. I think the decision and direction communicated by my Private Secretary was clear and the steps to put it into effect (both with the Trust and with officials in the Treasury) would have been taken forward by Department of Health officials.

As I address below, however, this was also picked up in my own later correspondence with the Trust.

5.21. I appreciate that from the viewpoint of the beneficiaries of the Macfarlane Trust and those involved in this Inquiry, the sums involved were still too small. However, it is notable that Tom Sackville (Stephen Dorrell's successor as PS(H) after the April 1992 election) was able to write to the Trust on 16 March 1993, with further funding of £5 million [MACF0000072_046]. I am confident that an award in the 92/93 PES round, had I proceeded with it, would have been for less than this sum of £5 million, if any allocation was made at all. Within the constraints that we had to work with, it is my view that deferring the bid to the following year worked.

5.22. To the best of my knowledge and belief from the documents now available to me, having made this decision about the original Macfarlane Trust in August 1991,

(1) My focus at Secretary of State level in the second half of 1991 on Trust funding issues was mainly on the policy approach to blood transfusion patients leading to my approach to the Treasury on this. We initially thought that the payment scheme as extended might be routed through the Macfarlane Trust but obviously the Eileen Trust was later established instead.

(2) I did not have any further involvement on the levels of funding for the original Macfarlane Trust save in relation to the correspondence addressed below.

5.23. As I have indicated, working level liaison with the Trust would have been carried out by officials communicating with the Trustees and vice versa. The Inquiry refers me to the following correspondence:

(1) Letter dated 13 December 1990 from GRO-A a haemophiliac who was HIV negative, but was urging more generous payments on behalf of those who were infected [DHSC0003658_083];

(2) My reply to GRO-A dated 12 February 1991 [DHSC0003658_082];

(3) Minute from Mr Heppell to my Private Secretary Mr Ahearn dated 16 December 1991 [DHSC0003111_010]. Mr Heppell noted that an approach was expected over the next few weeks from the Trust because they expected to be about half-way through their resources for paying means tested grants by the end of that financial year (this minute came some four months after my decision on the 12 August 1991 submission). Mr Heppell noted that the approach would be handled first by officials and that Ministers would be updated. Mr Heppell had been advised by the Trust about their recent meetings with MPs. He added,

"At this stage the best line to take is that the Department will, as in the past, consider carefully and sympathetically whatever proposals are put forward by the Trust/Society. We have very good working relations with them and have been very grateful for the good work that has been done by the Trust.

It any of the MPs presses the issue I suggest Ministers underline our positive response to the Trust in the past although without commitment. The fact is that we shall want to keep faith with our original approach to the Society/Trust and do our best to find any necessary topping-up money."

(4) Letter dated 5 March 1992 to me from the Rev'd Tanner, Chairman of the Trustees [MACF0000076_049]. Rev'd Tanner noted that the time was ripe for a review of the future needs of the Trust. He explained that,

"A major reduction in Trust financial expenditure would clearly be a painful experience for a large number of the people registered. Without a firm promise of further resources this decision will become unavoidable in the near future.

This would be seen by many within and without the Trust as a considerable reduction in the value of the settlement.

The Trustees ask to be informed what further help they may expect so that this information can be passed on to the people concerned."

(5) My reply to the Rev'd Tanner dated 13 March 1992 [MACF0000072_052]. In this letter, I noted the meetings with officials that had taken place and I made very clear that we would continue to support the Trust, and gave the assurance that revised funding would be kept under review and looked at again in the autumn of 1992 for the financial year 1993/94:

"I know that you and colleagues from the Trust recently met with officials from my Department and have sought assurances about future support for the Trust. As you know the Government has given assurances on several occasions that it would continue to keep under review the amounts available to the Trust. I can confirm that a Conservative Government would continue its policy of support for the Trust.

I understand you know that the Government did not plan to provide further funding for the Trust for the financial year 1992/93, as the Trust had adequate resources to enable it to maintain spending at present levels for the coming year. However, I am able to give you the assurance that I will look again at the position of funding for the Trust in the autumn of 1992 for the financial year 1993/94."

(6) The Rev'd Tanner's response dated 23 March 1992 [MACF0000072_051]:

"Thank you for your letter of 13th March 1992 which refers to my letter of 5th March 1992 and takes into account points discussed with Mr Strachan Heppell and other officers from your Department when we met recently.

I know the Trustees will be greatly comforted by your assurance that you will look again at the position of funding for the Trust, in the autumn of 1992, for the financial year 1993-94.

This will allow the Trustees to continue our present allocation policy without making arbitrary cuts in expenditure and in turn reassure those who look to us for support.

I am assuming that your endorsement of the present financial policy of the Trust will allow us to proceed with a review of the Regular Payments which may lead to their being increased to take account of inflation since October 1990, when the system was introduced.
I shall pass on to the Trustees your generous tribute to their work in helping to meet the special needs of people with haemophilia affected by HIV infection and their families. At the same time, I would like you to know how much we appreciate your own continuing concern for our cause and the encouragement we receive from the officials of your Department when we meet from time to time."

5.24. The Inquiry asks how often and on what basis the Department of Health reconsidered the amount of funding given to the Macfarlane Trust and my role in relation to this. Officials maintained the liaison and connection with the Trust[13] and my direct involvement was in making the decisions when a point of difficulty or choice of options was required, as was the case with the 12 August 1991 submission. The documents suggest to me that the Trust's funds that were used to make the fixed amount per-beneficiary payments were being topped-up on an as necessary basis to ensure that there were sufficient funds to honour those payments. The discretionary payments from the original Macfarlane Trust were the subject of review when the Trustees raised with the Department the fact that their funds were starting to be depleted and their need for reassurance about future funding. That was the subject of the 12 August 1991 submission and my decision on it. My letter of 13 March 1992 (and the meetings with officials that preceded it) followed through on that decision, giving the Trust the written reassurance that the Government would continue to support the Trust and that the funding levels would be looked at again for the 1993/1994 financial year. While the communication of this could have been left to officials, giving a written reassurance to the Trust on these points, as I did in my response to the Rev'd Tanner's letter, probably carried greater weight.

[13] For an earlier example of this liaison, the funding of the original Macfarlane Trust was one of the issues discussed when Mr Heppell met the Macfarlane Trust on 14 December 1990 – see his minute to my Private Office of 14 December 1990 [DHSC0003664_173].

5.25. The available records include a copy of the note of the meeting between officials and the Trust on 5 March 1992 [DHSC0003126_002]. I cannot say whether I would have seen this at the time. It is notable however that it was Mr Heppell who was leading this meeting on the Department's side which, given his seniority, is an indication of how seriously these issues were being taken. The note shows Mr Heppell giving the sort of reassurances that we wanted to convey and that I would have expected. I note that this included the option for the Trust to come back to the Department if they experienced difficulties prior to the 1993/1994 financial year. The note includes the following:

"Mr Heppell thanked the Chairman for his helpful submission and said that the Trust would not be asked to reduce its present level of help or to change its approach. The Department was grateful for the way in which the Trust carried out its work, and would want the Trust to continue on the same basis. The Government had always made it clear that the infected haemophiliacs were a special case, and recognised the continuing need for care of this group whose health, social and financial disadvantages were compounded by the onset of HIV. The recent announcement for the infected blood transfusion cases did not detract from that, and was not a move towards no fault compensation. Mr Heppell agreed that funding for a 2-3 year period was the right approach, and that funding on an annual basis would remove the Trust's room to manoeuvre. However, it was a question of timing; if there was no immediate need, the Department would not want to make a payment to the Trust this year, but could make the commitment that if funding is needed in the future, it would be forthcoming.

The Trust tabled a letter to the Secretary of State [this appears to be a reference to the letter to me dated 5 March 1992]. Mr Heppell agreed that a letter would go to the Trust with a form of words which would give the Trust the assurances they were looking for. The letter would:

- *make clear that the Department would wish the Trust to continue to make payments on the present basis,*

- *recognise that information provided by the Trust demonstrated a continuing need for the care provided by the Trust,*
- *make clear that the question of replenishment of the Trust would be considered in autumn 1992 for the year 1993/94,*

Mr Heppell said that if the Trust experienced difficulties prior to 1993/94 - which seemed unlikely - the Department would consider the position at the time."

5.26. The Inquiry asks me about the improving life expectancy of those infected and to what extent I was informed of this and involved in discussions. The Inquiry refers me to:

(1) Mr Watters' letter to the Prime Minister of 22 January 1991 [DHSC0020824_054]; the Prime Minister's reply of 19 February 1991 [DHSC0003376_004]; as well as Mr Watters' similar letter to me of the same date, and my reply of 18 February 1991 [DHSC0003657_011]; [DHSC0003119_006];

(2) Letter from the Rev'd Tanner to the Prime Minister, 25 February 1991 [DHSC0002472_161];

(3) Minute from Mr Chapman (a Private Secretary at No.10) to my Private Secretary Mr Ahearn, 27 February 1991 [DHSC0041453_051];

(4) Minute from Mr Ahearn to Mr Chapman, 7 March 1991 [DHSC0003374_004];

(5) Letter to me from John Marshall MP, 17 December 1991 [DHSC0041343_109];

(6) Response to Mr Marshall from Virginia Bottomley, 27 January 1992 [DHSC0043937_015].

5.27. I do not think that I can add very much to what is contained on the face of this correspondence, when considered alongside the 12 August 1991 submission (and my decision upon it) and the reassurances that followed. I do not have any specific memory of the life expectancy issue. But the papers show that the increased life expectancy of some beneficiaries was being raised by the Trust

and others as one reason why there was a need for further funds to be provided; and this was clearly one aspect of why we agreed to the principle of ongoing support for the original Trust with the promise of a review of funding levels ahead of the 1993/1994 financial year.

5.28. The Inquiry asks if I anticipated that greater funds would be required and how they would be found. This is, I believe, covered in my earlier answers. It was envisaged that further funding would be required; I envisaged that the funds would come from a PES bid that would likely be more effective if made in the Autumn of 1992 for the 1993/1994 financial year rather than proceeding with the bid in August 1991 for the 1992/1993 year; and this approach was successful in that Mr Sackville later announced the £5m of further funding in March 1993.

Section 6: HEPATITIS C VIRUS (HCV) SCREENING

6.1. The Inquiry refers me to the submission from Mr Canavan dated 21 December 1990, which was addressed first to the Chief Medical Officer and then to Lady Hooper (through their Private Offices), on the introduction of a blood donor screening test for hepatitis C antibodies [PRSE0004667]. The Inquiry refers me to the fact that the introduction of HCV screening had been recommended by the Advisory Committee on the Virological Safety of Blood (ACVSB) (meeting of 21 November 1990) [PRSE0002425]. The submission set out the main arguments for and against the introduction of screening, with recommendations in favour of its introduction, and that preparations should be made to introduce it as soon as practicable. Mr Canavan stated that it was unlikely that screening could be introduced before 1 April 1991. Looking at the papers now, I can see that Sir Donald Acheson agreed with the suggested course. On 31 December 1990, he endorsed the submission "*I agree, I consider that a difficult balance has been correctly struck in the circumstances.*"[14] Lady Hooper approved the recommendation and this was communicated by her Private Secretary on 16 January 1991, who noted that she had commented, "*I don't see that we have any other option*" [NHBT0000191_013].

6.2. The written record does not suggest that the submission or Lady Hooper's reply were copied to my Private Office. I have no independent recollection of this now. Based on the available records alone, it does not look as though I was involved but it is quite possible that Lady Hooper might have raised it at a Ministerial meeting. If she did so at this time (December 1990/January 1991), I expect it would have been simply to inform the rest of the Ministerial team that she was proposing to accept the recommendation to introduce the testing. I do not think that Lady Hooper needed to involve me in making a decision to accept such a recommendation. Her views were in accordance with officials' recommendation and the CMO was also in agreement. Against that background, I would most likely only needed to have become involved if there had been a difficulty over an issue such as funding which could not be resolved without my intervention.

[14] The version of the submission with this endorsement is at [DHSC0002498_096].

6.3. The Inquiry also refers me to the further submission dated 30 July 1991, again addressed to Lady Hooper, ahead of the proposed press release to announce the start of screening tests [NHBT0000192_125] [NHBT0000192_126]. Again, this submission does not appear on its face to have been copied to my Private Office. The focus of the submission was on the handling of the announcement, but Mr Canavan included a short background paragraph giving a brief overview in the following terms,

> *"3. In January 1991 Ministers agreed to the introduction of HCV testing as soon as possible on the unanimous advice of the expert Advisory Committee on the Virological Safety of Blood (ACVSB). At that time the technology was still being developed and evaluations of the screening kits were needed. It was found that the original kits gave many false positive results and so supplementary tests were also evaluated. Suitable second generation testing kits are now available and the Blood Transfusion Service is ready to start routine screening on 1 September 1991."*

6.4. I do not believe that I was involved in the implementation of the decision, including as to the funding arrangements for it. Nor do I consider that I necessarily should have been, unless there were problems with the implementation that necessitated ministerial input at Secretary of State level rather than being resolved at Parliamentary Under of Secretary of State level. Lady Hooper had made the necessary Ministerial decision which was for the testing to be introduced as soon as practicable.

6.5. Looking at the matters now, based on the available papers, the main reason that the roll-out was going to be in September 1991 and not April 1991 was said by Mr Canavan to be that second generation tests had become available and it was decided to carry out evaluation of those tests (as also referred to in the decision of *A and others v The National Blood Authority* (see further below)). From Chapter 31 of the Penrose Inquiry report, I have seen that the policy of a unified start date across the whole of the UK is raised as another factor; the

impact of the Gulf War and preparations for it is also mentioned in the chronology. But I am not really in a position to judge, retrospectively, the exact reasons for the time taken from the December 1990 submission to 1 September 1991, let alone the earlier period before I was Secretary of State.

6.6. The Inquiry refers me to key paragraphs in the judgment of Mr Justice Burton in *A and others v The National Blood Authority* [PRSE0003333]. I should mention an obvious caveat that the chronology assessed by Burton J covered both my period as Secretary of State, and that of Ken Clarke my predecessor and I cannot comment on the former period. However, based upon the details of that judgment, I think it is clear that it would have been possible to introduce the screening earlier.

6.7. I find it impossible reliably to answer whether I was specifically aware in 1991 of the time elapsed between Lady Hooper's response in mid-January 1991 and the announcement of the introduction of the testing and its actual introduction on 1 September 1991. I do not have any independent memory of this now so I simply cannot say whether I was conscious at this time that the date for introduction of the screening test had fallen behind the schedule envisaged when it was put to Lady Hooper for her decision.

6.8. In very general terms, if there was delay in the implementation of an agreed policy, as ministers we would have wanted to know why the delay had occurred and whether it was justified. Sometimes delay may have been unavoidable or justified (for example, because more testing or analysis was required). If the delay was not justified, we would want to know what action was being taken to tackle it and minimise the delay.

6.9. The Inquiry asks what responsibility I consider I had, to ensure the timely introduction of the screening test. The answer is that as Secretary of State I was accountable to Parliament for all the actions of the department whether I knew of them or not (the Crichel Down doctrine). That remains the case even where – as may well have been the case regarding the introduction of Hepatitis

C screening – I was not directly involved. In reality, Parliament normally accepts that actual responsibility may lie further down in a department. But it is the Secretary of State's duty to try to ensure that he or she has the right information to be able to intervene in matters of importance. Judging the right level of importance is always difficult and obviously relies crucially on officials and their own judgment on when to alert and involve ministers.

6.10. Based on my reading of the available materials and with the benefit of hindsight, I can see the grounds for suggesting that the time taken to implement Lady Hooper's decision ought to have been brought at least to her attention (and, if needed, possibly my attention also) when the "*unlikely … could be introduced before 1 April 1991*" timescale was heading towards an actual implementation date of 1 September 1991. However, officials also had a judgement to make on whether, and at what time, it was necessary to go back to ministers to update on progress or advise of any delays and the reasons for them (for example, in this context, that it was considered desirable for an evaluation exercise to be carried out on the second-generation tests). On balance, I think that if they did not do so, officials probably should have updated Lady Hooper on this prior to 30 July 1991. But I make that observation with some diffidence since:

(1) The documentary record may not be complete.

(2) I do not know now whether there may have been verbal updates provided.

(3) Additionally, it is hard now to speculate on what our ministerial reaction would have been; it is possible that we would have taken the view (for example) that the case for evaluation of second-generation kits was made out and that the implementation date of 1 September 1991 was reasonable in all the circumstances.

Section 7: LATER ROLES

7.1. The Inquiry has asked me whether (excluding my time as Chief Secretary to the Treasury) I had any further involvement in issues relevant to the Inquiry's Terms of Reference. The papers currently available to me are confined to those from the Department of Health together with supplementary materials produced by the Inquiry. However, I do not recall having any such involvement in my other ministerial roles in the Department of Environment, the FCO, as Chancellor of the Duchy of Lancaster, or in MAFF.

Section 8: OTHER ISSUES

8.1. The Inquiry invites me to reflect on how the Department, the Treasury and the Government handled the various issues.

8.2. As to providing financial support to haemophiliacs infected with HIV through the use of NHS blood or blood products, I think that I was right to seek to change the Government's approach when I became Secretary of State in 1990. For reasons explained above, I think it was right to seek to achieve the out of court settlement.

8.3. I also think we were right to change the policy towards those infected via blood transfusions.

8.4. I have no first-hand knowledge of the later moves towards financial support for those infected with hepatitis, though I would repeat my observations in paragraph 4.159, above.

8.5. Could we have extended the payments scheme to blood transfusion patients infected with HIV sooner, or even at the same time as it was agreed for haemophiliacs? Seen with the benefit of hindsight it would obviously have been desirable to do so. Certainly, our attempts to maintain a distinction between the two categories of victims became untenable and within a year, I had made the approach to the Treasury to extend the payments to the blood transfusion patients.

8.6. However, there is a further question, which is whether it would have been practically and politically achievable at the time to win the argument for the blood transfusion patients sooner. I do not think I would have succeeded in changing the policy in relation to blood transfusion patients in December 1990. The concern that this was a step too far towards no-fault compensation, was raised strongly even within the Department of Health in early December 1991 (I refer in particular to the concerns raised by Sir Christopher France and Mr Heppell see paragraph 4.123 above). Trying to extend the payment scheme in

that way from the outset may have risked losing the argument for haemophiliacs. That is my personal reflection, and I may be wrong. It was certainly right to change the policy in favour of the blood transfusion patients at the first moment when it was practicable to win the argument.

8.7. While it can always be argued that matters such as the HIV litigation settlement agreement could have been agreed sooner, my impression is that the Department of Health responded efficiently to my changed policies, while quite properly warning of the various risks discussed in the papers. It is hard now to describe fully the enormous pressures on the Department at the time with the fundamental reforms of the structure of the NHS, the Health of the Nation public health campaign, issues around pay for doctors, nurses and dentists and many other matters including preparation for what were expected to be heavy casualties in the war which was known to be coming in the Gulf.

8.8. It is always possible to do things better and faster, and I think Sir Michael Burton's criticisms on the speed of introduction of HCV screening are probably fair.

8.9. I understand that this Inquiry will be considering whether much more generous payments or even full compensation akin to tortious compensation should be paid to the infected and affected. I would welcome an outcome that found a way to give more generous payments. I also understand that there has been a considerable amount of evidence that, amongst other criticisms, the sums paid historically by the Trusts have been strongly felt to be inadequate. I would nevertheless note that, within the space of about a year of my appointment, we had moved from a policy of fighting the haemophiliac HIV litigation out in Court, to a settlement of that litigation on terms based on those put forward by the plaintiffs, and then progressed to extending the payments scheme also to blood transfusion patients. It may be assessed now that this did not go nearly far enough; but as I try to put myself back into the mindset of 1990 to 1992, I think that I and my team of ministers and officials did the right thing in moving policy

in the direction in which we did move it, and I am glad that we did so. I certainly never had cause to doubt that we were acting in good faith.

8.10. I have no criticisms of the Treasury. I do not believe I could have succeeded in changing the policies in the way we did without support from the Prime Minister, John Major, and most likely other ministers such as Ian Lang and Chris Patten. David Mellor, whether through his own judgement and assessment or in combination with discussions with me and others, came to support use of the Treasury Reserve for the HIV litigation settlement, and did not oppose the extension of the payments scheme to blood transfusion patients, albeit that we had to fund this from our existing budgets.

8.11. I have no further comment, save to return to two important points. The first is that I did not come across anyone, at any level of seniority, who worked on the issues investigated by this Inquiry who ever forgot the nature of the tragedy with which they were dealing. The second is that, although I believe that ministers and officials in the period when I was involved did their best to help in practical ways, the infected blood disaster remains one of the most tragic episodes in the history of the NHS. All those affected deserve not only sympathy and practical assistance, but also recognition and a collective effort to learn lessons for the future. I hope and believe that this Inquiry will play a valuable role in that effort.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed... GRO-C .....

Dated 29th April 2022