

Tuesday, 23 February 2021

(10.00 am)

SIR BRIAN LANGSTAFF: Good morning, Mr Stevens.

THE WITNESS: Good morning, Sir Brian.

SIR BRIAN LANGSTAFF: You're at home, are you?

THE WITNESS: I am. And thank you very much for giving me the opportunity to be so.

SIR BRIAN LANGSTAFF: Not at all. It's what we have to do in the particular circumstances we find ourselves in at the moment.

Now, let me tell you who you're talking to.

You're talking to a room here in Fleetbank House in which there are three members of the legal team opposite me, there are three members of the Inquiry staff, one of whom is Mary who will ask you to take the oath in a moment or two, and there is Soumik whose job it is -- which he does with great professionalism, I have to say -- is to make sure that the right document is shown to you at the right time and highlighted in the appropriate place.

Beyond us, there are probably somewhere around 200 or so people who will be watching. So although you're talking immediately to us and more immediately in answer to Ms Richards' questions, you will be talking to an audience of at least 200. It may very

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the fund until 2017?

A. Yes.

Q. You were also involved with MEPT Limited?

A. Yes.

Q. And you were a trustee of Caxton, the Caxton fund, from 2011 to 2013?

A. Yes.

Q. I'm going to be asking you questions today largely about the Macfarlane Trust and hopefully also the Eileen Trust, and then tomorrow about Skipton, Caxton, and some more general thematic issues, just so that you understand where the questions are going.

A. Okay.

Q. Mr Stevens, you provided the Inquiry with a written statement, and you were provided with quite a lot of documentation for the purpose of that statement, but I understand you've seen more documents since finalising your statement which has prompted your memory in a number of respects; is that right?

A. I wouldn't necessarily say it prompted my memory, but certainly, I was supplied with a lot documents after my statement was written, and there were places where the written record, which I had forgotten, would supplant my poor memory.

Q. We'll hopefully address those issues in the course of

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well be more because of the particular interest that your evidence will have. But thank you very much for coming. Ms Richards.

MS RICHARDS: I think Mary's going to administer the oath first.

SIR BRIAN LANGSTAFF: Of course.

PETER ROGER STEVENS, affirmed

Questions by MS RICHARDS

Q. Mr Stevens, can you see and hear me?

A. Yes.

Q. You were a trustee of the Macfarlane Trust from 1988 to 1992?

A. Correct.

Q. And during that time, you were also a trustee with the two Macfarlane special payment trusts, MSPT1 and 2?

A. Yes.

Q. You then had a second stint at the Macfarlane Trust as trustee and chair, 1999 to late 2006, beginning of 2007?

A. Yes.

Q. You were chair of and trustee of the Eileen Trust, 1999 to 2017?

A. Yes.

Q. You were involved in the establishment of the Skipton Fund from 2003 onwards and were a director of

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today and tomorrow. And at the end of tomorrow, if there's anything in your statement that you particularly want to raise or address or correct, I'll ensure that you have the opportunity to do so.

A. Okay. Thank you.

Q. Prior to your first involvement with the Macfarlane Trust in 1988, can you just tell us briefly what your background and employment history was?

A. Sorry, in the --

Q. Your employment history prior to becoming involved with the Macfarlane Trust --

A. Yes.

Q. -- what had your work been, and what were your qualifications?

A. I worked a number of mostly financial roles in three companies. And latterly during the time that I was involved with the Alliance House with the joint international insurance workers called Willis. And I got into -- my involvement with Macfarlane Trust stemmed from a previous short period as a trustee of The Haemophilia Society where the Reverend Alan Tanner got to know me and asked me whether I would join him as a trustee of the new Macfarlane Trust. I wouldn't say I had any particular qualifications for it. Just he asked me, I suppose, because of my general

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1 experience.

2 Q. So you were appointed I think in around March 1988,

3 and I won't go to the records, but we can see the

4 first meeting you attended as a trustee was April of

5 1988.

6 A. The first -- I missed the first board meeting. After

7 that, I suppose I tried to attend most of them, but

8 there were occasions when I couldn't.

9 Q. Did you have any -- other than the brief time you had

10 had as a trustee of The Haemophilia Society, did you

11 have any prior experience in the management of

12 charities?

13 A. No.

14 Q. When you took up the role as trustee, was any training

15 arranged or provided for you and your fellow new

16 trustees?

17 A. I don't think -- after all, we were all -- the whole

18 thing was new. We were all new to the job. I don't

19 think we ever had any formal training.

20 Q. What did you know at that time when you accepted the

21 Reverend Tanner's invitation to become a trustee at

22 MFT? What did you know of the circumstances in which

23 people had been infected as a result of blood

24 products?

25 A. I had two sons, both of whom had haemophilia. My

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1 trustees that you can recall?

2 A. I don't think so. I don't believe that I did any

3 visits to any haemophilia centres then. That came

4 later. I don't believe at that stage the Trust

5 organised any sort of any weekend events, for example.

6 Those, I think, all came later. No, I think I was

7 simply a trustee.

8 Q. You were a Haemophilia Society nominated trustee --

9 A. Yes.

10 Q. -- as I understand it. Did that give you any

11 particular or different responsibility as a trustee

12 than other trustees?

13 A. I don't think so. As I recall, the board at that

14 stage contained eight -- contained six -- the board of

15 ten contained six people nominated by the society;

16 four nominated by the Department of Health. I never

17 received, that I can recall, any instructions or

18 requests from the Society. I was simply, as it were,

19 on my own, a free agent doing -- giving -- making such

20 decisions, giving such judgment as seemed to be right

21 really as an individual.

22 Q. Now, do you know why the Macfarlane Trust was

23 established as a trust, rather than taking some other

24 form? Is that something you were involved in?

25 A. No, I wasn't involved in the establishment at all.

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1 eldest son contracted HIV. I subsequently -- after he

2 died in 1989, I subsequently saw his autopsy report,

3 and to my untutored eye, the damage done to his

4 internal organs would suggest he had Hep C as well.

5 My younger son, who is now 50, contracted Hep C but

6 not HIV. He has now eliminated Hep C and is fit and

7 well.

8 Q. Can you tell us what, broadly speaking, were your

9 responsibilities as a trustee of the Macfarlane Trust

10 in that first period, 1988 to 1992? What practically

11 did you have to do, and what kind of decisions did you

12 have to make?

13 A. I think I was broadly simply a trustee to help to join

14 in with the other trustees in consideration of the

15 policy and execution of the policy of the Trust.

16 I was specifically charged with addressing or trying

17 to address the -- see the need for mortgage and

18 insurance, life insurance solutions to the problems

19 that the Trust residents faced. Other than that,

20 I don't think there was anything particular I can

21 remember about my role.

22 Q. What, in practical terms, did participation as

23 a trustee entail over that four-year period? There

24 was attendance at the regular trustee meetings. Was

25 there anything else in particular that was required of

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1 I can only surmise that it was -- because it was set

2 up I think at the instigation of the Government as

3 a charity, it had to be -- in those days, I think

4 charities and trusts were quite closely linked, and so

5 it was set up as a discretionary trust with charitable

6 objectives.

7 Q. When you took up your role in 1988, what did you

8 understand to be the reasons for the establishment of

9 the Macfarlane Trust and the purpose of the Trust at

10 that point in time?

11 A. To provide support -- basically financial support to

12 people who had been -- to people with haemophilia who

13 had been infected with contaminated blood, with HIV.

14 Q. I am just going to ask you to look briefly with me at

15 the trust deed, the original version of the trust

16 deed. Soumik, it's MACF0000003_064, please. If we go

17 to page 5 and look at paragraph 4, we can see there

18 the objects of the Trust set out:

19 "The objects for which the Trust is established

20 are to relieve those persons suffering from

21 haemophilia who, as a result of receiving infected

22 blood products in the UK, are suffering from AIDS or

23 are infected with human immunodeficiency virus and who

24 are in need of assistance, or the needy spouses,

25 parents, children and other dependants of such persons

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1 and the needy spouses, parents, children or other
2 dependants of such persons who have died."
3 Did you understand, as far as you can recall,
4 the trust deed to draw any particular distinction
5 between those who were infected and their dependants?

6 **A.** I don't think at the time I was aware of any
7 distinction between those two groups. I think there
8 was -- a distinction did emerge in the trustees'
9 treatment of the groups, but it wasn't embodied in
10 that objects clause.

11 **Q.** We will come on to look at some of those issues at a
12 later stage, Mr Stevens. If we just, while still
13 looking at the trust deed, we can see, for the sake of
14 completeness, paragraph 5:

15 "In furtherance of the above object but not
16 further or otherwise the trustees shall have power to:

17 "(i) Provide or assist in the provision of
18 financial aid, holidays, food, clothing, and other
19 articles or assistance in kind, or of shelter,
20 hospice, housing, or other accommodation (whether
21 temporary or permanent).

22 "(ii) Promote the education of and provide
23 scholarships and apprenticeships for children and
24 young persons who are in need.

25 "(iii) Collect and receive funds, donations

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1 from the Ministry as to the original intention towards
2 spouses and as to whether those who became infected
3 were eligible to be registered in their own right and
4 not solely as 'dependants'."

5 It would appear from that record that questions
6 as to the intention of the Trust were regarded as
7 matters for the Department, the DHSS; is that right?

8 **A.** Yes.

9 **Q.** Why was it regarded as something upon which the
10 department's advice would need to be sought, rather
11 than the trustees forming their own view?

12 **A.** Because the Trust was set up at the instigation of the
13 Government and the Department, and the Department was
14 responsible to Government for the running of the
15 Trust. So it was right that we should go to them and
16 say, "What did you actually mean?"

17 **SIR BRIAN LANGSTAFF:** May I just ask why was the
18 Department responsible to Government for the running
19 of the Trust? Why weren't the trustees? It was
20 an independent trust, was it not?

21 **A.** Yes, the trustees -- we were independent. We were
22 certainly accountable to the Charity Commission not to
23 the Department. In the respect of the interpretation
24 of the trust deed, which was, I believe, originally
25 laid down in negotiation between Alan Tanner, his

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1 and legacies for the promotion of the above object,
2 provided that the trustees shall not undertake any
3 permanent trading activity in raising funds for the
4 above objects.

5 "(iv) Do all such other lawful things as may
6 be calculated to further the attainment of the above
7 objects, provided that nothing herein contained shall
8 permit or be deemed to permit the doing of any thing
9 or the pursuit of any purpose which are not
10 exclusively charitable."

11 Now, I want to ask you about one early meeting.
12 If we look at MACF0000002_015 please, Soumik. You
13 will see, Mr Stevens, this is a meeting of the
14 trustees on 2 May 1989 in which you were in
15 attendance. If we could go to the bottom of the
16 second page, please, Soumik, you'll see in the last
17 paragraph there's a reference there to infected
18 partners:

19 "An application for registration by a once
20 common law wife separated from the registered partner
21 was rejected pending further consideration (though it
22 was agreed that in that meantime help could be given
23 with expenses ..."

24 And then this:

25 "It was agreed that advice should be sought

10

1 number two, Clifford Grinstead and the Department,
2 I think it was right that we should go back to the
3 Department and say "What did you actually mean by
4 this?"

5 **SIR BRIAN LANGSTAFF:** Well, the meaning would be a matter
6 for the court, would it not, ultimately, because the
7 words used in making the gift or setting up the Trust
8 are "the Trust" and, once it's established, the
9 further views of the settlor don't matter, do they, in
10 law? Did you take legal advice on this?

11 **A.** I'll have to take your advice. You're a far better
12 lawyer than I am. At the time, the trustees believed
13 that the correct approach is to go back to the
14 Department to ascertain, as it says there, the
15 original intention towards spouses.

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

17 **MS RICHARDS:** We can take that down, thank you, Soumik.

18 I wanted to ask you next about the arrangements
19 for the appointment of trustees and employees and
20 these questions span both periods of time that you
21 were at the Macfarlane Trust. Now, you've told us
22 that there were a certain number of Haemophilia
23 Society-appointed trustees, a certain number of
24 DHSS-appointed trustees.

25 Were any particular characteristics or

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1 experience deemed either desirable or necessary in
 2 selecting who should become a trustee, as far as you
 3 can recall?

4 **A.** I think we did occasionally specify, either to the
 5 Department for their nominees or to the Society for
 6 their nominees, certain skills we're after.
 7 I remember there was a time when we felt that we were
 8 deficient in legal skills on the board. But I recall
 9 seeing a statement somewhere in the heap of documents
 10 about the Department, when the Department were filling
 11 vacancies that they were required to fill, they were
 12 simply looking for senior retired -- or retired senior
 13 officials from the Department, people who had some
 14 experience in medical and management matters without
 15 any specific skills.

16 **Q.** As and when new trustees joined the board, what, if
 17 any, efforts were made, as far as you can recall, to
 18 ensure that those new trustees had sufficient
 19 knowledge of the background to circumstances in which
 20 people had become infected with HIV and had some
 21 understanding of its impact?

22 **A.** This is one of the areas where my written statement
 23 was at variance with what I subsequently found in the
 24 documentation. There was an induction pack prepared
 25 by our solicitors so that any new trustee would have

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1 Haemophilia Society. Was that something that you
 2 regarded then or regard now as having advantages or
 3 disadvantages to have both those organisations jointly
 4 chaired?

5 **A.** Not really, no. No, the role of the Society was
 6 changing over the years and it was probably right that
 7 when Alan stood down from the chair of the Trust,
 8 I don't know whether he was still chair of the Society
 9 at that stage, it was probably right that his
 10 successor in the Society did not follow him into the
 11 Trust, that an element of separation was created.

12 **Q.** Were any attempts made to ensure that there was any
 13 form of representation on the Board of Trustees from
 14 Scotland, Wales or Northern Ireland?

15 **A.** I don't think there was, no. If there was, that was
 16 done by the Society and/or the Department. It was not
 17 done at the request of the MFT board.

18 **Q.** I think in the first part of your appointment, the
 19 1988 to 1992 period, there was an administrator and
 20 then, by the time you returned in 1999, that role had
 21 been replaced by that of a Chief Executive; is that
 22 correct?

23 **A.** My understanding is that Ann Hithersay, who replaced
 24 or succeeded Wing Commander Williams as administrator
 25 at some stage during the period when I was away from

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1 a full grounding in the background and the purpose of
 2 the Trust.

3 **Q.** Now, in terms of Chairmanship, the Reverend Tanner was
 4 the chair for the whole of the first period of time
 5 that you were a trustee and, when you returned in
 6 1999, you yourself then -- I don't know, I've got
 7 a record of the precise date -- but you took up the
 8 position of chair. How was the decision made as to
 9 who should be the chair of the board?

10 **A.** I've no idea. Alan and Clifford invited me
 11 specifically to rejoin the board as a trustee with
 12 a view to replacing Alan when he stood down at the end
 13 of 1999 or -- I can't remember the precise date which
 14 I took over from him in the chair, some time in 2000,
 15 I think, probably.

16 **Q.** So you were invited to rejoin the board specifically
 17 so that you would become chair?

18 **A.** Yes.

19 **Q.** But you don't know what discussions had taken place
 20 prior to you being approached in that way?

21 **A.** I don't know whether there had been discussions with
 22 the other trustees on the subject, or the Society or
 23 the Department.

24 **Q.** Now, obviously the Reverend Tanner had been chair of
 25 both the MFT (the Macfarlane Trust) and The

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1 the Trust, felt that her job should be better seen as
 2 that of Chief Executive and put that to Alan and
 3 Clifford and that was accepted.

4 **Q.** When you were chair, there were, I think, two chief
 5 executives, first Ann Hithersay and then
 6 Martin Harvey. What was your understanding, as chair,
 7 of the role of the Chief Executive?

8 **A.** To make sure that the Trust was executing the policies
 9 and the strategy determined by the trustees.

10 **Q.** Where did decision-making responsibility or authority
 11 lie as between the Chief Executive and the board?

12 **A.** Decision-making responsibility was with the board. If
 13 the Chief Executive had any doubts about what he is
 14 being asked to -- he or she was being asked to
 15 implement, they would have to go to the Chairman to
 16 find out what it was the board wanted done.

17 **Q.** The Macfarlane trust's office was in London and
 18 I think, in fact, the offices of the Alliance House
 19 organisations were in London, ultimately in the same
 20 location. What consideration was given to having some
 21 form of presence or office outside of London, in
 22 particular in Scotland, Wales or Northern Ireland?

23 **A.** At times when there was a lease termination or a lease
 24 renewal coming up in London there was, from time to
 25 time, some discussion whether the offices should be

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1 somewhere else. But with a staff as small as that of
 2 the Trust, there was no -- it wouldn't be practical to
 3 suggest -- to think of having a satellite office
 4 anywhere else. So either the office as a whole would
 5 move or it would -- every time we renewed it we
 6 decided that the costs and the inconvenience to
 7 everybody, including the registrants, of moving the
 8 offices away from London were such that we would be
 9 better put to stay where we were.

10 Q. What, if any, particular efforts were made to ensure
 11 that beneficiaries in all parts of the United Kingdom
 12 were able to access services and support equally?

13 A. Yes. I mean, most beneficiaries looked, first of all,
 14 to their haemophilia centre for their care and
 15 well-being, and the haemophilia centre would work with
 16 them on approaches to the Trust for assistance. There
 17 was an element of post code lottery, if you like, here
 18 in that some centres were better than others at
 19 providing the support, which we became aware of over
 20 years but, generally, wherever they were,
 21 beneficiaries had equal access to the Trust and to
 22 advice and help from their centres.

23 Q. If we could look, please, at another document, it is
 24 a set of minutes of July 1988. Soumik,
 25 MACF0000002_006. These are minutes of a meeting of

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1 see in relation to Glasgow, it's described as there
 2 being some:

3 "... initial anger directed at four points:
 4 "The inadequacy of the £10 million fund.
 5 "The decision by the Trustees not to pay all or
 6 most of the fund immediately on a lump sum basis to
 7 everybody.
 8 "Means testing".

9 Then the fourth is about a specific request.
 10 I am going to pick up on some of these themes later,
 11 Mr Stevens, but if we go to the next page, we can see
 12 top half of the page there's a reference to the visit
 13 to Edinburgh, and the second paragraph, reads:
 14 "A considerable amount of time in addition was
 15 spent 'discussing' the limits imposed upon us by the
 16 Trust Deed and anger was expressed at the fact the
 17 copies of the Trust Deed had not, as a matter of
 18 course, been sent to everybody."

19 I'm not going to take you to too many documents
 20 unnecessarily, I hope, but if you take it from me,
 21 Mr Stevens, there's another set of minutes which shows
 22 that copies of the trust deeds were going to be sent
 23 to Haemophilia Centre Directors. Is there any reason
 24 why the MFT had not made arrangements to ensure that
 25 all potential beneficiaries had a copy of the trust

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1 20 July 1988 at which you were in attendance. If we
 2 go to the bottom of the second page please, Soumik, we
 3 can see from the very bottom of the page, this is
 4 after a discussion about securing premises at
 5 Alliance House, it said:
 6 "... it was agreed that the address should
 7 remain confidential and that a new PO Box number be
 8 secured in SW1."

9 Why was the address to be kept confidential and
 10 not shared with registrants?

11 A. As far as I know, the address was available to
 12 registrants through the Society organised centres.
 13 I can't remember why we wanted to address to continue
 14 to remain confidential, probably to keep away unwanted
 15 callers but I can't remember.

16 Q. Could we look at another set of minutes,
 17 MACF0000002_011. You will see, Mr Stevens, these are
 18 meetings of a trustees' meeting on 9 December 1988,
 19 again you were present. If we go please, Soumik, to
 20 page 6, you'll see if we look at the top half of the
 21 page that, in fact in this early period in 1988, you
 22 did go on some visits at least to haemophilia centres.
 23 It records here two Scottish visits, meetings in
 24 Glasgow and Edinburgh. If we just go down the page to
 25 the second half of the page, please, Soumik, we will

18

1 deeds?

2 A. I can't think why that -- whether that -- I don't know
 3 whether that was a conscious decision or we simply
 4 didn't get round to it. I don't know.

5 Q. Then if we look at the bottom half of this page, under
 6 the heading "Summary and Recommendations", point 2
 7 refers to the depth of anger expressed in both Glasgow
 8 and Edinburgh, and a suggestion that there should be
 9 similar meetings at all major centres. Then at 3, it
 10 says this:
 11 "The Society's assistance should be sought to
 12 assess which Centres are most likely to contain
 13 particularly embittered people; these Centres should
 14 be seen sooner rather than later (it is understood
 15 that Cardiff might be a prime candidate)."

16 Why were people being identified there as
 17 potentially "particularly embittered"? Why that
 18 choice of words? This is your document, I should say.

19 A. I suppose by then we or The Haemophilia Society had
 20 picked up the fact that there was particular anger in
 21 Cardiff. I couldn't tell you why. I'm sorry in my
 22 earlier answer I had forgotten entirely about these
 23 visits.

24 Q. Before we look at some of the early decisions of the
 25 Macfarlane Trust in that 1988 to 1992 period, I just

20

1 want to ask you a little about the two special payment
 2 trusts. The first special payment trust, MSPT1, was
 3 established in early 1990. I'm not going to go to the
 4 original trust deeds. Is this right, it was to
 5 administer what were called *ex gratia* payments of
 6 £20,000?

7 A. Yes.

8 Q. If we look at a set of minutes of the Board of
 9 Trustees discussing this, it's MACF0000002_020,
 10 please, Soumik. You'll see, Mr Stevens, if we look
 11 that these are the minutes of a extraordinary meeting
 12 of the trustees held at Alliance House on
 13 29 November 1989, and if we look at the bottom of the
 14 page, you'll see reference there:

15 "On ... 21 November, the Trust and The
 16 Haemophilia Society had been invited to a meeting with
 17 the Secretary of State ... scheduled for 12.45 on
 18 23 November. No detailed agenda or papers have been
 19 provided in advance of the meeting."

20 If we go to the next page, if you look at the
 21 top half of the page, you can see:

22 "At the meeting it quickly became clear that
 23 the Trust and the Society had been invited to be told
 24 the Government's intentions only just in advance of
 25 an official parliamentary statement and press release

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1 notice or little advance involvement in the
 2 Government's planning and its announcement of this
 3 payment of £19 million. Is that your recollection?

4 A. Yes, I think you probably would have to consider both
 5 the special payments trusts together because the first
 6 one -- the *ex gratia* payment was set up in order to
 7 forestall growing litigation by
 8 beneficiaries/registrants against the Government.
 9 Really it was a failure in the sense that it didn't
 10 actually forestall this litigation at all, and they
 11 had to move on to MSPT2. But MSPT1 was an attempt to
 12 buy people off, I think, with £20,000 each. You can
 13 see that from that -- the central paragraph there that
 14 the Government had absolutely no understanding of the
 15 words that came up in the earlier consideration of the
 16 trust deed. There was a phrase "exclusively
 17 charitable". They had absolutely no idea that MFT
 18 could not make these payments which were not
 19 charitable but simply *ex gratia* £20,000 to everybody.
 20 It was a failure that ran all the way through the
 21 entire period that I was -- I mustn't exaggerate here.
 22 Well, certainly all the way through into -- well into
 23 this century, the failure of the Government to
 24 appreciate that the charities were charities and could
 25 only act on the basis of charity law. They could not

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1 ... There had therefore been no negotiation and very
 2 limited scope for discussion, though the views of the
 3 Trust and the Society had been firmly presented to the
 4 extent that the draft statement and press release had
 5 been modified in some areas.

6 "The Secretary of State had made it clear that
 7 the Government did not intent to alter its position
 8 that compensation must be handled by the Courts and
 9 hence that the proposed payment was not a settlement
 10 or compensation payment."

11 Then there's a reference to the chair, on
 12 behalf of The Haemophilia Society, saying this was
 13 just the beginning. Then if we go further down,
 14 there's reference to the Secretary of State being
 15 asked why the Government didn't make the payments
 16 itself:

17 "... the response was that using the Trust was
 18 necessary ... to give ... concessions on tax and
 19 social security payments.

20 "The Government proposal was to pay the Trust
 21 £19 million and for the Trust to provide the balance
 22 and be later reimbursed."

23 I don't know what, if any, recollection you
 24 have of these events, Mr Stevens, but it would appear
 25 from this that the Macfarlane Trust had little advance

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1 just hand out money because the Government thought it
 2 was a good idea.

3 Q. If we go to -- sorry, before we leave this page, we
 4 can see from the paragraph below that that it says:

5 "The Government proposal was to pay the Trust
 6 19 million and for the Trust to provide the balance
 7 and be later reimbursed."

8 Can you recall this issue or this suggestion
 9 that the Trust would somehow contribute to this and
 10 then be reimbursed?

11 A. No. I mean, this is -- again, it's an outrageous
 12 suggestion by the Government that the Trust should
 13 provide any of the money at all and later be
 14 reimbursed, or pay out, or let alone handle the
 15 payments out of the Trust. It just showed complete
 16 lack of understanding of what they had set up.

17 Q. If we go to page 11 of this document, please, Soumik,
 18 we can see there a reference to advice it appears the
 19 Trust received from the Charity Commission in that
 20 regard. Then the bottom of the page, you will see
 21 there reference to a missing 5 million:

22 "Trust monies couldn't be directly involved."

23 Is that what the Government was expecting the
 24 Trust to contribute, 5 million, that the Government
 25 would somehow then later pay back to the Trust?

24

1 A. Yes. If you say £20,000 each, and there were about --
2 at that stage, there were about 1,200 people
3 registered with the Macfarlane Trust, that's
4 24 million. So 5 million is the gap that they thought
5 the Trust could find and pay out. It's just -- it is
6 ludicrous. It is absolutely laughable that anybody in
7 Government or in the Department could have thought
8 that this was possible.

9 Q. If we could go back three pages to what I think is
10 probably page 8 of the document, Soumik. So this is
11 a draft press notice dated -- which was being
12 considered by the trustees' meeting in November 1989.
13 I don't think we have the precise date of it. But it
14 refers to the original 10 million which had been
15 provided in 1988 to set up the MFT in the first place,
16 and then an additional 19 million. Then it records
17 Mr Kenneth Clarke saying this:
18 "The Government had two objectives in mind.
19 First, to enable the Trust if the trustees see fit to
20 make individual payments of £20,000 this year. These
21 would go to each person with haemophilia ... second,
22 to enable the Trust to continue on a more generous
23 scale their help to families in particular need."
24 If the £19 million was going to be used, and
25 indeed wasn't quite enough to make the payments of

25

1 "To enable the Trust if the trustees see fit to
2 make individual payments of £20,000 this year."
3 That suggests, though the rest of the paragraph
4 would be to the opposite, that there was an element of
5 discretion --
6 A. Yes.
7 SIR BRIAN LANGSTAFF: -- about the payment to individuals
8 of the sum. The following said:
9 "This would go to each person with haemophilia
10 who was infected."
11 In other words, that's a payment to which
12 someone is entitled, and there's no discretion about
13 it. What was -- how did you read what he was saying?
14 Were the words "if the trustees see fit" an attempt to
15 make this structure fit with the discretion which the
16 trustees would otherwise have as trustees?
17 A. Yes. I can only suppose that somewhere in the
18 Department and the Government there was a glimmer of
19 understanding that the trustees of MFT could only make
20 payments on a discretionary basis. So they put in
21 these words "if the trustees see fit" to make it
22 possible that MFT could make the *ex gratia* payments.
23 SIR BRIAN LANGSTAFF: If the purpose of paying it through
24 the Macfarlane Trust one way or the other was to
25 ensure that the payments in the hands of the

27

1 £20,000, do you understand how it could be said that
2 the 19 million could enable the Trust to continue on
3 a more generous scale their help?

4 A. Sorry, I didn't hear the question.

5 Q. I'll rephrase it more clearly. Sorry, Mr Stevens.

6 Mr Clarke says there are two objectives in
7 making this payment. The first is to enable the
8 individual payment of £20,000.

9 A. Yes.

10 Q. That's what's ultimately done through MSPT1. But,
11 secondly, he says the Government's objective is to
12 enable the Trust to continue on a more generous scale
13 their help to families in particular need.

14 As I understand it, Mr Stevens, none of this
15 £19 million was going to -- ended up going to the MFT
16 to pay out in accordance with its charitable
17 objectives.

18 Do you understand how the Government was able
19 to say that this payment was to enable the Trust to be
20 more generous in its help?

21 A. Probably through political or official idiocy.

22 I mean, it was ludicrous. Ludicrous.

23 SIR BRIAN LANGSTAFF: Just before we leave that, can you
24 help me with the phrase that Mr Clarke is reported to
25 have said? It's:

26

1 beneficiaries were not taxable and did not affect
2 benefits, they would have to be discretionary, as
3 I understand what the previous document was
4 suggesting; whereas this reads to the opposite but
5 includes this sop, if it is a sop, to discretion.
6 It's very curious.

7 A. Yes. If it wasn't for the fact that I was involved
8 for so many years through the various organisations
9 with the Department of Health, I would say that it was
10 impossible this could ever have been drafted, could
11 ever have been written. But, unfortunately, it became
12 all too obvious that this is the way the Department
13 and Government worked.

14 MS RICHARDS: What, in fact, then happened is, as I
15 understand it, the Macfarlane said it couldn't proceed
16 in this way, hence the Macfarlane Special Payments
17 Trust, MSPT1, was set up.

18 A. Yes. I can't tell you what the timescale was, when we
19 said -- when we got that message across, but I think
20 it happened fairly quickly.

21 Q. Is this right: the role of MSPT1 was simply on
22 a non-discretionary basis to administer the payments
23 of £20,000?

24 A. Yes. The Macfarlane Trust -- MFT had the database of
25 people involved; their names, addresses, and bank

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details. So it was very easy to have another organisation set up that could have access to that database. Whether or not we asked people whether they minded, I suspect we probably didn't in those days, but maybe we did. And so MSPT1 -- or MSPT as it was then was set up simply to get these payments out which we did fairly quickly.

Q. Now, an issue then arose as to whether receipt of the £20,000 payment should be taken into account by the Macfarlane Trust when it was considering applications for assistance. And if we look at MACF0000002_022, please Soumik, we can see there these are the minutes of a trustees' meeting on 22 March 1990. If we go to page 7, please, you'll see there, Mr Stevens, under the heading "Allocation policy" a heading "The implications of the £20,000 *ex gratia* payment", and there is then a debate about whether the *ex gratia* payment should be taken into account when assessing applications for grants. If we go to the top of the next page, we look at first paragraph:

"The final majority view is that no direct account should be taken of the *ex gratia* payment in assessing grants by the Trust, and this was seen as a continuation of the existing policy. At the same time, it was recognised that it would be difficult to

29

determine such need."

You go on to say that:

"Clearly £20,000 cannot be considered sufficient compensation [underlined] -- nothing can, and you know that this is said with personal experience."

Then you talk, in that and the following paragraph, of different degrees of disadvantage, and you say in the following paragraph:

"... the family men, or their surviving widows and families, remain in general in need of assistance, and it is to them that I feel the Trust should give priority.

"I shall continue to urge my fellow Trustees, therefore, to take into account the *ex gratia* payment when considering applications received from those who fall, for example, into the first two groups I describe, in order that we can be more effective in our help to others on whom the burden of HIV infection falls even more severely. It is, of course, possible that we shall not receive many applications from those former groups, in which case the issue will rarely arise ..."

Two questions, Mr Stevens. The first is: why was it, in a nutshell, your view that the £20,000

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guarantee that trustees' awareness of the grant could be entirely set aside, and hence may affect their view of some requests for assistance such as mortgages or house improvements."

So that was the view taken by the Board. Your own view is what I wanted to ask you about, Mr Stevens, and that requires us to look at a different document. It is HSOC0013492, please.

This is an exchange of correspondence between you and Mr Watters of The Haemophilia Society. If we go to the third page, please, Soumik, we can see your letter. And if we look at the first half of the page to start with, you refer in the second paragraph to the letter having been discussed at the trustees' meeting. Those are the minutes I think we just looked at. Then you say in the third paragraph:

"In my opinion, as I told my fellow trustees, the £20,000 *ex gratia* payment cannot and indeed should not be excluded from our consideration of future requests for financial help from the Trust. In many cases it will not be relevant; but as I have expressed to you in connection with the campaign as a whole, I believe that with scarce resources we must be prepared to discriminate in favour of those in most need and the £20,000 payment is an obvious factor in helping to

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should be taken into account, at least in some cases?

A. I don't know why. That was my view, it is actually still my view, funnily enough, 20 years later, whatever it is. If you like, there's a phrase that has come up in various times during my career, The Daily Mail test, how would it look to the readers of The Daily Mail if they discover that this group of people were being given £20,000 and were then also being given other money from the same source, the taxpayer, that did not take account of the £20,000? I just felt, and still feel, that the whole financial picture needs -- should have been looked at and should be looked at. It wasn't the opinion of the majority of the board, as it said at the top of the previous page, and I had to go along with the majority. But as I said there in my letter to David, I would continue to urge my fellow trustees to take into account the *ex gratia* payment.

Q. The board's minutes, although reaching a view different from yours, had acknowledged that it might be difficult for trustees to avoid consideration of the receipt of the £20,000.

A. Yes.

Q. As a matter of fact, can you recall whether applications for assistance were rejected, in part at

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1 least because it was thought by trustees or by the
2 administrator or the allocations subcommittee that,
3 rather than come to the Macfarlane Trust,
4 beneficiaries should use the £20,000 *ex gratia*
5 payment?
6 A. I can't recall that happening as a matter of fact, no.
7 Q. Turning then to the second special payments trust,
8 which I'll refer to for shorthand as MSPT2, that was
9 set up in 1991 and that was pursuant to the settlement
10 agreement in the HIV litigation; is that correct?
11 A. Yes. I wasn't involved in the discussions about
12 setting that up but I have to assume that the
13 negotiations were between the Department and the
14 solicitors acting for the litigants, with peripheral
15 involvement from the Macfarlane Trust.
16 Q. Is this correct that MSPT2, again on
17 a non-discretionary basis, made payments -- the rate
18 varied, but made payments in accordance with the
19 amounts agreed as part of the settlement?
20 A. Yes, there was a tariff agreed and we made payments
21 according to that tariff, provided the applicants
22 signed the waiver of litigation rights.
23 Q. That's the next question or next matter I wanted to
24 ask you about. If we can, just to contextualise this,
25 look at the settlement agreement. I appreciate you

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1 and we had meetings to go through applications and we
2 would sign off a payment to be made, provided the
3 administrator, Wing Commander Williams, could assure
4 us that the applicant was correctly -- was correctly
5 assigned to whichever bit of the tariff he belonged to
6 and that the application was accompanied by a signed
7 waiver. Paragraph 8 there refers to qualifying
8 non-plaintiffs but, you know, somewhere there there's
9 a similar paragraph, I'm sure, that applies to
10 plaintiffs.
11 So nobody got a payment unless they had signed
12 that waiver. The other interesting thing is, of
13 course, that the reference to the hepatitis viruses,
14 which I think was -- the hepatitis C virus had only
15 just been identified and isolated and named in 1990.
16 I couldn't tell you what date it was in 1990.
17 Generally, the people who signed this waiver, I think,
18 did not know about the risk of hepatitis infection.
19 There was not parity of knowledge.
20 Q. Did you and your fellow trustees, do you recall at the
21 time, have any qualms or concerns about the fairness
22 or morality of the waiver requirement?
23 A. I don't recall protesting or observing to the
24 Department officials, let alone the politicians, that
25 there was something wrong here. We just -- we did

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1 were not involved in those negotiations, but if we
2 look at DHSC0001942, you will see HIV haemophilia
3 litigation, the main settlement agreement, and it
4 refers to the Macfarlane Special Payments (No 2) Trust
5 to be established and sets out the tariffs.

6 If we go to page 16, please, paragraph 8, we
7 can see there reference -- it's not the only reference
8 in this document, but just for sake of convenience,
9 I will just take you to this -- reference to the
10 signing of an undertaking not to bring proceedings in
11 respect of the administering of cryoprecipitate,
12 Factor VIII or IX, save that they weren't prevented
13 from bringing proceedings if the damage -- point 1 is
14 relation to date and point 2 is:

15 "The damage alleged does not include infection
16 or the risk of infection by HIV and/or the hepatitis
17 viruses."

18 A. Yes.
19 Q. So there's one of the references in the settlement
20 agreement to the undertaking. What was the role of
21 MSPT2 in evaluating the undertaking? Did you receive
22 the assigned undertakings or check somehow that there
23 was a signed undertaking before the payments were
24 made?
25 A. Yes. There were four trustees in MSPT2. I was one

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1 what we were told.
2 Q. We can take that down, thank you, Soumik.
3 Was there, as far as you can recall, any
4 discussion within MFT about whether the monies paid
5 under MSPT2 should be taken into account when grant
6 applications were being assessed by the
7 Macfarlane Trust?
8 A. I don't recall any discussion. I'm sure that if there
9 was some I would have been, again, in the minority,
10 maybe a minority of one. I can't remember.
11 Q. Now, I think it's clear from what you have said
12 already, and from a number of the documents, that in
13 this period, 1988 to 1992 the Macfarlane Trust's view
14 was that it could only provide assistance in response
15 to need.
16 A. Yes.
17 Q. Do you recall whether in that period the Trust had
18 received legal advice on that issue?
19 A. No, I can't recall that. I know, since it was
20 explored in my second coming, kept on coming up and we
21 took legal advice more than once, but I don't
22 recall -- I don't recall legal advice being sought
23 first time round.
24 Q. At a fairly --
25 A. Sorry, the objectives clause in the trust deed were

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1 pretty specific, it talked about need.

2 Q. I think at a fairly early stage, if we look at

3 MACF0000002_002?

4 A. One we've already had?

5 Q. I'm not sure this one is, it may be. This is the very

6 first trustees' meeting, I think, 29 March 1988. It's

7 the one you were not present at. You gave your

8 apologies. But if we look at the third page, please,

9 and we look at the second paragraph:

10 "Questions arose regarding a level of equal

11 distribution to those people with haemophilia who had

12 come into contact with the virus. This position had

13 been raised by the General Secretary of The

14 Haemophilia Society with the solicitors and their

15 reply was circulated. Mr Paisner made it very clear

16 in that reply that equal distributions which failed to

17 take account of personal circumstances did not fall

18 within the terms of the Charities Act 1960 and could

19 not therefore take place. This situation was accepted

20 and regret was expressed at this limitation."

21 So is this right, that from the very outset,

22 the Trust's position was, for the reasons we see

23 outlined there, that it could not simply equally

24 distribute the funds which, at that stage, stood at

25 £10 million?

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1 them is the fact that, even that was not -- that would

2 not have been in accordance with our charitable

3 objectives.

4 Q. Would you agree it's, however, perhaps not surprising

5 that beneficiaries or registrants, those infected and

6 their dependants, saw or felt that the monies paid by

7 the Government to the Macfarlane Trust were monies

8 that ultimately, having been paid in contemplation of

9 or in threat of litigation in part, ultimately somehow

10 belonged to them?

11 A. I don't find that surprising at all. I mean, it was

12 clearly a wrong view but it's not a surprising view

13 and it's one that we battled with constantly, all the

14 way through both the first four years and in my second

15 appearance there. It was the underlying view the

16 whole time that: it's our money, give us our money.

17 Q. This was a cause of tension throughout the period that

18 you were involved in the Macfarlane Trust?

19 A. Absolutely.

20 Q. What attempts were made, as far as you can recall, by

21 the Trust to explain the limitations of its powers to

22 the infected and affected community?

23 A. I suppose in newsletters and other documentation we

24 would have attempted to put this view over, I can't

25 remember. Unfortunately, the Macfarlane Trust had too

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1 A. Yes. Two comments: firstly, that some time in those

2 first four years we, as trustees, did introduce

3 a system of regular payment, a flat-rate regular

4 payment to everybody of £25 a month. Justifying that

5 on the basis that everybody who had haemophilia and

6 HIV necessarily were incurring greater living expenses

7 and, therefore, some assistance had to be given with

8 those higher costs. Whether or not Mr Paisner would

9 have accepted that, I don't know.

10 The second point that I was going to make, like

11 most things in my life these days, has escaped me.

12 No, it may or may not come back.

13 Q. Is it right to say that, really from the outset, there

14 was a tension between the Trust's view that, having

15 been set up as a charity and having the objects that

16 we looked at in the trust deed, it could not proceed

17 on an equal distribution basis but could only proceed

18 in response to need, and the view of beneficiaries --

19 A. Sorry, that was the second point I was going to make,

20 that if you think back to the notes about the visits

21 to Cardiff -- sorry, to Glasgow and Edinburgh, one of

22 the points at which anger was expressed is the fact

23 that we simply didn't pay out £10 million divided

24 between 1,200 people and just do that. I mean, there

25 are various arguments against that policy but one of

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1 many registrants to be able to engage in personal

2 dialogue with every one of them, whereas the

3 Eileen Trust, the issues much the same, it was very

4 much smaller and, particularly in the later years, we

5 were able to engage in individual discussion and make

6 sure they understood the problem, and they did. The

7 case worker, Susan Daniels, did a great job of that,

8 in ensuring that people didn't have these misguided

9 views and didn't take out on the trustees and the

10 Trust their anger. We had charitable objectives to

11 fulfil that were overriding everything we did.

12 Q. As well as the decision at an early stage that you

13 couldn't go down the road of equal distribution,

14 a decision was taken at an early stage that it was

15 inappropriate for the Trust to fundraise. I just want

16 to look at that with you please. It's

17 MACF0000002_005, please, Soumik. These are the

18 minutes of a meeting on 7 June 1988 attended by you

19 and, if we go to the third page, we look at 88.32, so

20 that's the "Any other business".

21 "Mr Grinstead raised the question of future

22 funding arrangements. This was discussed in some

23 detail and finally it was agreed that it would be

24 inappropriate to fundraise in order to support the

25 work of the Macfarlane Trust and that further

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1 recourse, when necessary, should be made to the
2 Government."
3 Why was the view taken that it would be
4 inappropriate to fundraise?
5 **A.** We just took the view that the Trust was too small,
6 dealt with a very small number of people who certainly
7 had been damaged very badly by the Government, but the
8 Trust was being funded by the Government. If we were
9 to fund -- if we were -- we thought we would both be
10 unsuccessful in raising any funds, and that were we
11 successful, the Government would say, "Fine. You
12 don't need us anymore." So either way, we thought it
13 was far better to stick with the devil we knew.
14 **Q.** If we go --
15 **A.** It's something we discussed many times over the years.
16 It was formally raised then at the Board meeting, but
17 it was -- we thought about this many times. We always
18 felt the same, that we were not likely to be very
19 successful. Bear in mind that this is before
20 crowd-funding and social media which these days seem
21 to raise large sums of money for the most
22 extraordinary specific causes. We didn't think --
23 well, that wasn't open to us in those days. We didn't
24 think we would be successful, but if we were, the
25 Government would wash their hands of us.

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1 **A.** Yes, I think that paragraph says it admirably.
2 **Q.** But why?
3 **A.** I think it goes back to what I said before, that if we
4 got involved in campaigning, we would be, as it were,
5 biting the hand of our paymasters. We preferred to
6 take the money, however inadequate, rather than risk
7 losing that money.
8 **MS RICHARDS:** Sir, I note the time. I'm going to move to
9 a slightly different topic. Would this be
10 a convenient moment to take a break?
11 **SIR BRIAN LANGSTAFF:** Yes. We'll take a break in a
12 moment. Just a couple of questions arising out of the
13 exchanges with counsel thus far.
14 The first was the making contact with the
15 registrants which was through their haemophilia
16 centres. Can you help with how contact will be
17 maintained from those who were not themselves
18 receiving treatment but were the relatives or
19 dependants of those who had been infected but no
20 longer were?
21 **A.** I think we took the view that the relatives of the
22 deceased would still be known to the haemophilia
23 centre, that there were continuing contacts between
24 the centres and the bereaved relatives.
25 **SIR BRIAN LANGSTAFF:** Thank you. The second question,

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1 **Q.** Another early decision was about not campaigning. And
2 if we look at MACF0000002_019, these are the minutes
3 of a meeting 20 November 1989. If we go to page 3,
4 please, under the heading "The compensation campaign":
5 "Discussion on this subject was wide ranging
6 but mainly centred on two aspects of Trust policy,
7 namely what part, if any, should the Trust play in the
8 campaign, and, secondly, what position should the
9 Trust take if offered any large sum of money by the
10 Government.
11 "On the first point, it was generally agreed
12 that the position which had been maintained to that
13 date (that the Macfarlane Trust and its work were
14 separate from the issue of compensation) was correct
15 and should be continued. It was also agreed that
16 while the Trust could not entirely avoid being drawn
17 into the public arena on this subject, it should not
18 take any initiatives or active part in the campaign.
19 At the same time, the Trust should take care to avoid
20 any action or statement would which impede the
21 campaign."
22 That, as I understand it, was a view which
23 again the Trust maintained during the period when you
24 were Chair, that it would not become involved in
25 campaigning. Why was that?

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1 it's something of a lawyer's question, perhaps, but
2 the undertakings which were required as a condition of
3 payment from the special payment trusts were checked
4 by the administrator to ensure that they were there.
5 Who was the undertaking made with? Was it made with
6 the Trust or with some other party?
7 **A.** I'm sorry, I didn't quite get the thrust of your
8 question.
9 **SIR BRIAN LANGSTAFF:** Well, there are two possibilities.
10 One is that as a condition of receiving payment from
11 the Trust, the individual person seeking payment would
12 have to sign a waiver.
13 **A.** Yes.
14 **SIR BRIAN LANGSTAFF:** That is a document prepared
15 effectively by the Trust for them to sign before they
16 can get the money out of the Trust. That's an
17 obligation then being undertaken to the Trust.
18 The other is that they sign the agreement as
19 part of a settlement reached with the Department or
20 the Government with the other party in the litigation,
21 and in which case, what the Trust will be looking for
22 presumably will be evidence that that had been done.
23 Can you help as to which it was?
24 **A.** I think it was -- I think what -- I think the first of
25 your options was what we were doing. There was

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a form, a waiver, that was attached to form part of the application form which had to be signed. The wording on the form was as agreed between the solicitors or the lawyers for the litigants, and I suppose the Department, with the Macfarlane Trust's acceptance that we would administrator, make sure that these forms were appropriately signed.

I'm sorry, I'm not sure that I'm really understanding the distinction between your lawyerly points.

SIR BRIAN LANGSTAFF: No, it's a matter which I think I should take up elsewhere rather than delay this part of the evidence, which is on something which may matter but for the moment we don't need to, I think, resolve it further.

Perhaps, Ms Richards, we can have a look at that in due course, and a lot will depend upon the particular wording, I suspect, of the waiver and who had the right to enforce it.

MS RICHARDS: Yes, absolutely.

A. Can I just say that precisely the same tariff and waiver was a pre-condition to people becoming registrants of the Eileen Trust. There the application and the waiver is -- the correct completion of the application, including the signature

45

(A short break).

(11.50 am).

SIR BRIAN LANGSTAFF: Just before we start, it's been reported to me during the break that there are one or two people who are listening remotely who have had difficulty in hearing not you, not me, but I'm afraid you, Mr Stevens, and you are the most important person to be heard here as a witness, so it's -- I think it may well be a technical problem. Bear with us, please, those who are watching remotely, and I hope it will be sorted. But if you need to take time or speak a bit more loudly, you'll understand why that is, I'm sure. Thank you.

MS RICHARDS: Sir, in answer to the query you raised before the break, I've got a copy not in a form I can put on screen I'm afraid, because it's not been redacted, but I've got a copy of the text of the undertaking that was to be given in accordance with the Macfarlane Special Payments (No 2) Trust deed, and it reads as follows:

"In expectation of receiving from the Macfarlane Special Payments (No 2) Trust the sum of [and then the sum obviously would depend upon the individual tariff], I undertake with the Secretary of State for Health that I will not at any time hereafter

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of a waiver, was something which the Eileen Trust were not involved in; it was something that was administered by the Department or their lawyers. Otherwise, it's identical.

SIR BRIAN LANGSTAFF: Yes, thank you. We'll take a break now until 11.50.

MS RICHARDS: Sir, yes. Mr Stevens will require the explanation about not talking about his evidence.

SIR BRIAN LANGSTAFF: Mr Stevens, I don't know if you have watched any of our proceedings before, but if so, you will have heard me say to every witness who is being questioned at the time that we have a break that during that break they must not discuss the evidence they have given or any part of their evidence which they think they may yet be asked to give with anyone, whoever it is, and however innocent they may think it to be. That's without first asking the permission of me to do so. You can discuss anything else you like, so it's not a question of being put in purdah, but those are the rules, and they apply to every single break that we have because the chances are that you will be back with us, I think, tomorrow.

A. I understand.

SIR BRIAN LANGSTAFF: So 11.50.

(11.19 am)

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bring any proceedings against the Department of Health, the Welsh Office, the licensing authority under the Medicines Act 1968, the Committee on Safety of Medicines, any district or regional health authority, or any other Government body involving any allegations concerning the spread of HIV or hepatitis viruses through Factor VIII or Factor IX, whether cryoprecipitate or concentrate, administered before 13 December 1990."

SIR BRIAN LANGSTAFF: Thank you for that. That seems to make it clear that the undertaking was given to the Secretary of State.

MS RICHARDS: Yes, and we are getting a copy of an Eileen Trust undertaking as well, just to double-check the wording in that regard.

Mr Stevens, the trustees recognised at an early stage of the Macfarlane Trust that the issues of life insurance and mortgage protection were hugely important issues for the cohort of beneficiaries with which the Trust was concerned; is that right?

A. Yes.

Q. If we look at MACF0000002_002, please -- and we have looked at this one before. These are the minutes of the first meeting 29 March 1988. And if we go to the second page, please, we look at the item -- it's the

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1 first half of the page, item 88.5, "Life
2 insurance/mortgage protection", this is recorded:
3 "The Chairman reported that at one of the
4 preliminary meetings with the Secretary of State for
5 Social Services assistance had been promised with
6 exploration of the above topics."

7 And then if we look at the next paragraph, it
8 says that:

9 "This formed the crux of the future allocation
10 policy of the Trust, and the Chairman undertook to
11 pursue the question further with Mr Stevens."

12 As far as you can recall, was any assistance
13 forthcoming from the Secretary of State with regard to
14 either of these issues?

15 A. Sorry, I don't recall any direction or any work
16 emanating from the Secretary of State to resolve these
17 issues. There may have been some. I don't recall it.
18 But, certainly, I was charged by Alan Tanner to pursue
19 the questions simply because I worked in the City of
20 London basically, and I did.

21 Q. I'm not going to go through the details of all the
22 meetings at which it was discussed and the papers you
23 produced. You produced two papers, I think, in the
24 second half of 1988 on the issue of mortgages. And
25 then in early 1989, Mr Grinsted produced a paper which

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1 There was a general policy on home ownership, and this
2 is the equity sharing mortgage purchase of property.

3 If we just go to the second page, bottom half
4 of the page under the heading "Equity share", we'll
5 see what's described as the key feature of the Trust's
6 policy:

7 "The key feature of the Trust's policy in
8 granting a mortgage loan is the Trust's right (in
9 return for not charging interest) to participate in
10 the value in the property. Equity sharing means that
11 upon the occurrence of certain events ... the Trust
12 will be entitled to a return of its money plus a share
13 of any appreciation in the capital value of the
14 property, which share will be the same proportion as
15 the loan made by the Trust bears to the total of the
16 original funding."

17 Now, first of all, Mr Stevens, as far as you
18 can recall, were these written policies -- this is one
19 of the three policies relating to mortgages -- were
20 they shared with or provided to beneficiaries?

21 A. Sorry, what was the second -- the final words of your
22 question?

23 Q. Were these policies, copies of these policies, shared
24 with or provided to beneficiaries?

25 A. Yes.

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1 raised the question of lending money in exchange for
2 an equity share.

3 A. Yes.

4 Q. I want to just look with you at then the trustees'
5 meeting that followed that. So that is
6 MACF0000002_013, please. So we can see these are the
7 minutes of a meeting on 16 February 1989. If we go to
8 the third page and we look at the bottom half of the
9 page under the heading "Mortgages", we can see there
10 a reference to Mr Grinsted's paper, and then in the
11 last paragraph general discussion on the matter of the
12 principle of assistance with house purchase:

13 "It was agreed that the paper offered a major
14 step forward and that the principle of equity sharing
15 could represent an important element of a policy which
16 protected the interests of the Trust as well as
17 providing help to individuals at the lowest possible
18 running costs."

19 Again, I don't need to take you to all of it,
20 but that was in due course confirmed as Trust policy,
21 and I want to look at one of the policy documents with
22 you. Soumik, it's MACF0000081_127, please.

23 This is one of three policies approved by the
24 Trust in July 1989. One was about equity sharing
25 mortgages and substitution of an existing mortgage.

50

1 Q. How was that done? How were these policies made
2 available?

3 A. In response to requests for help from beneficiaries.
4 The document you're looking at is the equity share
5 raised in the purchase of the properties, which is
6 different from -- slightly different from the equity
7 sharing for the -- as a substitution for existing
8 mortgages. Can I refer you, please, to
9 MACF0000081_131.

10 Q. This is the policy on home ownership?

11 A. Yes.

12 Q. It will come up in a moment.

13 A. If you look at well the opening paragraphs on "General
14 Policy":

15 "The ... Trust is established to relieve the
16 needs ..." et cetera, et cetera, that's fine.

17 "Home ownership is not recognised per se as
18 an area of need, but it may be the most cost-effective
19 or even the only method of meeting the need for
20 housing."

21 That's quite key:

22 "A prime objective of the Trust is to enable
23 beneficiaries to preserve a balance of disposable
24 income after housing costs have been met ..."

25 Then if we go down the page to paragraph 5

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1 there.
 2 Q. That's the bottom of the page, thank you.
 3 A. So we were only prepared:
 4 "... to allocate monies to the provision of
 5 private housing where this is the only option
 6 available to help provide or maintain satisfactory
 7 living accommodation.
 8 "The Trust will not help with home ownership as
 9 a form of insurance to provide security ...
 10 "Very large grants are not available ..."
 11 Now, that was agreed as a matter of policy on
 12 28 July 1989 and, if you go on to the third page of
 13 that document and this bottom section A "Rescue of
 14 Existing Mortgage", that sets out the circumstances in
 15 which the Trust will offer help where there was --
 16 there was a property, a family home, under mortgage
 17 and it says there:
 18 "Where reduced circumstances result in threat
 19 to a mortgage, maintenance of the family in its
 20 existing home is clearly the preferred solution ..."
 21 Then they ask a number of questions.
 22 Now, equity sharing, as a substitute for
 23 a traditional mortgage, was actually -- I think was
 24 the more common of the two forms, rather than
 25 provision of a mortgage for purchase, a new purchase.

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1 legal advice by then, the rules had changed and we
 2 could no longer give this sort of loan so we had to
 3 stop doing it.
 4 But at the outset it was quite an important
 5 contribution to the task we had to do, which was to
 6 help people.
 7 Q. Can you recall whether there was any discussion,
 8 either at the time these three policies were being
 9 agreed or subsequently, of whether it was right for
 10 the Trust to effectively be able to make a profit in
 11 the event --
 12 A. It didn't -- this word "profit" relating to the Trust
 13 is, I find, most extraordinary and you're not the
 14 first person who has expressed it. The Trust made
 15 interest-free loans on these mortgages, quite
 16 substantial, even if they didn't qualify for very
 17 large grants, quite substantial. So this is money
 18 that was being taken from Trust funds that could
 19 otherwise be spent on other people who had other
 20 needs.
 21 So when the beneficiaries of an equity-sharing
 22 mortgage had realised some appreciation in the value
 23 of their house, it seemed only reasonable that the
 24 Trust should share in that appreciation and enable the
 25 trust fund had been maintained to help all

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1 Can I then refer you to MACF0000002_017.
 2 Q. These are the minutes of the July 1989 meeting?
 3 A. Yes. I haven't got a page number, but if you go to --
 4 Q. Page 9.
 5 A. -- item number 89.59, that's it. So the document:
 6 "... Chairman drew attention to the document
 7 which had been discussed in outline of the previous
 8 meeting ..." which is the one we've just been looking
 9 at, certain redrafting going on, and then:
 10 "(b) Equity Sharing Mortgage in Substitution
 11 of Existing Mortgage. The chairman invited a detailed
 12 review of the Second (Final) Draft of the
 13 document ..."
 14 I think it's worth going on to the final
 15 paragraph, paragraph (c) there where the Chairman
 16 basically thanked Clifford Grinstead for -- it was
 17 a huge amount of work, and the meeting as a whole
 18 endorsed this statement. I think there was a feeling
 19 in some quarters that the Trust's policy on mortgages
 20 was badly thought out or maybe off-the-cuff or
 21 something like that. It was as a result of lot of
 22 detailed, detailed work by Grinstead and then
 23 consideration by the board. There were not many of
 24 these equity sharing mortgages granted and I seem to
 25 recall, when I subsequently became Chairman and we had

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1 beneficiaries. Simply a question of fairness.
 2 I think that's probably all I need say there.
 3 There are further documents relating to one particular
 4 case, which may or may not come up.
 5 Q. Is this right then: the trustees --
 6 A. Excuse me, I've just got a strange window just come up
 7 on my screen. I'm just going to get rid of that.
 8 Okay.
 9 Q. Is this right then, that the Trust didn't, either at
 10 the time these policies were being approved or
 11 subsequently, have any concerns or qualms or worries
 12 about receiving -- I'll avoid the use of the word
 13 "profit" -- a share of any appreciation in the capital
 14 value of the property?
 15 A. I don't think there were any qualms. I don't recall
 16 any concerns being expressed. I think we recognised
 17 that we had very limited funds, which was the source
 18 of so much aggravation over the years, and that by
 19 helping people, as said in one earlier reference, by
 20 helping people as something that is not recognised
 21 *per se* as an area of need -- it may be the only method
 22 of meeting the need for housing -- by doing that we
 23 were using funds that could otherwise be helping
 24 people with childrens' education, with holidays --
 25 sorry, I'm trying to get rid of this window, again --

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just being generally helpful on a broader front and that the people who benefited from these mortgages, equity-sharing mortgages, had the benefit of the appreciation in value of their property.

What it doesn't say in those documents is that, of course -- although I think it does in the detail of the deeds -- if the value of the property went down, not as a result of neglect but just simply market forces, the Trust would share in that depreciation as well. So it was even handed. But it ensured that the scarce Trust funds retained value, even after looking after this particular requirement.

Q. Could we just go back, Soumik, to MACF0000081_131. This is the policy on home ownership. Just look at the very top paragraph, under the heading "Policy on Home Ownership":

"This document is CONFIDENTIAL to the Trustees for use in development and application of policy on assistance with home ownership. It is not intended for publication or for release to applicants or their representatives."

Now, whether that's the case in relation to the other two policies, I don't think they contain the same wording but why was the document here not intended to be shared with applicants or

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able to assist in arranging for life assurance for your cohort of beneficiaries didn't get anywhere?

A. No, that's right. That final sentence is basically stating what I was able to report. I had a discussion with a number of insurance companies and the insurance company representative body and it was quite clear that they were not interested.

Q. Was the possibility of any form of Government-backed insurance scheme ever pursued further, as far as you can recall?

A. I can't recall specific -- I'm sure that Alan Tanner and Clifford Grinstead had frequent meetings with Strachan Heppell and John Cannon at the Department, so I'm sure that this was raised and it was apparent that there was no Government action in hand which would be likely to bring any early relief. It's said there. I think that was an unchanged policy from the Government, of no help.

Q. Again, still on this early period 1988 to 1992, in terms of allocating funds, the Trust established an Allocations Committee or subcommittee which would consider applications for grants; is that correct?

A. I'm sorry, can you repeat the question --

Q. Yes, absolutely. So we can take this document down, Soumik, thank you.

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beneficiaries?

A. I couldn't tell you. I can't remember. Maybe because we didn't want to see it splashed over the front page of The Daily Mail.

Q. In terms of the issue of life insurance, if we go, please, to MACF0000076_026, these are the notes of the minutes of a meeting with the Department of Health on 7 September 1989, which I'll come back to for a different reason in a few minutes. But if we go to the fifth page, please, Soumik, if we look under the heading "Life Assurance", it says:

"The subject of assistance with life assurance was discussed. It was apparent that there was no Government action in hand which would be likely to bring any early relief. There was a difference in recall between Mr Heppel [he was the Department of Health official] and the Reverend Tanner as to what assurances had been given by the Minister on this subject at the time the grant was made, and Mr Heppel agreed to make further inquiry. From enquiries that the Trustees had made, it was clear that Insurance companies were not interested, and no help would be forthcoming from the industry."

Is this right: your attempts to explore with insurance companies whether they would be willing or

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The Trust established at a fairly early stage an Allocations Committee, which I think was a subcommittee of trustees at that point in time --

A. Yes.

Q. -- who would consider applications for grants?

A. Yes.

Q. Soumik, if we go please to MACF0000004_113, we can see there an early allocations policy, the date of this is October 1988 and we can see the broad nature of the scheme set out the single payments, sometimes referred to I think as grant payments, and then the regular payments.

A. Yes.

Q. I just wanted to ask you one matter arising out of this policy. If we go to the second page, we can see the process set out there:

"All grants are authorised by the Allocations Sub-Committee of Trustees."

There was delegated authority to the administrator and social worker to make payments up to a certain sum. Then there's a paragraph beginning:

"Payments will not be made for items normally provided by the local authority or Department of Social Security ..."

What did the applicant have to show, in that

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1 regard, to the Allocations Subcommittee or the
2 administrator? Did they have to show that they had
3 first approached the local authority?
4 **A.** Whether they had to show it or whether they just had
5 to say they tried, I couldn't tell you, but certainly
6 it was a constant theme of grant making by MFT and by
7 Eileen Trust, and I think probably by Caxton as well,
8 that the charities were fall-backs, we were the
9 sources of finance of last resort, and that people had
10 to do their best to find the required finance from
11 somewhere else. We were not substitutes for the
12 Social Services, Social Security, we were backup.
13 **Q.** What consideration, if any, was given by trustees to
14 the burden that might impose upon those who were
15 themselves extremely ill or caring for those who were
16 extremely ill, that before they could even approach
17 the Macfarlane Trust, which had been especially set up
18 to assist, they had to go, for example, to their local
19 authority and, despite ill health, see what they could
20 get out of the local authority?
21 **A.** Well, that is an unfortunate corollary of having been
22 set up as a charity with insufficient funds by the
23 Government. It was a constant theme. We never had
24 enough money to do everything we would like to do.
25 So, unfortunately, we had to ask beneficiaries to try

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1 regular payments, a process the trustees believed
2 would have two advantages:
3 "1. Giving individuals more options ...
4 "2. Enabling the assistance to be more easily
5 adjusted in favour of those whose financial need is
6 greatest.
7 "The intention was, therefore, that the
8 increase in personal income provided would lead to a
9 reduction in the need for single grants, and recent
10 experience appears to justify this view.
11 Consequently, single grants will in future be
12 restricted to health-related issues, and grants for
13 household expenditure will only be made in exceptional
14 circumstances. Grants will not normally be made for
15 routine expenses, nor for occasional expenses such as
16 maintenance and redecoration of property or the
17 replacement of appliances or furniture."
18 Is it right to understand what's being set out
19 in these documents that there was a shift away from
20 grants to focus on regular pay as the primary means of
21 support in 1990/91?
22 **A.** Yes.
23 **Q.** Was that a reflection of the Trust's limited funds?
24 **A.** Yes. I mean, every aspect of our grant making was
25 determined or was constrained by the paucity of the

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1 elsewhere, even when we were aware that this was
2 imposing considerable burdens on them. We had to do
3 it.
4 **Q.** If we look at MACF0000005_023, please, Soumik. If we
5 go to the third page and look in the top left-hand
6 side of the page, under the heading "The 1990 policy",
7 it says:
8 "The policy of emphasis on the regular payments
9 has three purposes."
10 And those are then set out. And then if we go
11 to the bottom paragraph before the heading "The 1992
12 review":
13 "Trustees have in this time been able to
14 concentrate expenditure on single payments into the
15 areas most directly connected with health or sickness.
16 Very few grants are now made for ordinary household
17 costs."
18 Then if we just go to the next page, this is
19 entitled "Trust grants policy". It refers to a
20 newsletter from April 1991. And then if we -- we can
21 see reference to an increased level of regular
22 payments. And then fourth paragraph down, it says:
23 "As stated in newsletter number 5, the
24 intention behind this change was to move the balance
25 between singular and regular payments towards the

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1 funding that was made available to us.
2 **Q.** And so grants would be restricted to health-related
3 issues. Was there any guidance or explanation as to
4 what was meant by health-related issues, as far as you
5 can recall at this time?
6 **A.** I suppose mobility -- people who had particular issues
7 with mobility as a result of their haemophilia.
8 Something that comes to mind. I can't think offhand
9 of lots of examples.
10 **Q.** If we then go -- again, this is still within the first
11 period of your post at the Macfarlane Trust -- to look
12 at the position of widows and dependants. Soumik,
13 could we have MACF000002_018?
14 **SIR BRIAN LANGSTAFF:** I think it will have to be six
15 zeros.
16 **MS RICHARDS:** I'm sorry. MACF0000002_018. These are the
17 minutes of a meeting on 28 September 1989. If we go
18 to page 8, please, you can see there "Allocation
19 policy -- widows" and there's a reference to a paper
20 which had been circulated, and then there's a general
21 discussion and recognition of a need for a statement
22 of policy. If we look at that third paragraph:
23 "The need for a statement of policy was
24 recognised, and in particular that it was necessary to
25 be able to give some assurance to sufferers that their

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widows and dependants would be taken care of. At the same time, doubts were expressed on both the principles and the financial capability of long-term care of widows, especially those without dependant children. The principle of a finite period support after bereavement received some support, though there were differing views of what such a period should be."

Then it was agreed that further thought would be given to the matter.

Could we then in the same document, please, go to the paper that's referred to. Soumik, it's probably page 25. That's it. So this is the paper, "Widows and other dependants of deceased persons":

"1. The deed requires trustees to provide assistance for the needy spouses, parents, children, or other dependants of such persons who have died.

"2. Leaving aside for this purpose any remaining ambiguity in the definition of what is a spouse, there's a requirement for trusts to agree on how for all these dependants the Trust will interpret "needy".

"3. This basic policy decision is needed for two reasons: this sadly is a growing community which represents a potentially growing expenditure of Trust funds, both as a percentage and in absolute terms."

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deserving of less consideration; it was the trustees' view that that's how they'd be viewed by Government?

A. We felt that the way the Trust had been set up, the objectives for which the Trust had been set up put the -- put widows and dependants into a slightly lower priority category from the political point of view and as far as funding was concerned. Given the fact that we never had enough funds to look after everybody anyway, we had to take notice of this fear that -- I mean, you can see in paragraph 4 there, however distasteful such arguments may seem, they are distasteful. We had to bear in mind that the way the politicians would perceive the Trust's objectives did not embrace giving widows and dependants exactly the same priority as people who had already had haemophilia and were infected with HIV by the Government.

Q. And it would appear from the closing words of paragraph 3 (b) that the trustees thought that expending money on widows and dependants might lead the Government not to give further funding to the Trust. Is that a correct understanding of 3 (b)?

A. It doesn't say that. It says:

"... could in time affect any decision to allocate further funds."

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Then this:

"This is the area of expenditure most vulnerable to criticism by our paymasters as encroaching on the grounds of compensation, and thus could in time affect any decision to allocate any further funds."

Are you able to assist, Mr Stevens -- I know this wasn't a paper authored by you -- with what was being referred to there in paragraph 3 (b), why it was thought that giving assistance to widows and other dependants would make the Trust vulnerable to criticism by "our paymasters"; presumably that's a reference to the Government?

A. I think we were concerned that the Government would say the Macfarlane Trust had been set up basically to give support to people with haemophilia who had been infected with HIV. We felt that they would not feel that widows and other dependants were on the same level of priority as the people -- as what we used to call the primary beneficiaries. It was just one of those limiting factors that we had to deal with, that we were dealing with politicians, and politicians have different standards sometimes from the rest of us.

Q. So is this correct: it wasn't the trustees' own view that widows and other dependants were secondary or

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So it might be thought it would reduce or delay further funding.

Q. The trust deed itself -- we can go back to it if need be, but the trust deed itself doesn't create a different priority, doesn't talk about primary beneficiaries and secondary beneficiaries --

A. No.

Q. -- so was it something that the Government had said --

A. The trust deed doesn't differentiate in terms of priority. Our fear is from discussions that the Chairman and Deputy Chairman then had had with politicians in the (unclear) that there was -- there might be a view in Government that people with haemophilia who were infected with HIV were just that little bit more in need of help from the Trust, which the Government had set up and funded, than their widows and dependants after their death.

Q. And do you know whether --

A. It's all set out there in paragraphs 3 and 4, the arguments -- however distasteful such arguments may seem. They were distasteful, but we had to have them.

Q. Do you know whether that was a view that had been expressed in terms to the Reverend Tanner and Mr Grinstead by Government officials?

A. No, I don't.

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1 Q. The policy that was then produced I think in
 2 March 1991 for widows and dependants is at
 3 MACF0000072_003. We can see grant making policy.
 4 Widows and other dependants of deceased persons,
 5 March 1991. If we go to the second page, we can see
 6 bottom of the page, four groups identified:
 7 "1. Widows."
 8 And then top of the next page:
 9 "2. Parents of deceased adult registrant who
 10 were dependent on the registrant at time of death.
 11 "3. Children ..."
 12 And:
 13 "4. Other dependants who are accepted as such
 14 at the trustees' discretion."
 15 Those are the four categories of dependants
 16 being recognised. Then the term "needy" was then
 17 applied to the case of widows and other recognised
 18 spouses (as we see in paragraph 8). In the shorter
 19 term, the period of bereavement and a period of
 20 adjustment; and in the longer term, widows who were
 21 HIV infected widows with dependent children, widows
 22 who are disabled or chronically sick.
 23 And then we can see again in paragraph 9 in
 24 relation to the dependent parents of adults, it's
 25 short-term provision for the bereavement in relation

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1 sick.
 2 So widows who did not fall into any of those
 3 categories would effectively receive nothing after the
 4 immediate bereavement payment period and the tapering
 5 regular payments; is that right?
 6 A. Yes.
 7 Q. And if we just go to the bottom of the previous page
 8 again, the position of widows who are HIV positive.
 9 Now, what's said there is that widows who were HIV
 10 positive would in all respects be treated in the same
 11 way as registrants, including regular payments as in
 12 the main scheme.
 13 So was the intention that the policy adopted in
 14 1991, therefore, that those who I think are referred
 15 to in some documents as infected intimates, but widows
 16 who were HIV positive themselves would be treated as
 17 primary beneficiaries?
 18 A. Yes.
 19 Q. Would it be right to understand the basis for that was
 20 because there wasn't any good reason for
 21 distinguishing between those who were directly
 22 infected and those who were indirectly infected?
 23 A. I don't think there was any distinction drawn between
 24 the support that those two categories would get or --
 25 directly or indirectly.

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1 to bereavement; and longer term, parents who are
 2 disabled or chronically sick.
 3 Bottom of the page, we can see no general rule
 4 is made for orphaned children:

5 "Trustees will consider any such case
 6 individually."

7 Then if we go over the page, we can see at
 8 paragraph 13 it's said:

9 "The assessment of financial need will take
 10 into account all the existing resources and
 11 commitments of the applicant and all statutory sources
 12 of assistance. This will include the new 1991
 13 settlement payment."

14 So that was to be taken into account, at least
 15 in relation to widows and dependants.

16 Then we can see under the heading "Widows" what
 17 was contemplated was there would be an immediate cash
 18 payment of £1,000, and then there might be payments,
 19 for example, for funeral costs. And then in terms of
 20 regular payments, they would -- I'm paraphrasing
 21 here -- they would taper off after a period of months.
 22 And then in the longer term, regular payments would
 23 only be made to widows who were HIV positive -- go to
 24 the top of the next page -- widows with dependent
 25 children, and widows who were disabled or chronically

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1 Q. Those who were infected directly through the use of
 2 blood products, those who were infected as spouses or
 3 partners, this policy appears to be recognising that
 4 they should not be treated differently but the latter
 5 category should be treated in all respects the same
 6 way as the primary beneficiary.

7 A. Yes, I think 19(1) there covers all the data of HIV
 8 positive whatever the source of that infection.

9 Q. Do you know whether, as a matter of fact, that policy
 10 was adhered to by the Trust, that infected intimates,
 11 as they were called, received regular payments in the
 12 same way as other registrants?

13 A. I can only say I believe so. I can't -- I wouldn't
 14 bet the house on it, I suspect -- I believe they were.

15 **SIR BRIAN LANGSTAFF:** Are we moving away from this?

16 **MS RICHARDS:** We are, sir, yes.

17 **SIR BRIAN LANGSTAFF:** Can I just understand the Trust's
 18 position, as set out in this document? Picking it up
 19 at 19(1), which is still on the screen, the very last
 20 words are "as in the main scheme". So the main scheme
 21 was seen as something different from the scheme, or
 22 the supplementary scheme, or whatever it was; am
 23 I right?

24 A. I think -- this is all written by Clifford, I think.
 25 By "the main scheme" he is referring to the regular

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payments made to primary beneficiaries to people with haemophilia or people with bleeding disorders who were infected with HIV through the course of their treatment. So this document, which is -- I think in his mind he would call it a subsidiary scheme or a supplementary scheme or something, a secondary scheme, is in relation to widows. The main scheme refers to the term that was adopted by the Trust -- funnily enough when I wasn't there, the primary beneficiaries.

SIR BRIAN LANGSTAFF: Now, the expression "primary beneficiary" was understood to apply to those who had themselves been infected with HIV but to exclude those who were not in that category; am I right?

A. As far as I am aware, the term primary beneficiaries refers to people with bleeding disorders who were infected with HIV through the course of treatment with contaminated blood. So most of those are men, there were one or two who weren't. This paper is referring to the widows and dependants of such primary beneficiaries as had died, some of whom might also be HIV positive, and, if they were, they were regarded as primary beneficiaries and treated the same way.

SIR BRIAN LANGSTAFF: In the case of a widow who had no dependant children, am I right in thinking that the

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was further discussed with the Department. I'm sure this document would have been showed to the Department so they were aware what was going on. But I have to go back to the fact that had we had much more money, then the policy would have been different.

SIR BRIAN LANGSTAFF: Well, I understand that but there might be said to be two reactions to limited funds. One is to maintain a category of need for anyone and everyone who qualifies under the trust deed, although the money that can be distributed is necessarily less. The other is to cut out some people who may be in extreme grinding need but who simply aren't in the right category, a category which is created for those purposes by the Trust itself. It was the latter policy that this represents, was it?

A. Yes.

SIR BRIAN LANGSTAFF: Thank you.

MS RICHARDS: Sir, was there anything further on this document? Thank you. That can come down.

Mr Stevens, I want to come on to now what has been a theme of your evidence so far, which is the question of the funding that the Macfarlane Trust had. The initial funding was the sum of £10 million and is this correct, that you as trustees in 1988 had a hope, perhaps, that that would be topped up or increased but

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effect of this policy would be that after the payments made immediately after bereavement and perhaps for a short while longer there would be no payment made at all?

A. Correct.

SIR BRIAN LANGSTAFF: Whatever the particular need of that individual was?

A. Correct.

SIR BRIAN LANGSTAFF: So this was ruling out the trustees' ability to give money in a case of need, which would be a genuine case of need as most people would see it, as The Daily Mail might see it, on the basis they weren't in the right category.

A. Correct. If there were no children and the widow was not infected with HIV, then after a taper period she was, I'm afraid, cut adrift.

SIR BRIAN LANGSTAFF: Was there any advice --

A. If we had had ten times the amount of money the policy probably would have been different.

SIR BRIAN LANGSTAFF: Was any advice taken as to how that fitted with clause 4 of the original trust deed?

A. The policy would have been discussed with beneficiaries, at least two of whom were on the board. I don't know whether it would have been discussed with -- whether legal advice was taken or whether it

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no particular idea as to when it might be increased or by how much?

A. Absolutely. I'm not sure whether hope is too strong a word. Anyway, we certainly had no idea and there was -- there are notes of a meeting with Department officials after about two years when they said "It's premature to ask for more money in a moment, come back in two years' time".

Q. Yes we'll come on to that. I know you weren't involved in discussions that led to the initial £10 million but did you have any understanding acquired subsequently as to how that £10 million had been calculated?

A. No.

Q. Is this correct, that, as far as the Trust was aware, that £10 million was not based on any attempt by the Government to assess or quantify need?

A. I had no idea how 10 million was derived.

Q. If we look at MACF0000030_006 this is an interview you gave to Russell Mishcon for the purpose of a dissertation that he was preparing.

A. Yes.

Q. If we go to the third page and we pick it up, it is the first half of the page, in the long answer beginning "So I would say", but the last few lines of

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1 this answer you say this:
 2 "I think the Trust was short term fix ..."
 3 Then you say:
 4 "I think they were caught out by the lack of
 5 favourable response, which was why they then
 6 introduced the two capital payments and then, at that
 7 stage, I think they thought: 'Well okay that's done
 8 and dusted, these people have only a couple more years
 9 to go and we're off the hook'."
 10 I want to see if I understood what you meant by
 11 that, please correct me if I'm wrong. Are you there
 12 suggesting that the Government's approach had been
 13 a rough and ready provision of money on the basis or
 14 on the assumption that those infected would, for the
 15 most part, die fairly quickly?
 16 A. Yes.
 17 Q. Do you know whether the Department of Health's
 18 allocation of funding to the Macfarlane Trust over the
 19 years was ever based on an attempt to quantify actual
 20 need?
 21 A. I'm sure it wasn't. I think they gave us the answer
 22 to our requests and our arguments and our business
 23 cases. They gave us what they thought they could
 24 afford and what they could get away with.
 25 Q. I want to look at a meeting in September 1989 with

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1 have so far treated with caution ..."
 2 Then if we look at the bottom paragraph on that
 3 page, we can see it said:
 4 "The Trust will be looking for a general
 5 assurance that their grant allocation policy, and
 6 investment policy are broadly on the right lines.
 7 They feel vulnerable having received no communication
 8 from the Department."
 9 Then the document looks -- I'm not proposing to
 10 go through the detail of it, but it looks at various
 11 different aspects of allocation: dependants,
 12 juveniles, and so on.
 13 Was it correct, as far as you can recall, that
 14 the Trust was seeking the Department's approval for
 15 its actions, that they were in line with Government
 16 expectations?
 17 A. I don't think we were looking for approval. We were
 18 telling them what we were doing, explaining why we
 19 believed those actions, those policies were in line
 20 with what they wanted us to do and saying we need more
 21 money.
 22 Q. If we look at the notes of this meeting next, Soumik
 23 it's MACF0000076_026. The first page sets out some
 24 comments from the Department of Health on the notes
 25 but I don't think any of those are particularly

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1 you. If we go first to DHSC0003318_006, we can see
 2 this is described as "Briefing for meeting with the
 3 Macfarlane Trust -- 7 September '89". So it's
 4 an internal Department of Health document, not,
 5 I anticipate, a document that the trustees would have
 6 seen at the time. It refers to the Department
 7 strictly observing the independent status of the
 8 Macfarlane Trust but then says this:

9 "However MS(H) [that's the Minister of State
 10 for Health] has requested two-monthly reports on the
 11 Trust's activities."

12 Were you and your fellow trustees aware that
 13 the Minister of State for Health was seeking
 14 two-monthly reports on your activities?

15 A. I certainly had no memory of it, whether we were aware
 16 at the time I don't know but I have no memory. I have
 17 no recollection that I was so informed at the time.

18 Q. Then we can see from paragraph 2 this is, again, it's
 19 the internal Department of Health understanding of the
 20 purpose of the meeting but they say this:

21 "The Trust seek this meeting to determine
 22 whether present activities are in line with Government
 23 expectations; to seek approval for expansive
 24 variations to the Trust Deed; to seek approval for
 25 a major escalation of financial help in areas they

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1 material for present purpose.

2 If we go to the second page, you'll see notes
 3 of a meeting at the Department of Health
 4 7 September 1989. You weren't present at the meeting,
 5 Mr Stevens, but I can tell you this is a record taken
 6 by CHG, so that's Mr Grinstead. So it's the Trust's
 7 own record.

8 We can see from the introduction:

9 "Mr Heppell invited the Chairman to open the
 10 meeting, and the Reverend Tanner explained that the
 11 meeting had been requested so that we could place
 12 before the Department the policies, schemes, and
 13 practices that had been adopted by the Trustees from
 14 the time the Trust was established in March 1988 and,
 15 if justified, to receive from the Department an
 16 assurance that such policies and practices were
 17 rightly fulfilling the objectives envisaged by the
 18 Government in setting up the Trust. The meeting could
 19 also be a useful forum for discussion of certain
 20 principles and interpretations that required to be
 21 addressed by the Trustees, with the benefit of any
 22 guidelines that the Department felt able to give."

23 So it would appear from that that the Trust was
 24 seeking an assurance from the Department that the
 25 Trust was fulfilling the objectives envisaged by the

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1 Government. Why did the Trust think it needed that
2 kind of assurance from the Government, given it was
3 an independent body with independent objectives?
4 **A.** Because we needed more money, because we were going to
5 ask for more money. I can't remember if we did at
6 this meeting or not but we knew that the £10 million
7 with which we had been endowed was insufficient to do
8 everything that we were trying to do at the time, let
9 alone what we might do in the future.
10 **Q.** So, is this right, to put it in somewhat colloquial
11 terms, the Trust was trying to keep the Government on
12 side, as it were, because it wanted to ask or would
13 want to ask in the future for more funding?
14 **A.** We knew that that was going to be required, yes.
15 **Q.** If we go to the next page, we can see at the top of
16 the page that the mortgage policies we looked at
17 earlier were provided to the Department, and then
18 under the heading "Additional funding", bottom half of
19 the page:
20 "The Reverend Tanner brought to the
21 Department's attention the most crucial item that
22 would be raised at this meeting; namely the prospect
23 for additional funding of the Trust. The trustees
24 were well aware that direct charitable expenditure was
25 exceeding the income received by the Trust from money

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1 at the present time would be too early. This advice
2 was gratefully received and would be confirmed by
3 a formal exchange of letters."
4 I know you weren't present at the meeting but
5 I'm going to assume that this was reported back to the
6 trustees. I imagine it would have been. Can you
7 recall what your view was, either then or now, as to
8 the adequacy of the Department's response to the
9 trustees' request?
10 **A.** I can't recall my reaction then. My reaction now is
11 this is totally in character. Put off the evil day of
12 giving the Macfarlane Trust more money until they are
13 on their uppers until they are on their knees and then
14 give them half what they asked for. That's standard
15 practice.
16 **Q.** Did this cause real problems for the Trust in being
17 able to commit to any long-term support for
18 beneficiaries? Were there --
19 **A.** We've discussed this several times already this
20 morning. Of course it caused problems. This is where
21 the anger that was expressed in Glasgow and Edinburgh
22 and other places stems from. We were never able to do
23 as much as people thought we should do and as we
24 wanted to do because we never got enough money. There
25 was never any assurance that the money was going to be

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1 invested, and that capital was being withdrawn to meet
2 the deficiency. Nevertheless, the trustees approved
3 such action in the belief that the requests for
4 assistance were wholly justified. In addition, the
5 Trustees faced requests, particularly in the support
6 for dependant children, that contemplated long term
7 commitments. It followed that the Trustees wished to
8 raise the question whether, if the Trust fund was
9 exhausted, any additional funding would be made
10 available by the Government to meet the longer term
11 needs of people with haemophilia and HIV infection,
12 and their dependants. Without such additional funding
13 future expenditure could be considerably inhibited."

14 So that's the request. Will the Government
15 make more money available? The response:

16 "Following discussion, Mr Heppell responded
17 that ministers would not want trustees to make more
18 limited offers of help than they would otherwise
19 consider reasonable simply to conserve funds and that
20 each case would continue to be judged on its merits.
21 However, the request for additional funds was a matter
22 of timing and he advised the Trust that the right time
23 to approach ministers about additional funding would
24 be when the Trust funds were sufficient to meet
25 commitment for only two to three years. An approach

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1 forthcoming. It went on all the way through the
2 Trust's existence.

3 I have no idea -- now that it's all under
4 a single scheme administrator, I have no idea how
5 beneficiaries are feeling now about what they are
6 getting. Maybe money is pouring out. I have no idea.

7 But as long as we were involved, as long as the
8 Macfarlane Trust was involved and I was involved with
9 the Macfarlane Trust as a trustee, there was never
10 enough money and the Department never, ever provided
11 us with a sufficient assurance that money would be
12 forthcoming.

13 There was a period in the late '80s -- no, it
14 was the late '90s when the Department would only
15 produce more money when they could afford -- when they
16 found it down the back of the sofa. Fortunately, they
17 had -- there was a senior civil servant then, Charles
18 Lister (who I suspect you're going to be talking to),
19 who was able to institute a regular annual,
20 predictable annual, amount. It was never enough but
21 at least we knew it was coming. But before then there
22 was a period when we just didn't -- we had no idea
23 when we would see another sum, another penny, from the
24 Department.

25 So I'm sorry but I get really -- I get quite

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aerated by consideration of this sort of -- this sort of discussion we had time and time and time again with the Department and then with ministers. If you look and see -- if you look at what I said on behalf of Eileen Trust (I think it was but maybe the Macfarlane Trust as well) to the Archer Inquiry, I was almost speechless with anger at the minister involved at the time who said that she was satisfied the amount of money they were giving us was enough. I said she had no right to be satisfied, express satisfaction. This was, you know, the little bit you showed up earlier, the whole attitude was "give them a bit and we're off the hook".

It just -- it coloured all our ability to respond to requests. It affected the registrants' attitude to us, which was obviously they blamed the Trust, not us, not the Government. We were just -- that's something we had to live with it.

Q. Now, you --

A. Sorry, that's a rant -- not an answer but a rant.

Q. You left the Macfarlane Trust in, I think, early March, or thereabouts, 1992 and then returned, as you told us at the beginning of your evidence, in 1999 --

A. I think the Society felt that they wanted "one of their own" on the MFT board rather than me, that they

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lines below that, you say:

"I had been surprised that the Trust was still operating at a level of £2 million a year in 1999 and 2000."

Do you recall being surprised when you came back to discover that the Trust position was essentially similar to how it had been when you left it?

A. Yes, that's what it says there.

Q. Did you --

A. The figures -- I may have been mistaken in my understanding what the figures were precisely. But really what we did at the outset, we've got £10 million so, as it says there, we should -- with investment income, we should be able to make that last about seven years and, at the time, it was thought that the life expectancy of the beneficiaries of the Trust was about five to seven years; so that would just about see the Trust out. Luckily, that didn't happen.

So then I said to Russell my memory was that we just increased our original expenditure without telling the Government in advance -- without asking the Government in advance. We just told them. I'm not sure that's actually strictly true at the time but

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wanted somebody who represented directly the Society rather than somebody who was appointed by -- they never saw me. They didn't even know who I was.

Q. So your time as trustee came to an end and you were not renominated by The Haemophilia Society; is that how it was?

A. I was -- yes, I was there at the invitation of Alan Tanner and basically I appeared as the nominee of the Society. And when my time came up, they said thank you and goodbye. Actually they didn't say "thank you" at all.

Q. Now when you returned in 1999, had the Macfarlane Trust's position in terms of funding from the Government significantly changed or improved as far as you can recall?

A. It had changed in respect what I said a few minutes ago, that by 1999 they were receiving occasional handouts when the Department found some money down the back of the sofa. Unpredictable in amount and unpredictable in time.

Q. I think if we go back to your interview with Mr Mishcon at MACF0000030_006, please, Soumik, and we go to page 5, look at the top half of the page. It's the paragraph beginning "One of the things the Trust did in 2001", we can see, picking it up a couple of

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that's how it seemed to me.

Q. Well, I'm going to look with you, Mr Stevens, at some of the documents which show the steps taken to try and obtain more funding from the Government in the early 2000s.

Sir, I note the time; so perhaps we can pick that up at 2 o'clock?

SIR BRIAN LANGSTAFF: Yes, we will take a break now until 2 o'clock, which I hope gives you time for a lunch, and look forward to seeing you back here at 2 o'clock if that's okay. So 2 o'clock.

(1.01 pm)

(Luncheon Adjournment)

(2.00 pm)

SIR BRIAN LANGSTAFF: Yes.

MS RICHARDS: Mr Stevens, when you returned in 1999, prior to your return, a strategic review had been undertaken by the Macfarlane Trust. I want to look at it in a moment with you, or one part of it. But do you know who actually produced or wrote the strategic review document?

A. No. I think it was done internally by trustees with maybe one or two of the staff. I don't think -- I don't think we had a -- I don't think there was an outside --

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1 Q. That's what I thought, but I wanted to check with you.
2 If we just look at it. It's MACF0000045_019.
3 So we can see it's "Strategic review. Final report,
4 January 1999". Soumik, can we go to -- it's page 9
5 using the internal pagination, so electronically, it's
6 probably page 14. That's it, thank you.

7 So I just want to pick up what the Trust
8 appears to have gleaned from looking at the position
9 of registrants. If we go to the bottom of the page:

10 "It would appear that at least 70 per cent of
11 registrants who responded to the review are largely
12 dependent on state benefits and Macfarlane Trust
13 funding for their financial needs. This is well over
14 twice the national average of people living at or
15 below the poverty line.

16 "Poverty and despair about money were common
17 features in questionnaire responses, particularly from
18 those at peak earning age and had taken on
19 responsibilities of a mortgage and a family."

20 Then if we go to the next page, top half of the
21 page:

22 "Although many people on benefits were sick,
23 there were others who were relatively well and in work
24 but without the usual access to provisions of life
25 assurance, permanent health insurance, mortgage

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1 chronic illness with periods of respite typified by
2 those with haemophilia and HIV."

3 Then if we see the next bold print paragraph:

4 "Many registrants were very concerned about the
5 future of the Macfarlane Trust and wanted confirmation
6 that the Trust would be there to support them for as
7 long as necessary and that payments would keep pace
8 with inflation."

9 So that is a snapshot. Then if we go to the
10 recommendations to the conclusion of the report.
11 Soumik, it's page 21 using the pagination bottom
12 right-hand corner. Again, probably page 26
13 electronically. That's it.

14 So if we look at the top half of the page,
15 there's a number of recommendations, but I'm just
16 going to draw attention to the top three:

17 "(i) Ministers/the Department of Health should
18 consider the changing patterns and increasing
19 financial demands and expectancies of registrants.
20 They should provide policy guidance and priorities and
21 furnish the required level of resources.

22 "(ii) To ensure ongoing funding to
23 Macfarlane Trust to enable continued support to Trust
24 registrants to meet existing and emerging needs, and
25 with Trust to review types and extent of provision

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1 protection at all or at a reasonable cost. This was
2 due to restrictive practices related to HIV infection.

3 "Respondents frequently expressed fears that
4 the Government would change the rules in forthcoming
5 welfare reforms affecting their entitlement to future
6 benefits.

7 "Those who were severely incapacitated were
8 entirely reliant on state benefits, Macfarlane Trust
9 payments, and other grants from charities.

10 "Many registrants were bogged down by debt, and
11 most were concerned that their essential outgoings
12 were covered by their income, leaving no leeway for
13 holidays, unexpected bills, house repairs, changes in
14 rent or council tax rates, let alone repaying debts.

15 "Many registrants expressed a genuine desire to
16 get back into some form of employment. However, none
17 was well enough to sustain full-time work, so
18 part-time work would have to be very well paid to
19 compensate for loss of benefits."

20 So that's the picture that emerged from the
21 questionnaire. And then the recommendation to
22 ministers we can see. There's a recommendation in
23 relation to current welfare benefit reviews to ensure
24 that they:

25 "... include recognition of the nature of

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1 required.

2 "(iii) To continue to fund an efficient
3 administration of the Trust."

4 So a key recommendation of the strategic review
5 that you would have become aware of, taking over as
6 Chairman in 2000, was that the Department should be
7 approached to secure continued funding at a level
8 sufficient to meet registrant needs; is that right?

9 A. Yes.

10 Q. Just before we leave this document, the first
11 paragraph refers to: the Department should provide
12 policy guidance and priorities.

13 Why was the Trust -- I know you didn't author
14 this, so maybe you can't answer it, but do you have
15 any understanding of why the Trust was looking to the
16 Department to provide policy guidance and priorities,
17 rather than formulating that themselves?

18 A. Couldn't tell you. Don't know. I didn't write that.

19 Q. Okay. So that's the strategic review. That's
20 beginning of 1999.

21 Is it fair to say that when you then took over
22 as Chair the following year, one of your
23 responsibilities would have been to follow up on these
24 recommendations?

25 A. Yes.

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1 Q. We can see -- if we go to MACF0000088_026, we can see
2 what was proposed. These are the minutes of
3 a Partnership Group meeting on 28 February 2000 which
4 you were attending as you were due to become Chair of
5 the Trust with effect from the end of March. If we
6 go, please, to page 4, we can see under the heading
7 "Payments review group report", in the second
8 paragraph, you say:

9 "The Macfarlane Trust --"

10 Sorry. This is, I think, reporting what you
11 were saying. The minutes say:

12 "The Macfarlane Trust had been set up by
13 Government in 1988 to do a job that was perceived at
14 the time. It was not a campaigning organisation~...
15 could not be joined in the present campaigning
16 activities. However, there were many issues raised
17 today that had not been in the minds of those who
18 campaigned to set up the Trust in 1987 ..."

19 And an example is then given that is in
20 relation to HCV.

21 Then the next paragraph records that you:

22 "... would be meeting Lord Hunt in
23 April ... would be advising him of the increasing
24 range and level of needs identified in the strategic
25 review and its aftermath ... would tell Lord Hunt that

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1 chose to do, I can't remember.

2 Q. We can check that in relation to -- by reference to
3 the documents.

4 It records you were saying you were committed
5 to seeking extra funding. "There would be no
6 begging." What was meant by that? Why not beg the
7 Government by reference to the parlous state in which
8 many beneficiaries found themselves?

9 A. I think the point I was trying to get over there was
10 we weren't going to ask; we were going to tell. We
11 were going to say: this is what we're going to be
12 spending. Fund us.

13 Q. If we look --

14 A. Just that. There's no point requesting and them
15 saying no. We just wanted to tell.

16 Q. If we look at how things played out, if we go, first
17 of all, please, to DHSC0003264_004.

18 Now, these aren't I think the minutes of the
19 meeting that you had with the Department of Health.
20 It appears to be a Department of Health briefing of
21 some kind, and we haven't been able to so far locate
22 any minutes. But we can see it says there under the
23 heading "Purpose of meeting", the Trust wished to
24 discuss the changing needs of Trust registrants and
25 the Trust's resulting financial requirements. And we

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1 trustees had determined to increase payments to
2 registrants from this year, and that the Trust would
3 be increasing its annual expenditure from 2 million
4 a year to 2.5 million.

5 "Up until this year, Trust spending had
6 remained at around 2 million a year. This had not
7 been a policy decision by trustees. It had just
8 happened that way. In implementing the
9 recommendations of the strategic review, greater
10 outlay of funds would be required. As the Trust's new
11 chairman, Peter Stevens, was committed to seeking this
12 funding, there would be no begging. The needs had
13 been identified. In order to meet those needs, top-up
14 would be needed from the Department earlier than had
15 been anticipated."

16 It's recorded there that two decisions that
17 appear to have been taken by the trustees by this
18 time. The first is to increase expenditure from
19 2 million to 2.5 million, and the second is to
20 approach Government to seek extra funding; is that
21 correct?

22 A. Yes. I think when I talked to Russell Mishcon, I said
23 we were going to put it up from 2 million to
24 3 million. There it says we were going to do it from
25 2 million to 2.5 million. I can't -- what we actually

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1 can see there it appears that you have told the
2 Department of Health you are going to increase from
3 2 million to 2.5 in 2000-2001 and then nearly
4 3 million by 2005-2006. This increase in payments
5 would need to be funded by the Department.

6 If we go to page 3 and look at the bottom half
7 of the page below the table, we can see this document
8 says:

9 "As a result, the Trust you asking for a top-up
10 payment of 4 million in 2001/02, a year earlier than
11 planned and of a greater sum than anticipated. At
12 present, there is no provision to make any payment to
13 the Trust in 2001/2002, and there's no contingency
14 funding that year."

15 There's then under the heading "Assessment of
16 position" reference to earlier discussions. It says:

17 "The Trust first discussed these proposals with
18 officials on 6 April. No commitment has been given to
19 provide the increased level of funding requested by
20 the Trust, other than the general commitment in
21 Lady Hayman's letter. We have no reason to doubt that
22 the financial position of the Trust's registrants is
23 worsening."

24 If we go over the page, there's reference at
25 the top of the page to the particular problems of

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co-infection with HIV and hepatitis C.

If we go to the bottom half of the page, please, Soumik, we can see the Department saying this -- it is below the first bullet point you see on screen:

"It is hard to resist the Trust's request for additional funding to meet the needs of registrants when the Trust is acting within the terms of its remit as laid down in the Trust deed. However, before additional funds are committed (assuming the money can be found in 2001/2002), we recommend that the Department commissions an independent review of the Trust's activities."

It says:

"This could ..."

Then a number of matters set out, the last of which is:

"... examine the case for the Department providing increased resources."

Go back to the bottom of the page:

"This would need to be done quickly and could be presented in a positive way as a means of working constructively with the Trust to ensure that the needs of registrants are fully addressed. Although the Trust has undertaken its own strategic review which

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what happened. You were not given additional funding in response to your request, were you?

A. Yes. It's kick it into the long grass, or kick the can a bit further down the road. It's a fairly standard process for Government departments.

Q. We can see -- although we don't have the minutes of the meeting with the Minister, we can see your report back to trustees if we look at MACF0000013_031. These are the minutes of the meeting of 2 May 2000. And if we go to page 4, please, Soumik. "Report on a meeting with Lord Hunt Undersecretary of State for Health":

"The Chairman [by now this is you] reported that he and the honourable treasurer, accompanied by Dr Winter and the chief executive, had visited Lord Hunt on 18 April. A meeting had been positive but inconclusive. It had been curtailed due to our late arrival on a subsequent lunch engagement of Lord Hunt."

Then it, I think, seeks to summarise some of the points that you had made at the meeting. Next paragraph refers to things that Dr Winter had identified:

"It was pointed out to Lord Hunt that there were considerable inconsistencies in the provision of services and resources across the country which led to

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went over some of this ground, it would be hard to justify additional spending without an independent assessment of the position."

Then if we go to the top of the next page or first half of the next page, "Points to make":

"Stress the continuing commitment of Ministers to the work of the Trust ... we will continue to fund the efficient administration of the Trust ... understand and sympathise with the worsening position of the Trust's registrants ... we have not set aside top-up funding for the Trust in 2001-2002. This may present us with difficulties. There is no contingency budget."

And then last bullet point:

"We will look carefully and quickly at the Trust's proposal for increased resources to meet the needs of registrants. Given the severe constraints on resources at present, we propose before making a decision to commission an independent assessment of the situation by someone with a knowledge of haemophilia who can work with the Trust and report quickly to the Department."

Now, it would appear from this that although the Department's saying it's hard to resist your request for additional funding, that is effectively

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Trust funds being used to underpin inadequate responses from other areas of the statutory sector. The Chairman said that Lord Hunt had expressed considerable interest in this and immediately suggested that someone be appointed to work alongside the Trust to identify cases where other statutory bodies could have allocated funds."

Just pausing there. Was that ever done, as far as you can recall?

A. Sorry, I was reading --

Q. This refers to a suggestion by Lord Hunt that someone be appointed to work alongside the Macfarlane Trust to identify cases where other statutory bodies could have allocated funds. Was that ever done, to your knowledge?

A. Not that I recall, no.

Q. And then it says:

"The Chairman had advised Lord Hunt of the need to increase payments to registrants from September. The reaction to this information had been neither positive nor negative. However, Lord Hunt had indicated he expected to have a further meeting with Trust representatives later in the year."

And then you comment that Lord Hunt's not a touchy-feely man but was taking a businesslike and

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1 logical look at the Trust."

2 Do you have any further recollection of that

3 particular meeting with Lord Hunt, Mr Stevens?

4 A. No. There is the suggestion there that I had two

5 meetings with him. I only remember one.

6 Q. Yes. I think --

7 A. I don't know any details of it, other than what's

8 expressed in there.

9 Q. No. We have only identified one meeting, I think,

10 Mr Stevens, in any event; the 18 April meeting.

11 The first paragraph under this heading had said

12 you described the meeting as positive but

13 inconclusive.

14 A. Yes.

15 Q. Do you recall whether you as Chair or the Trust as

16 a whole took any particular further steps following

17 this meeting to try and get a more conclusive response

18 from Government?

19 A. No. I don't remember what the next steps were, I'm

20 afraid.

21 Q. We will look at some documents and see what we've been

22 able to pick up from the documents as to some steps

23 that were taken. So that was April/May 2000.

24 If we next look, Soumik, at MACF0000004_064,

25 please. This is a newsletter from the summer of 2001,

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1 a good job. So I think we were happy that as a result

2 of what she'd done, she'd produced some favourable

3 conclusions. I don't think it led to any more money

4 particularly.

5 Q. We'll just have a quick look at that document. It's

6 MACF0000006_010. And if we go to page 14 -- it's

7 probably page 15 electronically, Soumik.

8 I'm not going to go through the full details of

9 it, but if we look at paragraph 4.4 to start with,

10 under the heading "Conclusion", it asserts as follows:

11 "The Trust's current financial management

12 arrangements failed to provide adequate levels of

13 financial information on which to base strategic

14 decision-making. We accept that this is in part

15 a result of a lack of internal management resources to

16 carry out business planning and related activities.

17 However, we have recommended that the Trust should

18 provide a business case to the Department for the

19 review of its current staffing arrangements and

20 benefits that this would provide, including the

21 ability to report to the Department on its financial

22 status and its ability to fulfil its requirements set

23 out in the Trust deed."

24 Pausing there before we look at the

25 recommendations. Do you accept the correctness of the

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1 so it's a year or more further on, and we can see from

2 the bottom left-hand column reference to the

3 Department having undertaken a comprehensive

4 management audit of the Trust. And then if we go to

5 the top of the page again and look at the right-hand

6 column, second paragraph:

7 "The trustees continue to press the Department

8 to raise the rate of funding so that we can continue

9 and develop the assurance we give to our registrants

10 and their families."

11 We'll look at the Department-commissioned

12 management audit in a moment, but in terms of the

13 Trust's own actions and continuing to press the

14 Department, can you recall what, if anything, the

15 Trust was doing to press the Department?

16 A. I can't recall anything in particular, other than just

17 continue meeting them with them and continue raising

18 more money.

19 I don't think -- I don't recall -- I don't

20 recall picketing Richmond House or anything like that.

21 Just more of the same. I think that audit referred to

22 in the bottom of the left-hand column there was

23 conducted by -- I think that was the one conducted by

24 a departmental trainee or something called Cat,

25 strangely enough, Macfarlane. I think she did quite

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1 observation there that the Trust's then current (this

2 is probably around 2001) financial management

3 arrangements failed to provide adequate levels

4 of financial information on which to base strategic

5 decision-making?

6 A. I don't see any reason to argue with a report that's

7 produced by somebody who's qualified to do it. I'm

8 not sure that I would have drawn that conclusion

9 myself, but if this was the report that was done by

10 Cat, she is a very competent young lady, and I'm sure

11 that the conclusion is probably right.

12 Q. If we look then at the bottom of the page under the

13 heading "Recommendations". We pick it up at 4.5.2.

14 The recommendation there is:

15 "The trustees continue in their efforts to

16 establish a business plan incorporating or in addition

17 to a financial strategy to address the Trust's

18 underlying financial difficulties. In order to assist

19 the trustees, terms of reference should be agreed upon

20 by the Chairman, Treasurer and Chief Executive. The

21 planning should incorporate the following:

22 "(a) An assessment of current and future needs

23 of registrants over the next three financial years.

24 "(b) An assessment of the types of claims the

25 Trust can continue to provide in light of current

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1 financial constraints."
 2 And then over the page:
 3 "(c) Cash flow forecasts for the next three
 4 years based on a range of scenarios."
 5 And so on.
 6 So what appears to be recommended here is that
 7 the Trust should be producing a business plan and
 8 financial strategy.
 9 Did the Trust, as far as you can recall, accept
 10 that recommendation?
 11 A. I think we probably accepted the recommendation.
 12 Whether we carried it out as fully as the author would
 13 suggest we did, I can't remember. But something was
 14 certainly done and will have been done along those
 15 lines.
 16 Q. To what extent, if at all, did you consider whether
 17 this exercise by the Department, of commissioning this
 18 report and making these recommendations, was part and
 19 parcel of an overall strategy or policy of pushing
 20 funding decisions further along the line?
 21 A. Sorry, I lost the question halfway through.
 22 Q. I'll try and break it down. It was, as I understand
 23 it, the Department's idea to undertake this management
 24 audit.
 25 A. Yes.

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1 years after that, 2003.
 2 A. Yes.
 3 Q. Can you recall what led to the commissioning of the
 4 long-term review?
 5 A. I would think probably -- no, I can't. I mustn't
 6 speculate.
 7 Q. Before we look at the review itself, if we just go to
 8 a set of minutes from early 2003. It's
 9 MACF0000009_012. And this may assist in answering the
 10 question I asked a moment ago, Mr Stevens.
 11 So we can see "Macfarlane Trust meeting,
 12 20 January 2003". And then if we go to page 5, we can
 13 see under the heading "Long-term review":
 14 "The Chairman reported that the long-term
 15 review had arisen from a meeting with the Department
 16 of Health at which Charles Lister had said it was time
 17 for Government to make a new political commitment to
 18 the Trust. It had been agreed that in order for this
 19 to happen, the Trust should carry out a further review
 20 to mark the 15th anniversary of the establishment of
 21 the Macfarlane Trust in 1988."
 22 Then there's reference to an external
 23 consultant being appointed.
 24 So by this time, we've had the strategic review
 25 in 1999, the Department's own management audit in

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1 Q. We can see --
 2 A. This is the Department's recommendation, set of
 3 recommendations. As I can recall it, we thought,
 4 "Yeah, they're fine. We'll do our best to carry them
 5 out." Whether we did execute them fully or to the
 6 standard required, I can't remember.
 7 Q. Did you and your fellow trustees consider whether this
 8 was really just another series of hoops that you were
 9 going to be required to jump through before the
 10 Department committed itself to any further funding?
 11 In other words, was it of a piece with what you
 12 described, the Government kicking the question of
 13 funding further down the line?
 14 A. I can't remember now what we thought, what we did.
 15 This was done in 2000/2001.
 16 Q. Yes. Certainly, the newsletter we looked at a few
 17 moments ago --
 18 A. It's not very long before we then moved into the
 19 long-term plan produced by Hilary Barnard. There was
 20 a succession, a steady succession of reports, reviews,
 21 plans, and it's difficult now, 20 years on, to
 22 remember what was going on.
 23 Q. I understand that, Mr Stevens. The management audit,
 24 as far as one can tell, had been completed by the
 25 summer of 2001. The long-term review was some two

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1 2001, and now a decision to undertake or commission
 2 a long-term review, but still, as I understand it,
 3 over this period no significantly increased funding
 4 from the Government. Is that right?
 5 A. There may have been some short-term top-ups. I can't
 6 remember.
 7 Q. That's why I use the word "significantly", Mr Stevens.
 8 If we look at the bottom of the page, we can
 9 see you saying:
 10 "The Chairman saw the review as a means to
 11 establish new priorities for the Trust and look at
 12 different ways to use limited funds, rather than seek
 13 to increase funds made available by the Department."
 14 So it rather looks like that as though you
 15 might have -- and this may be unfair; please say so if
 16 you think so -- given up a little on the attempt, at
 17 this point in time, to persuade the Department to
 18 cough up more and longer term funding?
 19 A. Yes. I think we wanted to establish -- we probably
 20 wanted to establish a firm basis on which the
 21 Department would be unable to resist our pleas for
 22 more money.
 23 I should say at this point that the long-term
 24 review was one of the things that I was asked about in
 25 my written statement and had virtually no facts on

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which to base my statement. So I did it from memory, governed by the fact it was completed 18 years ago. So I wrote a fairly jaundiced view of the review. I think used the term "woolly" at one stage.

After my written statement was completed, the Inquiry produced all sorts of action plans that were prepared by the new Chief Executive, Martin Harvey, including the annual plan for 2005 which is quite clear that the board took the long-term review very seriously and undertook a lot of work, a lot of change in the Trust so that my written statement is at odds with what actually happened. I'm sure that what actually happened is correct and my written statement was done from memory, and my memory's not what it was.

Q. Understood Mr Stevens.

A. If it ever was.

Q. I just want to look at a couple of parts of the long-term review with you. Soumik, it's MACF0000172_001. We can see there it was prepared by an external consultant, Mr Barnard --

A. Who had previously been doing a review of the Partnership Group, and I think we were sufficiently impressed by his work on that and by his acceptability to members of the Partnership Group that we thought he would be a good author of this long-term review as

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and should not be solely a grant-giving trust but has equal and integral roles in providing non-financial help to registrants, infected intimates widows and dependants. Reflecting the enhanced role of the Trust that there is a strong case for the Trust to receive increased funding from Government in order that beneficiaries of the Trust can receive an improved financial deal to support lives, not just existence."

Then a number of other recommendations.

Then if we go to -- it's internal page 34, Soumik. I think it's probably electronic page 35. "Specific recommendations":

"This section sets out specific strategic recommendations to the trustees to advance the implementation of the long-term review."

7.1 says this:

"Claim on resources. The Trust should prepare an overall case for presentation to Government, drawing on the results of this review, the questionnaire, the census and other available sources of information. Allowing for effective consultation with beneficiaries, the Trust should seek to make this presentation to Government within the first six months of 2004."

Then 7.2:

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well.

Q. I'm just going to ask you to look at the executive summary and then a couple of the specific recommendations. So if you go to page 3 please, we can see under the heading "Executive summary" in italics quotations from a survey undertaken as part of the review:

"Our world was turned upside down due to the contaminated blood products. I expect the Trust to change to our needs and give us more financial independence and freedom. Now that we have a new future to face. I do survive by existing not living."

And then the review sets out:

"These direct quotations from the survey of the Macfarlane Trust's registrants and infected intimates express the challenge to the Trust, its funder, and its beneficiaries. This long-term review covers the next three years, 2003-2006, in the life and work of the Trust. This review establishes the direction and baseline for planning and priorities within the Trust and in its relations with external agencies."

Then if we go to the next page, paragraph 1.5 sets out a number of conclusions of the review:

"There is a strong and continuing role for the Trust for the foreseeable future. The Trust is not

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"Widows and dependants. Trustees should seek a more generous system of support for widows and dependants, recognising the significance of their contribution and the hardships they face. The needs of widows and dependants are intimately bound up with those of registrants and infected intimates, and this should form a significant element in presentation to Government."

There are a number of other recommendations. I won't go through them all, but we can see there the core recommendation or a core recommendation is for the Trust to put together a case to present to Government within the first six months of 2004. I'm not going to take you to the documents, Mr Stevens, unless you want me to, but these recommendations were accepted, were they not, by the Board of Trustees?

A. Yes, they were. That timescale was probably not met, but there was something else going on around that time called Skipton.

Q. Yes. I'll come on to that when we look at a couple of documents.

A. So I think there was a slight diversion of resources or certainly, as far as I can recall, the first half of 2004 I was almost entirely focused on Skipton preparation --

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1 Q. Yes.

2 A. -- doing work that the Department should have done

3 rather than on this. I do recall in the list of

4 documents somewhere that Martin Harvey produced

5 I think about three sets of progress reports on the

6 implementation of these recommendations. I think he

7 identified as a particular objective each one of these

8 recommendations and just reported on progress more or

9 less quarterly through the year, leading into the

10 annual plan for 2005.

11 Q. Yes. I won't go through all the documents you have

12 referred to but I just want to establish some of the

13 key dates. So we've got the long-term review 2003,

14 recommending the production of a business case to

15 Government within the first six months of 2004. If we

16 can then go, Soumik, to MACF0000019_126. These are

17 the minutes of a trustee meeting on 11 October 2004

18 and if we go to page 3, please, and we look at the

19 bottom of page 3, under the heading "V-CJD and impacts

20 in respect of MFT", it says this:

21 "The Chairman reported on the perceived impacts

22 the recent announcement would have on the MFT

23 registrant community. He also spoke about the

24 potential for reviving the business case that had been

25 set aside pending *ex gratia* payments received from the

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1 it at all. So we had this sequence of planning

2 meetings at the Department, with various medical

3 specialists, representatives of each of the devolved

4 administrations, Charles Gore from the Hep C Trust,

5 Martin Harvey and myself and, as I said in my written

6 statement, I did the work for a team of civil

7 servants. After each meeting I went away and started

8 implementing what had been agreed in terms of the

9 scheme and how the scheme would operate, the

10 application forms. It was just -- there seemed to be

11 no planning had been undertaken before John Reid stood

12 up and made his statement, and there was certainly

13 none then that took place between August and the end

14 of the year in the Department.

15 Q. I'm going to come on tomorrow to look with you in more

16 detail at the work undertaken to establish the

17 Skipton Fund but, as Macfarlane Trust trustees, your

18 primary responsibility in that capacity would have

19 been to the beneficiaries of the Macfarlane Trust.

20 A. Yes.

21 Q. Did it --

22 A. From whom, as previous things that were put up on the

23 screen had shown, most of them were co-infected with

24 Hep C and there was considerable degree of support for

25 some sort of Hep C *ex gratia* payment scheme. So

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1 Skipton Fund."

2 It would appear from this, Mr Stevens, that the

3 decision to pursue and develop a business case to

4 present to Government for further funding for the

5 Macfarlane Trust had effectively been set aside

6 because the focus was then upon the Skipton Fund, it's

7 establishment and the making of the first payments

8 from the Skipton Fund; is that correct?

9 A. I'm sure it is. It's certainly -- looking back now,

10 my expectation, my understanding, would be that one

11 couldn't do both jobs at the same time, not on the

12 amount of resources that we had.

13 Q. So it comes back, does it, again to the question of

14 resources that this important work of presenting

15 a case to Government for increased funding for the

16 Macfarlane Trust was not followed through as promptly

17 and efficiently as it should have been because of what

18 was regarded as the need to work on the Skipton Fund

19 scheme?

20 A. I think that's right, yes. I mean, remember that the

21 Secretary of State had made his statement in the House

22 in August 2003. It took most of the rest of the year

23 to work out who was going to do any of the work to

24 develop that scheme. It was quite plain that the

25 Department of Health hadn't even allocated anybody to

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1 I don't think that by giving priority to the Skipton

2 work rather than long-term review or business case

3 I don't think that there would have been many people

4 in the community who would have objected to that.

5 Q. I'm not seeking to suggest in any sense whatsoever

6 that the Skipton work was not of enormous importance

7 and we will look at that, as I say, tomorrow. Do you

8 recall whether you and your colleagues in the

9 Macfarlane Trust said to the Department of Health

10 there is a pressing need here for two major exercises

11 to be undertaken, one is the formulation of a case for

12 funding of the Macfarlane Trust, the other is the

13 establishment of Skipton, we need more resources or

14 you need to get more people on board so that both can

15 be accomplished within a similar timescale?

16 A. No, I don't think that was said.

17 Q. If we look a document from November 2005 then next,

18 it's MACF0000177_017. This is the business case that

19 was finally submitted. So we can see from the bottom

20 the date is November 2005, so it's some two years or

21 so on from the long-term review.

22 A. Yes.

23 Q. If we go to page 5, we can see under the heading

24 "Background":

25 "The purpose of this document is to present to

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the Department of Health ... the case for giving further financial support to the survivors of one of the greatest medical disasters of modern times, that of the infection with HIV of some 1,250 people with haemophilia through treatment in the [NHS] using contaminated blood products."

Then if we go to the third paragraph:

"The financial plight of the majority of the surviving 30 per cent of the original registrants of MFT is parlous. The capital payments, which were in any case small, have long since been spent, often on the advice of the recipients' medical consultants on the basis of their likely imminent deaths. For 20 years or more they have had to live on benefits and on the trickle of money available from MFT. During that time their health has worsened, in terms of haemophilia, HIV and hepatitis C ... with which virtually all are co-infected; relationships have come under intense strain and, frequently, broken under it; housing stock has deteriorated; all the other physical aspects of living ... have needed repair and replacement."

If we go to the next paragraph:

"The physical and mental health of these people has never been anything but precarious. They live

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"Secondly, their life expectancy is not that of people in good health."

That's paragraph 3.2. 3.3:

"... survival for so long has made it impossible for MFT to provide any meaningful help to the registrants' dependants ..."

Then if we look at the paragraph below that:

"It would, therefore, be wholly inappropriate to regard survival to the present time as being the precursor of any normal or even acceptable life in the years ahead. The report of the Review was entitled 'A Life, not just an Existence'. The Trustees urge on DoH the realisation, to which they themselves have come, that, without a renewal of the original financial commitment by HMG, these surviving registrants have little chance of anything other than an increasingly impoverished existence that will bring them ever further behind the life of their compatriots, let alone the sort of life they would have expected had their treatment by the NHS not infected them."

You are there setting out a powerful case for increased funding. Can I just ask you about the terms in which that last paragraph is expressed. It says:

"The trustees urge on DoH the realisation, to

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with three life-threatening conditions."

Those are then set out. Then the position of bereaved families in the next paragraph:

"MFT has never had the resources to give adequate support to bereaved families, even though that is clearly an objective set out in the Trust Deed that governs it ... Some have been able to recover their lives and establish independence; with some MFT has lost all contact; many are known to MFT's Trustees ... to be living in acute poverty which neither the benefits system nor MFT as currently funded can significantly alleviate."

"This business case examines the evidence and shows that the assumptions behind the current funding policy are out-of-date. The Trustees believe that, on the basis of this evidence, new funding arrangements are now unavoidable."

Then if we go to two pages further on, please, Soumik, reference is made to the Long-Term Review. Sorry, if we go -- next page. We can see reference is made to the Long-Term Review and to three problems, essentially, with the way in which the MFT had been funded.

"3.1 ... survival so long since the original capital payments has resulted in acute poverty ...

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which they themselves have come ..."

Might suggest that this was something the trustees also themselves had only realised belatedly. Is that a fair reading or is that reading too much into it?

A. I don't think belatedly is a necessary word there but it did -- it took time to realise. I mean, when one is doing a job like being a trustee, it is very difficult to step away from that and say "Right, we need a step change", and I think Hilary Barnard's review, and maybe the work done before the strategic review, had helped bring us to the realisation that we needed a step change, that we couldn't just continue tinkering with what we had inherited but we had to get a new commitment from Government and a new scale of funding.

Q. The next two pages set out a number of respects in which this document identified a desire to be able to assist registrants. I won't go through it paragraph by paragraph but if we just look briefly at the next page, it's headed "Need" and it covers adequate housing, the need for proper financial support, needs arising out of a particular health issue --

A. Can I just stop you? In the middle top paragraph it says:

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1 "This can be exemplified in terms of needs that
2 were not foreseen when MFT was set up and which its
3 funding base, annually incremented, cannot meet."

4 That's a key, that the Trust was started out
5 with £10 million and expected to last five to seven
6 years topped up, topped up, topped up, at some stage
7 you actually had to say no, we started in the wrong
8 place, we've got to start again at a much higher
9 level. That's what all this is saying about, is
10 talking about.

11 Q. If we go on to electronic page 11, Soumik, we can see,
12 and the earlier pages have set out the various
13 different respects in which the MFT felt that
14 registrants required support and then under the
15 heading "Proposals for additional funding", it says
16 this:

17 "The foregoing sets out the evidence that
18 justifies increased funding for MFT and its
19 registrants; the Trustees believe that this case
20 should have the highest possible priority. It will be
21 appreciated that MFT, despite being a charity and of
22 necessity operating independently of DoH, is in effect
23 an agent of HMG in helping a unique group of people
24 who suffered extraordinary damage through NHS
25 treatment."

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1 Then this:

2 "To fulfil the quasi-agency function in a way
3 that does credit to DoH and meets the needs of
4 registrants and their families realistically and
5 reasonably, and assuming that the capital payments
6 referred to above are made, the Trustees request that
7 the annual rate of funding be raised to £7 million for
8 the next five years, with an indexed annual increment
9 based on HMG's preferred cost of living indicator."

10 So that was, in hard financial terms, the
11 figure that the Trust resolved to seek from
12 Government?

13 A. Yes. I'm quite proud of that. If you had asked me
14 without showing me "How much did you ask for?",
15 I would not have said -- I would not have realised it
16 was £7 million. I would not have put it as high as
17 that. I think £7 million is a good figure, in a way,
18 of saying there's a step change required. That -- at
19 the end of the previous paragraph that £3 million
20 annually, with an increment of 50,000 in the third
21 year, as I recall, that undertaking was given by
22 Hazel Blears when she was in the hot seat. I'm not
23 sure that 50,000 ever came through.

24 Q. There was a reference, either in this document or in
25 other document, to that £50,000 not having come

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1 Just pausing there, Mr Stevens, why was it that
2 the Tribunal was describing itself as an agent of the
3 Government?

4 A. Sorry, what was --

5 Q. Why was --

6 A. Could you repeat the question?

7 Q. Why was the Trust describing itself as, in effect,
8 an agent of Government?

9 A. To try and make -- try and put the onus on the
10 Department and officials and ministers to realise that
11 we are doing their job for them. It is, in effect,
12 an agent, unlike Skipton, which clearly was an agent
13 covered by an agency agreement. Here we're saying
14 "You set us up as a charity, threw us a few pennies,
15 so we're doing your job for you, now recognise that
16 fact and let us do the job properly".

17 Q. If we look further down that page to the last two
18 paragraphs, it refers to the enhanced level of funding
19 required to meet the needs detailed in the report. It
20 refers to the funding that had been available, so
21 2 million throughout the 1990s annually and then in
22 2003:

23 "... a three-year undertaking to provide
24 £3 million annually (with an increment of £50,000 in
25 the third year)."

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1 through.

2 A. Yes, I remember the reference that it hadn't come
3 through at one stage. I can't remember if it ever did
4 come through.

5 Q. Now, if we look then next, please, at what then
6 happened, once this case had been put together, we
7 look, first of all, at EILN0000048_142, it's an email
8 from you 3 November 2005 and, picking it up in the
9 second paragraph, you say this:

10 "The main thing I want to say at this stage is
11 that the political process has to be handled
12 carefully, since there is no point starting off
13 appearing to bounce politicians or officials into
14 things. We have a powerful case and I want to start
15 by helping them understand the case and working out
16 with them how they can best meet our requirements. We
17 can play harder later on if they do not take the
18 message, but at the moment I am sure it is right to
19 start with careful persuasion.

20 "So, please, I think we must be patient and not
21 get devolved assemblies or the press fired up until we
22 have had time present to start the presentation and
23 persuasion case quietly.

24 "This is not just the view of a political
25 amateur like me, but is the careful advice of one of

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1 the trustees of both Trusts who was himself a senior
 2 DoH official and knows how the process works."
 3 Can I --
 4 A. I know to whom this memo was addressed.
 5 Q. Yes, please don't mention the name.
 6 A. I'm not going to mention the name.
 7 Q. Thank you.
 8 A. This -- there is some sense in that memo that it is
 9 written to a particular person, a very particular
 10 personality and a particular style of central
 11 behaviour that needed to be tempered. So he's
 12 a lovely guy but he had to be calmed down
 13 occasionally, and this, you know, was a way of trying
 14 to calm him down while at the same time admitting that
 15 we can play harder later on. You have to take these
 16 things -- you have to get the context right.
 17 Q. Is this, nonetheless, an accurate account of the way
 18 in which the Trust proposed to approach Government?
 19 A. He was, as you can see from the code number at the
 20 top, he was an Eileen Trust registrant, he's now dead,
 21 unfortunately. He was probably the only real activist
 22 the Eileen Trust had. We did some things that he
 23 recommended but we resisted for a long time, in the
 24 end did them, and he was right, I was wrong. I had
 25 a lot of time for him but he had to be -- he could

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1 a discussion of what strategy to adopt. So there's
 2 the pursuit of the possibility of a ministerial
 3 meeting to discuss the business case, a couple of
 4 lines further down, it says:
 5 "The board were of the view that as many
 6 contacts as possible should be exploited to further
 7 the case for the increase in funding ..."
 8 Reference is made to the All Party
 9 Parliamentary Groups, reference to local MP,
 10 possibility of a meeting with shadow Secretary of
 11 State for Health. Then it says this:
 12 "Mr Spellman urged that caution in respect of
 13 overt lobbying should be followed for the following
 14 reasons:
 15 "(a) That the business case supported itself in
 16 terms of the requirement.
 17 "Overt lobbying might prove counter-productive.
 18 "If the business case is declined, the full
 19 board of trustees should be given the opportunity to
 20 debate a 'next steps' programme.
 21 "Further political activity might not help the
 22 situation.
 23 "The Chairman agreed that no political activity
 24 should be undertaken which might impede a positive
 25 response from the Department."

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1 have got this totally wrong. He could have set the
 2 long-term survival case back for years.
 3 Q. I understand that was your purpose in sending this
 4 particular email but does what's set out here in any
 5 event, broadly, accurately describe the Trust's
 6 approach, which was, as it were, a more softly-softly
 7 rather than playing harder, to use the phrase in this
 8 approach?
 9 A. You can't prove a negative. I have no idea whether
 10 this particular approach or whether the approach we
 11 took was right or not. We didn't get £7 million
 12 a year. Whether we ever would have done, I don't
 13 know. But we had to take serious cognisance of the
 14 views of one of our trustees who was -- who had been
 15 a senior official at the Department. So he did know
 16 how the system worked and he advised not making too
 17 much noise, not going to The Daily Mail, not going to
 18 the television, working out our case, making a case
 19 that was logical and making it quietly. I have no
 20 idea whether he was right or not.
 21 Q. Can we look at the minutes of a trustees' meeting from
 22 January 2006, so early the following year,
 23 HSOC0029628_002. You can see the date there
 24 23 January 2006. Could we go to page 4, please.
 25 Under the heading "Department of Health" there's

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1 Why was a policy pursued of avoiding overt
 2 lodging and avoiding political activity?
 3 A. Because that was the advice of one of our trustees who
 4 knew how the system worked.
 5 Q. Mr Spellman?
 6 A. Yes.
 7 Q. If we then go to MACF --
 8 A. Sorry, can I just say that I did have a meeting with
 9 Andrew Lansley. I mean, I don't think he knew what
 10 I was talking about. So, you know, politicians they
 11 have their own agendas. Alf Morris, mentioned there,
 12 he tabled some questions. He was a good egg. At
 13 another stage, I pulled every political string I had,
 14 the number of members I knew or didn't know but had
 15 connections with got absolutely nowhere -- absolutely
 16 nowhere.
 17 Q. If the Shadow Secretary of State for Health then,
 18 Andrew Lansley, as you say, didn't know what you were
 19 talking about, doesn't that rather suggest some kind
 20 of overt programme of public education might have
 21 pushed this business case further up the political
 22 agenda?
 23 A. Possibly.
 24 Q. Let us look at some minutes of the Partnership Group
 25 meeting in April of that year, MACF0000088_005. We

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can see that it's 10 April 2006. You're not -- you are -- yes, you are not in attendance, Mr Harvey is there as Chief Executive. If we go on to the second page, we can see under the heading "The Business Case for Increased Funding", there's reference to the case having been formally submitted to ministers and officials, and then if we pick it up, third paragraph under that heading:

"Some members felt that the Trust should take a forthright approach to the funding question and exhaust the reserves to the point that the Department would be forced to recognise the predicament arising from that action."

Then we see the Chief Executive saying that that would be counter to current policy in respect of management of funds. Then there's reference at the bottom of the page to registrants wanting to take some form of affirmative action:

"... and some [if we go to the top of the next page] members present felt that trustees should present a more robust argument in support of the business case even to the point of resignation."

It's right, isn't it, that, as represented, I think, by the views of the Partnership Group on this occasion, there was frustration amongst some

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would very soon -- those who were living on benefits and the Macfarlane Trust income would have suddenly discovered they were running only on benefits. It would not have been a responsible attitude to do, just to run the Trust down to nothing and then say, "Sorry, Department, we need some more money".

Q. Now, a meeting with the Minister did finally take place in July of that year. If we look at DHSC0006259_046. I'm not sure who took this note but it looks like it's probably an internal department note.

A. That's a departmental note, isn't it?

Q. I think so, and we'll look at another version we have or another account of the meeting, but we can see here --

A. I think that's the meeting with what's-her-name Flint.

Q. Caroline Flint.

A. Caroline Flint?

Q. Yes. So we can see --

A. I think she was MSPH at that time.

Q. We will see from subsequent correspondence that that's the minister you were dealing with. So under the heading "Discussion", there's reference to the current funding of both the Macfarlane Trust and the Eileen Trust and the fact that a considerably larger

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beneficiaries or registrants, at least, at what was seen as an overly tentative and insufficiently robust position on the part of the trustees?

A. Yes. I can understand that.

Q. Was formal consideration ever given by the trustees to the proposal here that the Trust should take a forthright approach to funding and exhaust reserves?

A. Sorry, the trustees should do what?

Q. It's the previous page sorry Soumik. Third paragraph from the bottom it says:

"Some members felt that the Trust should take a forthright approach to the funding question and exhaust the reserves to the point that the Department would be forced to recognise the predicament arising from that action."

Was that ever formally considered by the trustees, as far as you can recall?

A. No, because -- I think we did discuss it but because of our responsibilities to the Trust we couldn't simply run the Trust down to nothing and then walk into Richmond House and say, look, sorry our pockets are empty. That would have been irresponsible. So we had -- and also we had commitments to beneficiaries in terms of the short-term, the rate payment. If we couldn't meet the commitments we had taken on, they

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settlement was now sought. Then what's set out is the nub of the claim from the Trusts, I'm not going to go through them all but we can see reference there to what is said to be a moral obligation, promises from previous Department of Health ministers:

"The basis of the original settlement was that registrants were not expected to survive for long ..." and so on.

If we go over the page, picking up below the two bullet points, this note records:

"The Trust's representatives presented an emotive case, describing the impact of their infection on their lives and the need for adequate funding to maintain their dignity and independence."

Then we can see the response from the minister is recorded, she has listened carefully, she thanks them:

"She noted that the Trusts had been created originally to supplement the range of welfare benefits ... and not to provide an alternative source of funding for the same needs. It had been, and remained, the Department's intention in setting up the Trusts to recognise that harm had been caused which was not anyone's fault, but which nevertheless justified some ex gratia to those affected. She noted

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that the payments provided by the Macfarlane Trust had been able to increase substantially within the available funding due, sadly, to the smaller number of registrants still surviving. She said that she would write to Mr Stevens in the next week [or so] ..."

Now, you'll see there the reference halfway through that paragraph to harm having been caused which was not anyone's fault. Was that --

A. That's what the Inquiry's finding out.

Q. Yes, absolutely. To what extent, in your dealings with the Department, the denial of any fault, did that lie at the heart in your experience of the refusal to increase funding further? Was that something that came up in discussions with the Department on a regular basis?

A. I'm sorry, I'm going to have to say that's for the Inquiry to establish. I don't know what went through political -- politicians' minds and the minds of beneficiaries, in this respect. I do know that when Caroline Flint wrote to me with their offer, she said she was satisfied with something or other, and you've only seen my gentle rant so far, you haven't had a real rant. But when I talked about that letter to the Archer Inquiry, I had a real rant. I mean, it was absolutely outrageous. She had no right to say she

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the Trust and she confirmed there would be a further meeting with a decision, hopefully, before the recess."

First of all, do you know who produced this note?

A. Sorry?

Q. Is this your note of the meeting or --

A. No. There's more than one typo in that, I can see quite easily. So no I would not have written that. I don't know who did.

Q. Do you recall having the same view as is here set out, that the minister --

A. I don't think I would dispute what is being said there. I know that the senior civil servant who was present, whose name appeared on a previous page, he was the only senior civil servant at the Department of Health with whom we had dealings that I can recall being rude to -- I mean, rude enough that I had to apologise, not that he required me to but I felt I owed him an apology for saying things that should not, probably should not have been said.

Q. Was that Jonathan Stopes-Roe?

A. So he probably -- she probably was badly briefed.

Q. I'm sorry, are you referring there to Mr Stopes-Roe?

A. Possibly, yes.

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was satisfied. Apart from anything else, the figures that they presented, I think she was saying it was an 11 per cent increase. It wasn't an 11 per cent increase at all, it was a typical civil servant smokes and mirrors. I think it was an increase of three or four per cent. I was just -- I mean, it was outrageous and I'm afraid I said so.

Q. Let's just look, first of all, at the correspondence that followed immediately after this meeting. If we go to -- sorry, actually, if we go, first of all, to a different account of the meeting GLEW0000357. This is somebody else's account, I'm not quite sure whose, of the meeting on 12 July 2006. If we go to the third and final page, we can see this is, third paragraph down:

"It was clear from the ministerial response that the following was the case:

"1) That she had been badly briefed and was not prepared by for the strategy deployed by the Trust.

"2) That the attempt to go on brief ..."

Then a number of points set out:

"... were seized upon as being irrelevant."

Then next paragraph:

"... the minister then changed tack and said that this was a listening exercise, a chance to meet

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Q. You wrote a letter, I think pretty quickly after that meeting to the minister, DHSC0041159_194. A letter of 12 July, you emphasise, in particular in the third paragraph, the problems experienced by the registrants of the trusts, and then you say this in the final paragraph:

"It will not of course have escaped you that there could to some extent a trade-off between increased funding for the Trusts and renewed capital payments to the registrants. The initial aggregate cost of the latter could be significant but if it were the means among many other benefits of reducing or even eliminating continued financing of the Trusts far into the future, it might have some appeal to the Government."

What did you mean by a trade-off between increased funding and renewed capital payments?

A. We had done quite a lot of work, I think with the support of the Partnership Group, on buying people out. I know that one of the user trustees, one of the more helpful user trustees, of the Macfarlane Trust when he stepped down from the Trust he talked about this.

It was an idea that if the Government was prepared to put its hand fairly deeply into its pocket

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at one stage and buy people out of their future expectations from the Trust, then maybe they would have a smaller and more manageable annual bill to pay to the Trust. Nothing came of it because the numbers didn't work out. The sort of capital payment that would be required was prohibitive; so nothing came of it. But that's what we were floating there, that if there's something they wanted to look at, then we'd be happy to look at it for them with them. But they didn't take the bait.

Q. If we could look next at DHSC0006259_044 -- this is a document that you obviously would not have seen at the time.

A. No, I was quite interested in this document --

Q. So it's from Caroline Flint to the Secretary of State referring to the meeting. So we can see she says in the first paragraph, fourth line:

"The present pressure on central budgets simply does not provide for that kind of increase and I am not convinced that their case is strong enough, but this is an emotive issue and I should be grateful for your views."

Then if we skip down towards the bottom of the page, this is the last paragraph:

"The Trusts were always intended to supplement

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unlikely?

A. I think -- yes, I think that's probably right. After all, one of the reasons for having relationships with the civil servants, even though I'm occasionally rude to them, is so that we do get an understanding of what they and their political masters are thinking and they understand what we're thinking. So yes, I mean that's probably right.

Q. If the Trust had been told all along that -- sorry.

A. To say that we -- that Martin and later (*unclear*) that we understood this does not mean to say that we agree with it.

Q. If the Trust had, as this says, all along been informally briefed that additional funding would be unlikely, why had the Trust persisted in its softly-softly persuasive approach rather than go all out for a harder, more robust attempt to persuade officials to change their mind?

A. I think the business case that we put forward -- we were dealing -- we were providing them with the argument why they should -- we'd run them with the reasons for giving us more money and the argument as to why, if they did, they were presented as being necessary. So we were giving them a political lifeline, safety belt, so that they had something. We

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statutory provision. They were not intended to make alternative provision, nor did they imply fault by the NHS. At the meeting, some concerns were raised about how registrants didn't always claim their rightful statutory entitlements because of fear of exposure to friends and neighbours. I am not convinced that some of the expenses mentioned in the meeting and in the business case were appropriate to the Trusts."

Now, in relation to that last sentence, did either the minister or any civil servant within the Department of Health ever respond to your business case identifying particular expenses which it was thought were not appropriate?

A. Not that I can recall, no.

Q. If we go over the page, third paragraph, it says this:

"The Trusts describe their current claim [is] the first comprehensive review of what they are doing. That may be so but officials have all along informally briefed the Trusts that additional funding would be unlikely. In response, the Trust's Chief Executive has equally informally indicated to officials that they understood this at least at the senior level."

Is that correct as far as you can recall, that the Trust had been all along informally briefed by civil servants that additional funding would be

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had to do this because of the following reasons.

I think that our response to Caroline Flint was reasonably robust. I didn't jump on to her desk and trample all her papers about, but I think I expressed myself in terms that she wouldn't normally expect to hear outside the Houses of Parliament.

MS RICHARDS: Sir, I note time. There's still a small number of documents to look at on this issue. Shall we do that after the break?

SIR BRIAN LANGSTAFF: Yes. We'll take a break now until 3.50. So 3.50.

(3.20 pm)

(A short break)

(3.54 pm)

SIR BRIAN LANGSTAFF: Yes.

MS RICHARDS: Mr Stevens, I want to look next with you at the response from the minister, HSOC0005411. It's a letter dated 28 July 2006. You have made reference to it already in your evidence but we can see, for the sake of completeness, the full letter here. She says in the third paragraph:

"I am satisfied that an increase of £400,000, approximately 11 per cent, to the Trusts' funding will maintain an appropriate level of support to their remaining registrants and is within the current level

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1 of Government funding that is available."
 2 So that was the response that the Trust
 3 received to its business case?
 4 **A.** Sorry, that was?
 5 **Q.** That was the response which the Trust received from
 6 the minister to the business case which had been
 7 presented.
 8 **A.** Yes. I just notice the last sentence of that
 9 paragraph:
 10 "Both these figures include provision for
 11 administration costs."
 12 Which until then had been funded separately.
 13 **SIR BRIAN LANGSTAFF:** Can I just stop you there because
 14 I think we have lost a bit of the sound. Can I just
 15 have that checked by the IT, please? Do you want to
 16 start again?
 17 **A.** The final sentence of that paragraph, both these
 18 figures include provision for administration costs.
 19 Before then, figures -- administration costs had been
 20 funded separately. So it wasn't -- this increase of
 21 11 per cent so-called is just totally -- totally
 22 spurious.
 23 **MS RICHARDS:** Mr Stevens, we're having some difficulty
 24 hearing you. We can hear you but it's not as audible
 25 as it was before the break. Are you able to move

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1 affecting a section of the Inquiry hearing room. So
 2 it hasn't affected everyone who's listening online,
 3 I'm pleased to say. And if the sound drops,
 4 Ms Richards and I will put up with it. If she has to
 5 ask you to repeat something, I hope you will forgive
 6 her.
 7 **A.** Of course.
 8 **MS RICHARDS:** So that was the letter of response. I want
 9 to look then at how the Trust responded to this. If
 10 we go to HSOC0005412_002. If we look at the first
 11 half of the page. This is a document authored by you
 12 on 11 August 2006 setting out, as I understand it,
 13 your thoughts on the Minister's response. If we go to
 14 the third page, we can see from the top of the page
 15 you describe the amount offered as very disappointing.
 16 You refer to thinking there may be a device to enlarge
 17 the offer without breaching some internal DoH rules
 18 and to a £1,000 goodwill element as being risible.
 19 And then if we look further down the page under
 20 the heading "Nature of the response to the business
 21 case", you say:
 22 "The business case was well researched, based
 23 on the facts of our registrants' circumstances
 24 endorsed by the trustees of both trusts. The
 25 Minister's expressed satisfaction with her offer

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1 perhaps a little closer to the microphone?
 2 **A.** Try that.
 3 **Q.** Still not how it was prior to the break.
 4 **SIR BRIAN LANGSTAFF:** No. Something has happened over the
 5 break, I'm afraid.
 6 **A.** Has it been okay until now?
 7 **MS RICHARDS:** Yes.
 8 **A.** I haven't touched anything during the break.
 9 **SIR BRIAN LANGSTAFF:** No. Well, something's happened
 10 somewhere in the system. I'm sorry. Shall we just
 11 take a few minutes and see if we can get it sorted
 12 because the people who are watching remotely have got
 13 to be able to hear, and if we are having difficulty,
 14 they will too, I think.
 15 **A.** Yes.
 16 **SIR BRIAN LANGSTAFF:** My very great apologies to you. I'm
 17 sorry for this, but we'll just take a break for five
 18 minutes and see if we can get it sorted.
 19 **MS RICHARDS:** Thank you, sir.
 20 (3.57 pm)
 21 (A short break)
 22 **SIR BRIAN LANGSTAFF:** You can hear us all right?
 23 **A.** Yes.
 24 **SIR BRIAN LANGSTAFF:** Good. I think the problem, I'm
 25 told, was with some form of amplifier here which was

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1 appears to reject the considered judgment of
 2 trustees."
 3 Then if we go over the next page under the
 4 heading "Evaluating the offer", if we look at the
 5 bottom half of the page, we can see three paragraphs
 6 from the bottom:
 7 "It should be borne in mind that the MFT has
 8 just come to the end of a three-year funding
 9 arrangement consisting of £3 million annually (setting
 10 aside the Department's failure to pay additional
 11 £50,000 promised for the final year of that
 12 arrangement). One of the registrants' main complaints
 13 has been the lack of recognition of the rising annual
 14 cost of living. The offer does nothing to help either
 15 Trust increase support to take account of this. In
 16 fact, an 11 per cent increase on Trust expenditure
 17 would only provide an amount approximately equal in
 18 real terms to MFT's £3 million received in the first
 19 year of that arrangement."
 20 Then, final page, you say:
 21 "The lack of recognition in the offer of the
 22 Trusts' needs as set out in the business case is
 23 immensely frustrating. It is as if there's been no
 24 business case submitted, and the Department had
 25 announced a new funding arrangement without any

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1 reference to the trustees or to their considered
2 assessment of the registrants' needs."
3 You refer to the nature of their calculation
4 seemed to indicate a weakness and arithmetic errors.
5 And then penultimate paragraph:
6 "On balance, the Department's response to the
7 business case appears wholly unacceptable. It is not
8 immediately clear how we might develop any option but
9 to accept it, but at the moment, it would appear that
10 a response to the Minister objecting to the
11 offer ... is justified."
12 Now, I don't think we have, Mr Stevens, a copy
13 of your letter in response to the Minister. Is it
14 your recollection that you did write back to the
15 Minister making these points?
16 A. It's not my recollection, but that's not to say it
17 didn't happen. I just don't remember it.
18 Q. Okay. The view that you have set out in this document
19 suggests frustration and disappointment, to say the
20 least, on the part of the trustees or on your part
21 that the Department had responded in this way to the
22 business case; is that right?
23 A. Yes.
24 Q. If we look then at how the trustees decided to
25 proceed, it's MACF0000020_102. These are the minutes

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1 invitation to attend a further meeting and to seek at
2 least a three-year continuation of funding at the
3 level finally agreed.
4 "The amendment was accepted and carried."
5 So it would appear from this that you put
6 forward a proposal which included the trustees being
7 minded to resign but that that was rejected by
8 trustees. Is that your recollection?
9 A. Yes.
10 Q. What was it that led you to think that a threat to
11 resign was now the right response?
12 A. We were running out of options.
13 Q. That having been rejected by board, as a whole, it
14 would appear that the response came down to wanting
15 a further meeting to re-express key points in the
16 business case; is that right?
17 A. Yes.
18 Q. Was a further meeting with the minister secured, as
19 far as you can recall?
20 A. Was there a meeting with the minister?
21 Q. Was there a further meeting with ministers during the
22 time that you were chair?
23 A. I don't recall a further meeting with Caroline Flint.
24 They probably changed the minister and we had another
25 one. I can't remember who the next one was. There

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1 of a meeting on 21 August 2006, and we can see from
2 the bottom of that page that it's a consideration of
3 the Minister's response. If we go over the page, it
4 says there, fourth line down:
5 "There followed a wide-ranging debate. The
6 following points are salient."
7 I'm not going to go through the all the points;
8 we can read the minutes. But if we go to the next
9 page, halfway down -- sorry, bottom half of the page,
10 it says this:
11 "The Chairman asked members of the Board to
12 adopt the following proposal:
13 "That after debating the response to the
14 Minister's letter ... the invitation to attend
15 a further meeting with officials should be accepted to
16 re-express the key points in the business case and how
17 they affect the community of care; that the letter
18 from the Minister does not address the views of
19 trustees and that they are minded to resign and that
20 there is a will to discuss with officials what sum of
21 money there is that accords with the business case,
22 where that might be found and from where."
23 Then:
24 "An amendment was put ... to strike out any
25 reference to resignation ... and to only accept the

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1 was a string of them, very few of them lasted very
2 long. I don't think it was anything to do with us.
3 Q. That was August 2006 and, amongst other things, the
4 Trust issued a statement to registrants updating them
5 on the position and suggesting that a meeting would be
6 sought. If we go, please, to DHSC0041155_123, please,
7 this is now a few months later, 1 December 2006. It
8 would appear from the third paragraph that there's
9 been at least a further meeting with officials and
10 then, in the fourth paragraph, fourth line, it says:
11 "... I feel I must ask you to arrange for us to
12 have another opportunity to present our arguments at
13 Ministerial level again. If you and we can achieve
14 this together soon, and ideally before programme
15 budgets become too set in stone, I am hopeful that we
16 can demonstrate that it is wrong that our
17 beneficiaries, whose lives are continuing and will
18 continue to be so blighted by errors within the NHS,
19 should be further disadvantaged by financial
20 stringency within the NHS."
21 So is it right to understand you'd managed to
22 secure a further meeting with officials and I think
23 probably one of your last acts as outgoing chair was
24 to ask for a further ministerial meeting but there was
25 no such meeting during your chairmanship?

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- 1 A. Correct. I can't remember who Elizabeth Woodeson was
2 actually. I can't remember where she -- how we got
3 her name. I think maybe she was Stopes-Roe's boss.
4 Q. Just looking, without going back to the documents, at
5 the sequence of events that we've explored over the
6 course of the afternoon, would you accept that the
7 Trust took too long to put together a business case to
8 Government for further funding?
9 A. No.
10 Q. Why?
11 A. Because we had many things to do. We could have put
12 a business case together or we could have got the
13 Skipton Fund going. Doing both at the same time was,
14 I think, beyond possibility.
15 Q. Leaving aside the difficulties of resourcing, to which
16 you have referred, and the competing demands of the
17 establishment of the Skipton Fund, if you had had
18 greater resources, do you accept it would have been
19 appropriate to put together a business case rather
20 earlier than we see from the chronology.
21 A. It might have been possible. Whether we would have
22 got a reception -- any better reception -- the same
23 people in Richmond House were dealing with both issues
24 as well, so I think running both projects
25 simultaneously, both from our point of view and from

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- 1 A. Such limited experience as I had with the media would
2 suggest that they would immediately go the other way
3 and start picking holes in the fact that the Trust was
4 dealing with very small number of people and had
5 an immense amount of money. Bear in mind at this
6 stage the outgoings to this community were probably in
7 excess of £200 million because by the time we got to
8 2006 Skipton had been running quite hard. So a huge
9 amount of money had gone to a very, very small
10 community, admittedly who had been damaged by the
11 National Health Service. I think it would have been
12 very difficult to have a reliable and consistent media
13 campaign. I fully accept I might be wrong but you
14 make a case, other people have made a case, the
15 trustees chose to do something different.
16 Q. Is this correct, as a matter of fact, that the
17 trustees did not make any attempt to contact media
18 organisations to see what their response might be?
19 A. Correct.
20 Q. Moving on from attempts to secure funding from
21 Government, I wanted to ask you a little more about
22 the Trust's relationship with its beneficiaries.
23 What steps were taken by the Trust to try and
24 ensure transparency and fairness in its
25 decision-making?

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- 1 the Department of Health's point of view, would have
2 been difficult.
3 Q. Do you think it was a mistake to pursue the low-key
4 strategy of trying to persuade through the
5 presentation of a business case and meeting with
6 ministers, rather than a more overt or campaigning or
7 robust approach?
8 A. Personally I don't but maybe that just reflects my
9 personality. As we said right at the beginning, the
10 Macfarlane Trust -- by this stage it was dealing with
11 400 people. To get media interest, to be able to
12 mount an effective media campaign, I think was pie in
13 the sky. We'd never have achieved that, achieved
14 anything. Without that, I'm not sure that we could do
15 very much more than argue a well-presented business
16 case and deal with it as we did.
17 Q. You had amongst the beneficiary community individuals
18 living in desperate circumstances, as your own
19 long-term review had clearly acknowledged. You had
20 children who had been orphaned, you had widows in
21 poverty, you had haemophiliacs living with HIV in
22 a desperately ill and impoverished state. Do you
23 really not think that some media organisations might
24 have been interested if the Trust had made contact
25 with them and asked them to support a campaign?

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- 1 A. We did what we could. I can't remember specific
2 steps. We simply tried our best to be objective and
3 to be fair and to have fairness actually quite high on
4 the agenda, which might not always have been
5 acceptable to the beneficiaries concerned. But there
6 was always a danger, which we were aware of, of people
7 with loud voices getting more, which we tried to
8 resist. We had users trustees on the board, I think
9 for most of, probably for all of the time I was
10 Chairman, who were able to or should have been able to
11 ensure that there was balance and fairness in the
12 decision-making. If they didn't do that, then there
13 is not much I can do about it.
14 Q. If we look back at the 1999 strategic review, Soumik,
15 which was MACF0000045_019, and if we go to -- try
16 page 24 of the electronic pagination, Soumik. That's
17 it. So this is a recommendation to the Trust, as
18 opposed to an external recommendation to Government,
19 which we looked at earlier. If we just look down this
20 series of recommendations, bottom half of the page, to
21 (vii):
22 "To improve explanations to registrants and set
23 out clear grant giving policies."
24 That might suggest that, as at January 1999, it
25 had been identified that improvements were required,

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both in terms of the explanations given to registrants and in terms of the policies that were available to registrants.

Other than through the publication of the Macfarlane Trust handbook, how else did the Trust ensure that its grant-giving policies were known to and understood by registrants?

A. There was the handbook. You already made more than one reference to the newsletters. There was a website. So I think the explanations were there on what the policies were. But as far as explanations to individual registrants about particular grant requests, which maybe the first part of that sentence embraces, all we could do was to try to make sure that explanations were clear, full, and emphasise the considerations that were in the minds of the trustees or the staff when decisions were made about grant requests.

Q. I wanted to invite you to look at some observations made in the witness statement of Jude Cohen from whom the Inquiry will be hearing in a couple of weeks. Soumik, it's WITN4565001. If we could go -- So Jude Cohen was head of support services for the Macfarlane Trust for a period of time.

If we go to page 16, please, paragraph 54, the

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individual circumstances each time.

Q. Would you accept that if similar cases are not being treated in a similar way, that might give rise to an appearance of unfairness and inconsistency?

A. It might look that way. But, again, if we applied that to every particular -- every grant request, if we looked at the circumstances of the person making the request on every occasion, then we were being fair.

Q. If we could go on to paragraph -- sorry, page 18, please, Soumik. If we look at the bottom paragraph, paragraph 63, she refers there to a decision of the NSSC that grants not backed by receipts would be treated as loans which would then have an impact on registrants.

And over the page, paragraph 64, she records her view that that policy should have been made clear to registrants from the outset, but that was rejected by the Partnership Group which decided that registrants should only be informed in a follow-up letter.

Do you have any recollection of this issue?

A. No. But I would say that the Partnership Group were probably wrong there, that people should know right from the outset that receipts were necessary. If one didn't do that right from the beginning, then they

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statement there refers to the NSSC, which was the committee that by this time was the committee responsible for considering grant applications, and says this:

"... it seemed to me that the committee's decisions were often inconsistent and made on an *ad hoc* basis. When I questioned this *ad hoc* approach to grant making, I was informed by the Chair, Peter Stevens, that as charity trustees, they were expected to make *ad hoc* and discretionary payments and not have a blanket approach to similar applications."

Can you recall concern being raised with you about decisions being made on an inconsistent and *ad hoc* basis?

A. Sorry, what was the question?

Q. Can you recall concerns being expressed to you by Jude Cohen or, indeed, by others --

A. Oh, I can't recall that. I'm sure what she's saying there is correct, but I don't recall it.

Q. Was what's recorded here -- even if you can't remember the conversation, was this a correct reflection of your approach that the trustees' approach should be *ad hoc* and discretionary, rather than having a blanket approach to similar applications?

A. Yes, I think that's right. You have to consider the

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would be upset when they went had to go back and try and get hold of the receipt.

So I think I'm in agreement with Jude there when she finishes that paragraph saying, "I consider this inappropriate," because by the time the registrant received the follow-up letter, it may have been too late to request a receipt. I think she's absolutely right.

Q. And if we look further down the page at paragraphs 66 and 67, she expresses a concern about a lack of guidelines and publication of guidelines. You may be aware that the office guidelines which set out maximum amounts that would be paid for certain items were not or had not at this stage I think been published to beneficiaries. Why was that? Why not ensure that they were aware of these guidelines?

A. I think we were damned if we did, and we were damned if we didn't on this occasion. When we did publish guidelines, they became shopping lists. When we didn't, we get criticism that they were opaque and lacking in clarity.

Q. Why would --

A. If we had had guidelines that didn't leave the office, then Jude's complaint would not have been -- could not have been made, and we would have avoided the shopping

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1 list danger. As it is, guidelines got out very, very
2 quickly, and so we -- so to avoid the shopping list,
3 we had to avoid having guidelines published.
4 **Q.** Why did you think that the publication of guidelines
5 would result in a shopping list, by which I assume you
6 mean applications being made that were unmeritorious?
7 **A.** That's what happened. We're dealing with people.
8 **Q.** Wouldn't --
9 **A.** If one sees that the Trusts had a guideline for
10 a particular form of mattress up to a certain maximum
11 amount of money, instantly there would be a lot of
12 requests for that sort of mattress spending that much
13 money. Why not? It would seem a perfectly reasonable
14 reaction to having that list of -- those guidelines.
15 **Q.** The consequence of the failure to publish guidelines
16 might be, however, that people weren't making
17 applications for things that they genuinely needed or
18 might genuinely enhance their lives.
19 **A.** Possibly. If we had been cleverer maybe and had
20 published guidelines or write a number by them without
21 a figure, maybe that would have helped, but then, of
22 course, we would have been damned for lack of clarity.
23 I don't think there's a single answer or a single
24 solution that satisfies all possible criticism.
25 **Q.** You see, the problem with not publishing the

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1 **Q.** Did you and your fellow trustees consider, however,
2 the difficulties that that might create for people
3 already in very poor health, struggling to manage
4 day-to-day --
5 **A.** Of course we did. Of course we did.
6 **Q.** That was regarded as --
7 **A.** That's one of the reasons -- one of the things that
8 user trustees were very good at was explaining this
9 problem.
10 **Q.** Did the Trust take any steps to amend its practice in
11 light of that explanation?
12 **A.** Did the Trust what?
13 **Q.** Take any steps to amend the practice of requiring
14 three quotes for all items or pieces of work?
15 **A.** I think we probably looked at every possible -- every
16 conceivable option of how grant applications should be
17 made, how many bids there should be, whether there
18 should be guidelines.
19 I mean, you know, I fully appreciate you have
20 a devil's advocate role. I was a trustee of that
21 trust for many years. I think I was totally aware of
22 the difficulties under which the beneficiaries were
23 living and of the difficulty that we were facing of
24 meeting their requirements with totally insufficient
25 funds. So we had to make the process work in such

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1 guidelines with figures might be that those who are
2 already struggling to manage their day-to-day lives
3 might obtain their three quotes for a washing machine
4 that was over £300 in vein because the Trust operated
5 an internal policy of only paying up to £250. Whereas
6 if they knew what the Trust's policy was, they could
7 make attempts to ensure that their applications were
8 within the policy. What would be wrong with that?
9 **A.** Yes, possibly.
10 **Q.** Why did --
11 **A.** I think you can specify hypotheses whatever. Whatever
12 line in the chalk you can dream up an example that
13 would show that it was inappropriate. So, as I say,
14 we're damned if we do, damned if we don't.
15 **Q.** Why did the Trust require applicants to obtain several
16 quotes for work or items when a grant application was
17 being made?
18 **A.** Why did we --
19 **Q.** Why did you require there to be more than one quote?
20 I think we've heard evidence that often three quotes
21 were required.
22 **A.** So that we could be certain that -- that we weren't
23 being used as the first source of funds but as the
24 last resort, which is a consequence of what -- of the
25 way we were set up.

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1 a way that people did not come direct to us, as far as
2 the first source of money, but only after they had
3 tried the social fund and anywhere else that might be
4 able to help them.
5 **Q.** Was the process made deliberately bureaucratic to
6 deter applications being made?
7 **A.** No.
8 **Q.** Were there --
9 **A.** It was -- the process was designed to make sure that
10 we didn't -- I am trying to find the right word. We
11 didn't spend money on some applications that would
12 have been better spent on others. So we had to make
13 sure that our resources were managed sensibly, were
14 husbanded carefully.
15 **Q.** Was practical support offered to registrants to assist
16 them in making their applications to the Trust?
17 **A.** They could speak to -- they could speak to members of
18 staff who -- each charity had a particular named
19 member of staff who would help them, talk them through
20 the process.
21 **Q.** In terms of the information that the Trust required
22 from its registrants on a regular basis, is it right
23 that there was a system of requiring census forms to
24 be completed?
25 **A.** Yes, there was. I believe it was annual, it was

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1 certainly a census form, so that we knew or had
 2 a handle on income and expenditure, and so we had an
 3 expenditure.
 4 **Q.** The figure that was then used as a household figure
 5 for the purpose of, as it were, any means testing of
 6 applications would include, would it not, the income
 7 of the spouse or partner or adult children?
 8 **A.** Yes. You refer to means testing. We used the
 9 benefits going into a household as a proxy for means
 10 testing. So people who were receiving income support,
 11 for example, or mobility allowance, or whatever,
 12 I can't remember what they were called now, so we knew
 13 what that meant in terms of their household income and
 14 their expenditure.
 15 **Q.** Some Macfarlane Trust registrants have described to
 16 the Inquiry that the process they had to go through,
 17 form-filling, multiple quotes, providing details on
 18 a regular basis of household income, made them feel
 19 that they were holding out a begging bowl. Do you
 20 understand why they might have felt that way?
 21 **A.** Of course.
 22 **Q.** Was that unhappiness ever explicitly recognised and
 23 addressed by trustees?
 24 **A.** It was certainly recognised. We did our best to
 25 address it by -- by ensuring there was sufficient

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1 **Q.** Your statement suggests that for an appeal to succeed
 2 there would either have to be new evidence or --
 3 **A.** That applied to Caxton. I don't think that was an MFT
 4 requirement.
 5 **Q.** Was there any policy or any published criteria as to
 6 how an appeal might proceed within the
 7 Macfarlane Trust?
 8 **A.** Was there?
 9 **Q.** Was there any policy or any published criteria for
 10 an appeal within the Macfarlane Trust?
 11 **A.** Not that I can recall.
 12 **Q.** I ask you to look at a couple of letters. The first
 13 is dated when you were not a trustee in the mid-1990s
 14 and the second is when you were a trustee. Soumik,
 15 could we have please BHCT0000875. Do you have that?
 16 BHCT0000 -- it might be 873, sorry, inability to read
 17 my own handwriting.
 18 So this is a letter 3 June 1996, so this is
 19 from when you were not trustee, it's in that period
 20 after your first period of trusteeship, but if we can
 21 see it's a letter from the Macfarlane Trust. This is
 22 a letter to Dr Mayne. It's asking for a medical
 23 report in support of an application the patient has
 24 made for assistance, and if we look at the fourth
 25 paragraph it says this:

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1 information, ensuring that the staff in the office
 2 were sympathetic and helpful, by talking to
 3 beneficiaries when we could through the Partnership
 4 Group and at weekend events, as long as they went on.
 5 So, yes, we did what we could.

6 It's quite significant that Eileen Trust didn't
 7 have any of these problems because the Eileen Trust
 8 was small and we had a case worker, Susan Daniels, who
 9 knew everybody, they knew her, they could get in touch
 10 with her and that was something that, if it had been
 11 possible to implement that process in the
 12 Macfarlane Trust we would have avoided a lot of the
 13 problems, but we couldn't because there were too many
 14 people.

15 **Q.** Is it right that, in terms of Macfarlane Trust
 16 decision-making, there was no formal appeal process
 17 in, the way that we'll explore with the Skipton Fund
 18 tomorrow, there was a specific appeal process. If
 19 a registrant wished to appeal against a refusal of
 20 an application for assistance, they would -- that
 21 would fall to be considered by you as chair or by you
 22 in co-ordination with your fellow trustees; is that
 23 correct?

24 **A.** I think it's the latter. I think it was done by the
 25 board, including myself, yes.

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1 "All information contained in the completed
 2 report will be treated as given in confidence to the
 3 Trust and will not be shared with the patient
 4 concerned."

5 Then there's reference in the final paragraph
 6 to a consent form, which I don't think we've been able
 7 to find.

8 If we can then go to a document that dates from
 9 your time as trustee, TREL0000316_064, we can see this
 10 is October 2002, so this is during your chairmanship.
 11 Again, it's a request to a doctor for a report, and
 12 the third paragraph tells us:

13 "All information on the completed report will
 14 be treated in complete confidence and will not be
 15 shared with the patient concerned."

16 The purpose of showing you both those letters
 17 is to show this appears this is a practice that
 18 continued for a number of years. Why was it that the
 19 information being sought from the doctor would not be
 20 shared with the patient?

21 **A.** It might be information that the clinician would give
 22 the Trust that hadn't been shared with the patient.

23 **Q.** Wasn't it the patient's right to know what their
 24 clinician was saying to the Trust in relation to their
 25 application?

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1 A. Probably would, but it's not our job to tell them.
 2 Q. It's your policy, as in the Trust's policy, it would
 3 appear, that the information will not be shared with
 4 the patient.
 5 A. That's correct. As long as the clinician knows that,
 6 then it's up to the clinician to decide whether or not
 7 to tell the patient what he or she is telling us.
 8 It's not for us to pass on in the information from the
 9 doctor to the doctor's patient.
 10 Q. Why did the Trust think it proper to receive medical
 11 information about a patient that they wouldn't share
 12 with the patient?
 13 A. We couldn't -- we are not in control of the
 14 information that the doctor is going to give us, so
 15 all we can do is just to assure the doctor that
 16 whatever he or she says, we will not share it with the
 17 patient because it's up to the doctor concerned to
 18 decide whether or not to do that. What's the problem?
 19 Q. Information's being provided, information that's about
 20 the individual and their medical condition --
 21 A. Yes.
 22 Q. -- that they are not permitted to see that might lead
 23 to their application being rejected and they've no way
 24 of dealing with that.
 25 A. Well, then they will talk to the doctor. If we say

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1 there is inconsistency in their application, they give
 2 only a crude measure of need, and so on."
 3 This is July 2002. First of all, given that
 4 you have identified a complex, potentially
 5 inconsistent process that may only give a crude
 6 measure of need, why was that being identified for the
 7 first time in the middle of 2002?
 8 A. I couldn't tell you. I mean, maybe I should have
 9 identified it earlier maybe if it had been identified
 10 earlier and nothing had been done about it. I don't
 11 know.
 12 Q. Do you know whether --
 13 A. I had only been Chairman a year and a half, so --
 14 well, no. In fact, a year and a quarter. So
 15 I possibly didn't come up to speed as fast as I might
 16 have done, but I've come up with something here.
 17 Q. Do you know whether changes were made to the regpay
 18 system in response to the concerns that you were
 19 expressing?
 20 A. Sorry, I didn't --
 21 Q. Do you know whether changes were made to the regpay
 22 system in response to the concerns you were
 23 expressing?
 24 A. I don't know. I can't remember whether -- if I go on
 25 through the paper to find out what I was proposing,

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1 it's been declined on medical grounds, they can talk
 2 to the doctor because they will know that we obtained
 3 the medical information from their doctor. We cannot
 4 possibly start giving information out to patients that
 5 the doctor tells us that they might not have told the
 6 patient. I mean, I don't -- I simply don't see the
 7 problem.
 8 Q. I asked you the question and you have given your
 9 answer.
 10 Can I ask you to look at MACF0000011_072,
 11 please. This is a document authored by you in
 12 July 2002 and it's "Proposals for the revision of the
 13 structure of grant payments". If we go to the second
 14 page, top half of the page, you're referring, first of
 15 all, here to the system of "regpay", so regular pay
 16 and you have identified it as complex, 15 different
 17 rates applicable, complexity uses up office time and
 18 encourages inaccuracy, lowest band gives no incentive
 19 for people to be employed, nor does it recognise
 20 additional financial needs arising from families, and
 21 then your fourth point:

22 "... reliance on State ... benefits as the
 23 indicator of need has the advantages of being
 24 objective and, for the Trust, economical, but also
 25 some disadvantages: benefits might not be applied for,

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1 I might remember then, but I can't remember if this
 2 did lead to any changes.
 3 MS RICHARDS: Sir, I haven't quite finished the
 4 Macfarlane Trust yet, but I note the time. I am in
 5 yours and Mr Stevens' hands as to whether we continue
 6 or pick up in the morning.
 7 SIR BRIAN LANGSTAFF: Yes. Well, I think it's probably
 8 a good time for a break. My apologies, once again,
 9 Mr Stevens, for not having been able to start as
 10 promptly as we would have wished with the decent sound
 11 after the last break, but I hope that's --
 12 A. Has it got better --
 13 SIR BRIAN LANGSTAFF: I hope the problem doesn't recur.
 14 Tomorrow morning at 10.00, if you please, and of
 15 course, the usual rules apply overnight. But I look
 16 forward to seeing you then at 10 o'clock tomorrow.
 17 A. I will wait here in case the technician wants to come
 18 and fiddle with the kit.
 19 SIR BRIAN LANGSTAFF: Okay. Thank you very much. Very
 20 kind of you.

(4.50 pm)

(Adjourned until 10.00 am the following day)

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(57) million... - none

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|--|--|--|---|--|--|
| <p>N</p> <p>none... 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