

Tuesday, 9 March 2021

(10.00 am)

**SIR BRIAN LANGSTAFF:** Good morning, Mr Mishcon.

**THE WITNESS:** Good morning, Sir Brian.

**SIR BRIAN LANGSTAFF:** Well, you can obviously hear me, and you can see me as well, I hope.

**THE WITNESS:** I can.

**SIR BRIAN LANGSTAFF:** Now, I gather that you are at home, and at home you have your wife and your dog, but your dog is a Great Dane puppy and is being kept at a safe distance so that there is no interference from either wife or dog in the course of your evidence. Am I right?

**THE WITNESS:** You're quite right, sir.

**SIR BRIAN LANGSTAFF:** Let me tell you who you are talking to. You are talking to Fleetbank House, a room capable of holding 200 which at the moment holds I think eight people, including myself and Mary, who will ask you to take the oath in a moment or two. But the main audience that you're addressing is beyond us. It is those who are watching remotely on either Zoom or YouTube, and there will be something in the region, if last week is anything to go by, of about 240/250 people at any one time. So that's the audience that you have. That is whom you are talking to.

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a necessity. I had embarked on a master's degree course involving charity management, and I saw an advertisement in The Times for a trustee. I think the advertisement was also for the chair of the Macfarlane Trust.

Because I have had a serious blood condition and I had several transfusions in the 1950s and '60s and obviously was fortunate enough not to have been infected, I thought that I knew something about the subject matter, and I thought that I might be of use as a trustee to this particular charity.

**Q.** What, if anything, did you know, either at the time of your application or in the early days of your appointment, about the circumstances in which the Macfarlane Trust had been set up?

**A.** Well, obviously, doing my research, that is how I discovered what it was all about.

**Q.** When you say your research, you mean your research for your dissertation?

**A.** Research for dissertation, but also research about this specific charity.

**Q.** I think you've told us that you received an induction pack when you were appointed.

**A.** Can I correct?

**Q.** Yes, of course.

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Now, before Ms Richards asks you the questions, Mary, would you administer the oath, please.

**RUSSELL ORDE MISHCON, affirmed**

**Questions by MS RICHARDS**

**Q.** Mr Mishcon, are you able to see and hear me?

**A.** I am.

**Q.** You became a trustee of the Macfarlane Trust in March 2006, and you remained in that position until early 2014; is that correct?

**A.** It is.

**Q.** You also were a trustee of the Eileen Trust. You were appointed in that capacity in around March of 2007, and is it right you remained a trustee of the Eileen Trust until 2018?

**A.** I can't exactly remember, but I think that is correct.

**Q.** Are you -- you were a qualified solicitor. What was your principal field of practice?

**A.** Initially, I would be regarded as a general practitioner, but subsequently a commercial and commercial property specialist.

**Q.** What led you to apply for the position as trustee of the Macfarlane Trust?

**A.** I have been involved with charities since my teenage years. My first trusteeship was in my early 20s. I've always been involved. I've seen it as

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**A.** I think the induction pack was handed out at the trustee development day in November 2007, not when I was first appointed.

**Q.** We may come back to the trustee development day later, so I'll leave that for present purposes.

Just in terms of your dissertation, I'm just going to put the title on screen. I might ask you a little bit more about it in the course of the morning. For present purposes, if we can just see the first page, Soumik, it's MACF0000029. We can see there the title of it. It's "The strategic challenges facing the Macfarlane Trust: The effects of demographic change and lack of Government funding in haemophiliacs infected with HIV, hepatitis C by NHS-administered contaminated blood products".

You told us I think you were doing this as part of a degree course. How did you come upon to -- alight upon this particular topic for your dissertation?

**A.** Again, it was something in the Sunday Times. It was an article about this particular course that was being run by London South Bank University. Because I never went to university after school, I had embarked on this as a challenge.

**Q.** But what was it that led you to alight upon this

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1 particular topic for the dissertation as part of the  
2 degree?

3 A. Well, I obviously was a trustee of the  
4 Macfarlane Trust -- sorry, I became a trustee after  
5 I had started the course, and I felt that it would be  
6 something to be of benefit possibly to the charity if  
7 I did this exercise.

8 Q. We can take that down for now. Thank you, Soumik.  
9 Now, in the course of your tenure at the  
10 Macfarlane Trust, you were a member of the National  
11 Support Services Committee for a period of time, and  
12 I'll come back to that later.

13 You also attended some meetings of the MFT  
14 Caxton liaison committee. Can you recall what the  
15 purpose of that committee was?

16 A. In all honesty, I can't. I think it was only a couple  
17 of meetings that I attended in the early days of it.  
18 Obviously, all I think I can say is that we were  
19 trying to set up criteria that would assist the  
20 Caxton Foundation based on the experience of  
21 Macfarlane Trust. But I have no recollection of what  
22 was said or done at the meetings, I'm afraid.

23 Q. You were also involved with two working parties at the  
24 Macfarlane Trust. There was a working party looking  
25 at, in particular, the position of widows and bereaved

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1 considered.

2 And the issue of the reserves was a difficult  
3 one. Because the allocation, the annual allocation  
4 from the Department of Health was never certain and it  
5 was always felt that it could be withdrawn, if it had  
6 been withdrawn, what was an appropriate sum of money  
7 to have in order to reduce the effect on the  
8 beneficiary community. And it was felt that I think  
9 around the £4 million mark that we had would cover us  
10 for, from recollection, a year and a half, something  
11 like that. So that, as I repeat, the burden on the  
12 community of having the funds taken away from the  
13 Macfarlane Trust would be lessened. But, again, the  
14 Department of Health insisted on us reducing those  
15 reserves substantially, so the objective of the  
16 working party was to come up with proposals to do just  
17 that.

18 Q. I'll come back in a little more detail to the working  
19 parties and a couple of sets of minutes at a later  
20 stage.

21 Before I do that, I want to ask you some more  
22 general questions about the Macfarlane Trust and its  
23 relationship with the Department of Health. If we  
24 look at your witness statement, Mr Mishcon. Soumik,  
25 it's WITN4474001. And if we go to page 3, please,

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1 dependants. Is that what we see sometimes referred to  
2 in the minutes as the stage 2 working party?

3 A. Again, I wouldn't know, but I will take it that it  
4 was.

5 Q. What was the role or remit of the working party,  
6 whatever its precise label or name, the working party  
7 that was looking at the position of widows and  
8 bereaved dependants?

9 A. Well, I think it emanated from the trustee development  
10 day in 2007 where Peter Stevens had set out quite  
11 clear and defined objectives for the Trust going  
12 forward, and one of those was the position of the  
13 widowed community. I was appointed to that working  
14 party. I was not a member of the NSSC.

15 Q. Then the second working party that you were involved  
16 with was a reserves working party set up a little  
17 later, I think in around 2012.

18 What was the role or remit of the Reserves  
19 Working Party?

20 A. It was because we had substantial reserves at that  
21 time, and the Department of Health were wanting us to  
22 reduce those reserves, and we were virtually put under  
23 the obligation to do so in order to have our  
24 allocation for the following year considered --  
25 I don't know if I should use the word "favourably" but

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1 paragraph 7. I just want to ask you a little more,  
2 Mr Mishcon, about what you say in this part of your  
3 statement. So you say:

4 "The Trust was not independent from the  
5 Government/Department of Health because it was solely  
6 dependent on them for its source of funds. I have  
7 described it as an instrument of the Government, but  
8 it was established as an independent charitable  
9 organisation."

10 Then you refer to Mr Evans' description of the  
11 trust as an arm of the Government:

12 "Whether an instrument or an arm of the  
13 Government, it should not have been and to be either  
14 is, I believe, contrary to Charity Commission  
15 guidelines. Whilst the Department of Health did not  
16 dictate policy to the Trust, other than by operating  
17 the purse strings and nominating two of the charity's  
18 trustees, neither did it, as far as I am aware,  
19 exercise oversight nor involve itself in day-to-day  
20 matters. It was also intimated, as I recall, that if  
21 the Trust sought to fundraise on its own account, any  
22 receipts would reduce the grant the Trust received  
23 from the Department of Health by an equal amount."

24 Then you set out your recollection as to the  
25 basis of your understanding for that last observation.

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1 Can I just ask you to develop a little more for  
2 us what your view was of the Trust's role and its  
3 interactions with the Department of Health and what  
4 difficulties or tensions that caused.

5 A. Clearly, the Department of Health influenced what the  
6 Macfarlane Trust could do by virtue of the level its  
7 funding because it was the sole source of funding for  
8 the Trust. It is clear, from having looked at some of  
9 the evidence that's been put before the Inquiry, that  
10 the Department took a very, very long line in relation  
11 to the reserves which we've just been talking about  
12 and, so to say, as I do in my statement, that it did  
13 not dictate the policy of the Trust, that could be  
14 mincing words. I don't know that I can say anything  
15 more, unless you want specifically to refer to  
16 something?

17 Q. No, that answers the question, Mr Mishcon.

18 You set out in this paragraph your concern that  
19 the position that the Trust found itself in might be  
20 contrary to Charity Commission guidelines. Was this  
21 something which the board considered and discussed at  
22 the time, or sought any advice on?

23 A. I refer to it in my dissertation, as far as I recall,  
24 and I think I quote from the actual charity guidance  
25 policy. I believe I would have raised that at a board

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1 campaigning? So campaigning using the media,  
2 advocating publicly for a larger allocation to be  
3 made, drawing attention to the plight of the  
4 beneficiary and bereaved communities, what was your  
5 view on the ability and appropriateness of the Trust  
6 doing that?

7 A. Well, it was certainly something that was within its  
8 power to do so but, again, Charity Commission  
9 guidelines enabling charities within certain confines  
10 to lobby and to promote their charity, and I was very  
11 much in favour of that and my dissertation bears that  
12 out.

13 Q. I'm just going to ask --

14 A. May I just add --

15 Q. Yes, of course.

16 A. -- that I thought that this was one of the ways -- I'm  
17 sure we'll be coming back to the letter that I drafted  
18 to the Minister -- but I felt that this was one of the  
19 ways, and a very important one, for increasing the  
20 profile of the charity so that the public could see  
21 what the effect had been on the registrant community  
22 of the contamination, the blood contamination, and  
23 that the Government wasn't doing enough to provide  
24 support for that community.

25 Q. I'm just going to ask you to look with me at one of

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1 meeting. I can't exactly recall if I did or when  
2 I did, but it was a general view on the Board of  
3 Trustees that this had been done -- you know, carried  
4 on for so many years, this policy, with all the  
5 policies that it then had for payments to the  
6 registrant community, and it wasn't going to change  
7 that easily.

8 Q. In terms of the ability to fundraise, is this  
9 a correct understanding of your position at the  
10 relevant time, that the Macfarlane Trust had the power  
11 to fundraise, but there was a practical constraint  
12 which was that the Department of Health might then  
13 make a commensurate reduction in its allocation of  
14 funding. Is that --

15 A. Sorry. It certainly had the power, but, again, it was  
16 felt by some members of the board that the cost of  
17 fundraising was known to be an expensive cost, and  
18 given the indications or the feelings that it wouldn't  
19 go down well with the Department, neither really was  
20 it the role of Trust, having been set up by the  
21 Government, to administer funds to the registrant  
22 community, that it would be appropriate to do so -- to  
23 fundraise.

24 Q. We can take the statement down, Soumik.

25 What about the position or the question of

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1 the interviews appended to your dissertation or that  
2 you undertook as part of your dissertation work. It's  
3 with the Reverend Tanner. Soumik, it's  
4 MACF0000030\_037. If we go to the next page, we can  
5 see at the very top of the page the date. So this is  
6 an interview, as I understand it, Mr Mishcon, that you  
7 undertook with the Reverend Tanner on 31 January 2008;  
8 is that right?

9 A. Correct.

10 Q. Soumik, if we can go to the last page, please, and if  
11 we look at the bottom half of the page, I just want to  
12 read and then ask you about the Reverend Tanner's  
13 response. You asked him this, you said:

14 "Given our Government's past record and its  
15 'niggardly' response, to use your word, even if Archer  
16 was to write a pretty damning report about the  
17 'generosity' of the UK Government, given Treasury  
18 constraints, given all the news about the possibility  
19 of economic turndown, what realistically do you think  
20 the Government's response is going to be?"

21 This is the Reverend Tanner's response:

22 "I expect it to be the same as it has always  
23 been, that the Government has only ever moved, with  
24 regard to Haemophilia and these particular situations,  
25 after intense campaigning and I think it would call

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for another intense campaign by the Haemophilia Society, coupled with the Macfarlane Trust. I can't see the papers falling on the Prime Minister's desk and him saying to his chums in the cabinet, 'we really must do something about this immediately'. I think something will own happen as a result of further intense campaigning, all the way along the line of Special Payments 1, 2, and Skipton; it's only happened after that."

From your perspective as trustee, Mr Mishcon, did you agree with the view expressed there by the Reverend Tanner?

**A.** I did, and Lord Morris, who I also interviewed, was saying very much the same thing and Baroness Kennedy of The Shaws, Helena Kennedy QC, had also indicated that really this is the only way that Government would be moved, if there was an advocacy and she offered and, in fact, did raise questions in the House of Lords that I, with the assistance of the chief executive, raised. That's my recollection.

**Q.** There appears from what the Inquiry has seen and heard so far from Macfarlane Trust Board minutes and the evidence it's heard so far, there seems to have been a reluctance on the part of the Board of Trustees to participate in campaigning, other than perhaps through

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**Q.** Can you hear me now?

**A.** I'm sorry, Ms Richards, you are breaking up.

**Q.** Yes, you are as well.

**A.** I can hear you now but I didn't hear anything you said before.

**Q.** We will see how we get on for the next few minutes. We might have to take a break if problems continue. Can you see the document on the screen, Mr Mishcon?

**A.** I can. Yes, I can.

**Q.** So this was your letter of 5 March to the Minister and you asked her for the opportunity of an interview -- is that right -- so you could raise a number of questions with her?

**A.** Correct.

**Q.** If we go over the page, we can see some of the questions that you wanted to pose. If we look at the bottom half of the page, under the heading "Questions", you pose this question:

"... will you, as Minister, give serious

creation to a further capital payment being made to alleviate the existing hardship, which might allow surviving registrants to provide for their own and their dependants' future with a degree of financial independence?"

You then raised a concern about the particular

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the lobbying, private lobbying, of Parliamentarians.

What was the response of your fellow trustees to suggestions there should be more vigorous or active campaigning?

**A.** It wasn't really taken on board by them.

**Q.** Did you get a sense of why that was the case?

**A.** No.

**Q.** I want to take you next to --

**A.** I'm sorry, can I just add -- forgive me, Ms Richards -- it was felt that this was the role of The Haemophilia Society that had conducted advocacy in the past but, at the time that I became a trustee, I think that it had sort of ceased to initiate that role. It did obviously take a part in the Archer Inquiry but that wasn't -- it didn't go further than that.

**Q.** I want to ask you to look with me at a letter you wrote to the Minister as part of your research for your dissertation. So it's MACF0000030\_017, please, Soumik.

If we go to the next page, this, Mr Mishcon, is your letter of 5 March 2008 to Dawn Primarolo, Minister of State for Public Health Protection. You set out the purpose of writing --

**A.** I'm sorry, Ms Richards --

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position of young people and whether there was a special case for providing an additional capital sum to that particular cohort. You then refer in the bottom --

**A.** Ms Richards, it's not on this page. It's not on this page that you're showing on the screen.

**Q.** It's on our screen, Mr Mishcon.

**SIR BRIAN LANGSTAFF:** I think we may need to take a break just to check --

**MS RICHARDS:** The technology, yes.

**SIR BRIAN LANGSTAFF:** So can you hear me all right, Mr Mishcon? Can you hear me?

**A.** I can, Sir Brian.

**SIR BRIAN LANGSTAFF:** What we'll do is we'll take a break.

**A.** I can, Sir Brian, yes.

**SIR BRIAN LANGSTAFF:** We'll take a break and let the techies have a look and see if they can improve the connection. So I don't know how long that will be but it will be at least ten minutes for those who are watching remotely. Thank you.

**MS RICHARDS:** Thank you.

(10.26 am)

(A short break)

(10.48 am)

**SIR BRIAN LANGSTAFF:** I gather we're back up and running

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1 on a probably more secure footing, so shall we pick up  
2 where we left off?

3 **MS RICHARDS:** Certainly. Soumik, can we have back on  
4 screen the document -- do you need the reference  
5 again? No. If we go to the previous page.  
6 Mr Mishcon, I'm not going to go through the  
7 document paragraph by paragraph but am I right in  
8 understanding these are the questions that you invited  
9 the Minister to answer?

10 **A.** Correct. If I can just add that one thing I feel  
11 quite passionate about is Judge Krever's report and  
12 what I quote on page 2 --  
13 **Q.** Go to the next page.  
14 **A.** -- of what he said? It also happens to be in the  
15 preface to my dissertation.  
16 **Q.** We'll just get that on screen. If you go to the next  
17 page, please, Soumik. So that's in the middle of the  
18 screen. You say this, Mr Mishcon:  
19 "I assume that you are aware [this is you  
20 addressing the Minister] of what other governments  
21 have done in making more adequate provision for those  
22 in similar circumstances in their respective  
23 countries.  
24 "I'm thinking of [Ireland], Canada and  
25 Israel~..."

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1 Government appears to have such little compassion  
2 (using Judge Krever's 'measure') for those affected by  
3 this tragedy ..."

4 You then set out a number of further questions.  
5 I think it's right that you didn't initially get any  
6 response to this letter and you wrote again on  
7 25 March 2008, chasing for a response. I won't go to  
8 that.

9 In terms of the response that you did get,  
10 WITN4474005, please, Soumik, the fifth page of that.  
11 We can see this is a letter dated 25 March. If we go  
12 to the second page, we can see it's from someone in  
13 the customer service centre of the Department of  
14 Health. So is this right, Mr Mishcon: this is the  
15 only response you got? You didn't get anything from  
16 the Minister or those directly working for the  
17 Minister?

18 **A.** Correct.  
19 **Q.** If we go back to the first page and look at the second  
20 half of the first page, we can see, picking it up in  
21 the last three paragraphs, there's reference in the  
22 last three paragraphs to the business case from the  
23 Trust in 2006. It says:  
24 "The Department concluded that such a payment  
25 was not justified at the time. The situation has not

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1 Then you refer to Judge Krever's report and you  
2 quote this:  
3 "The compassion of a society can be judged by  
4 the measures it takes to reduce the impact of tragedy  
5 on its members. No amount of money can make up for  
6 the pain, suffering and premature death of those  
7 infected with HIV, Hepatitis C or any other blood  
8 related injury. The financial burden of living with  
9 HIV or other blood-related illnesses can, however, be  
10 quantified for the purpose of providing financial  
11 assistance to injured persons or their families ..."  
12 Is that the passage that you had in mind,  
13 Mr Mishcon?  
14 **A.** It is.  
15 **Q.** We can see, if we just look below that, if we go  
16 further, thank you. The next question you pose of the  
17 Minister was:  
18 "What criteria does your department use to  
19 quantify, evaluate and cost 'the financial burden' and  
20 needs of the registrants of the Macfarlane Trust and  
21 of their dependants."  
22 Then you refer again to Lord Krever, in the  
23 next paragraph, and say:  
24 "I would be interested to have your comments as  
25 to why, in comparison to other countries, the UK

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1 changed substantively since then."  
2 The next paragraph refers to criteria used to  
3 quantify claims in a court of law and then the final  
4 paragraph, picking up upon what you'd said about Judge  
5 Krever, said:  
6 "It is important to note, when making  
7 international comparisons, that the situation in  
8 Canada and [Ireland] is quite different, as it was  
9 established that wrongful practices were employed in  
10 both those countries. This is not the case in the  
11 UK."  
12 Then I think the rest of the letter really goes  
13 on to talk mostly about questions of stigma.  
14 **SIR BRIAN LANGSTAFF:** Just before you leave this letter,  
15 the paragraph beginning "As you will be aware" states  
16 a number of things as though they were received fact.  
17 Each of those is, in the light of the information  
18 we've had thus far in this Inquiry, highly  
19 controversial, is it not?  
20 **MS RICHARDS:** Yes.  
21 **SIR BRIAN LANGSTAFF:** Yes. Each and every sentence, in  
22 fact.  
23 **MS RICHARDS:** Yes.  
24 **SIR BRIAN LANGSTAFF:** Thank you.  
25 **MS RICHARDS:** So is this right, Mr Mishcon, you got

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1 nowhere, really, in your request for either  
 2 an interview with or comprehensive answers from the  
 3 Minister?  
 4 **A.** Correct.  
 5 **Q.** We can take that down. Thank you, Soumik.  
 6 Can I then just ask you a little about what the  
 7 Trust's approach was to trying to obtain increased  
 8 funding from the Department of Health.  
 9 You were a trustee, I think, possibly under  
 10 three different chairs: Mr Stevens for a short while,  
 11 possibly, Mr FitzGerald I think for most of the first  
 12 few years, and then Mr Evans for the last two years or  
 13 so of your trusteeship at the Macfarlane Trust.  
 14 What was the strategy that was pursued by the  
 15 board, in terms of trying to get increased funding  
 16 from the Department of Health?  
 17 **A.** As I think I've intimated in my dissertation, the  
 18 Macfarlane Trust was not particularly good on strategy  
 19 going forward, and I think one of the problems of that  
 20 was because everything was dependent upon the annual  
 21 allocation by the Department, so no real planning  
 22 could be done. But it did occur to me, and I said so,  
 23 that we should have had a strategy, or what the  
 24 situation would have been post-Archer. And to do  
 25 that, one needed to think of all the possibilities

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1 "What is in my view far more relevant to  
 2 a strategic case is the desperate health and financial  
 3 state of our registrant community, which is not  
 4 touched upon, our duties as trustees to fulfil the  
 5 objects of the Trust set up by the Government and  
 6 importantly to indicate what other Western governments  
 7 have done or are doing (whether by way of compensatory  
 8 payments or financial and other provision) to deal  
 9 with the issue of those infected by contaminated  
 10 blood."  
 11 Mr Mishcon, would we be right in understanding  
 12 that what you're there doing is suggesting two  
 13 components to a possible strategic case. One is to  
 14 articulate the desperate health and financial state of  
 15 the registrant community, and the other is to set out  
 16 to Government what other Western governments were  
 17 doing; is that right?  
 18 **A.** Yes.  
 19 **Q.** Was that ever done by the Macfarlane Trust during your  
 20 time there?  
 21 **A.** Not to my knowledge.  
 22 **Q.** Can you assist us with understanding why that was?  
 23 **A.** I don't think I can, to be honest with you.  
 24 **Q.** If we go back then to your witness statement,  
 25 Mr Mishcon. Again, a question I wanted to ask you

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1 that Archer may come up with and how the Government  
 2 would respond to that.  
 3 But when there was a Government response, we  
 4 had all our policies in place. I hope I'm answering  
 5 your question. As I said, strategy was --  
 6 forward-looking strategy was not something that was  
 7 felt by the trustees to be particularly important.  
 8 **Q.** If we look at just one exchange of emails in 2007,  
 9 Mr Mishcon. It's HSOC0028245. If we look at the  
 10 second page, first of all, bottom half of the second  
 11 page, we see -- I don't need to ask you about the  
 12 detail of it, Mr Mishcon, but just so we understand  
 13 what this is, this is a firm of consultants, I think,  
 14 producing a draft document by way of a strategic case.  
 15 And then if we go to the top of the page, we can see  
 16 Mr Harvey, who was the then chief executive,  
 17 addressing an email to the Board of Trustees saying:  
 18 "... action has been taken to develop  
 19 a redefined strategy in respect of the business case  
 20 'Funding long-term survival'."  
 21 Then if we go to the first page, I just want to  
 22 ask you about your comments. You say -- so this is  
 23 your email in response, 18 July 2007. You say in the  
 24 second paragraph -- after some observations about the  
 25 document, you say this:

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1 about something arising from that in relation to the  
 2 Department of Health. Soumik, it's WITN4474001.  
 3 If we go, please, to page 5 this time and  
 4 paragraph 8.5, you've referred there to the rejection  
 5 of the business case in 2006. I don't need to ask you  
 6 about that. We've heard evidence from those who were  
 7 involved.  
 8 But at the end of this paragraph, you say in  
 9 the last five or so lines:  
 10 "Trustees were advised that at a meeting with  
 11 officials of the strategy and legislation branch of  
 12 the Department of Health on 10 December 2007, the then  
 13 Chairman and Chief Executive of the Trust were advised  
 14 that another reason for the rejection of the business  
 15 case was the absence of any discussion of empowerment  
 16 of the Trust's community of care."  
 17 What did you or, to your knowledge, your  
 18 colleagues on the board understand the Department of  
 19 Health to mean by "empowerment" in this context?  
 20 **A.** I think it was to have policies designed to assist  
 21 registrants (primary beneficiaries, widowed community,  
 22 et cetera) to move forward with their lives, if that  
 23 was at all possible. And that involved perhaps  
 24 education because I assume that you've had evidence  
 25 that many of the beneficiaries were very young when

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they were contaminated, and when it came to education, either they were not well enough or, because their life expectancy was so limited, as and when they got some capital payments, they saw no point in doing anything other than perhaps spending that because they weren't expected to live that long. I think the interview I had with Nick Evans -- I think it's Nick Evans -- sort of pointed that out quite clearly.

So it was a question of having policies that would help those who wanted to be helped, either by providing facilities for further education or opportunities, whether that was business opportunities or whatever. And, in fact, through the NSSC, we did introduce policies to that effect. And, again, I do refer to this in my dissertation.

But it was also raised by Peter Stevens at the 2006 development day, and I think that the aide-memoire that was produced for that trustee development day is very, very important because Peter Stevens sets out in his papers his view of things that needed to change, and I have to say that I fully concurred with that. I cannot say that over the years all those things were put into effect.

**Q.** To what extent then was the issue of empowerment something that the board was identifying as a relevant

25

empowerment projects.

**Q.** And I'm going to ask you about the NSSC in a few minutes. Just so that others can follow what you've said about the trustee development day, as you referred to it on a couple of occasions, Mr Mishcon, I'm just going to get the aide-memoire on screen so that those listening know what is being discussed. Soumik, it's MACF0000016\_086.

We can see here it's headed "Aide-memoire trustee development day 4 November 2006", and we can see a number of trustees present, including Mr Stevens, who was I think shortly to step down, and Mr FitzGerald identified as Chairman elect, and yourself. Is this the document that you were referring to, Mr Mishcon?

**A.** It is.

**Q.** If we just look over the page, we can see there's a presentation or address by Ms Fletcher, who's a solicitor from Berwin Leighton Paisner, I think:

"... key duty of trustees [this is at paragraph 8] to establish and respond to need. Need was identified as financial funding the many and varied of categories sought by the beneficiary.

"The Trust clearly had primary and secondary beneficiary constituencies; the level of financial

27

objective for itself or something that was being driven by the Department of Health?

**A.** I'm sorry, Ms Richards, I'm having a little difficulty in understanding your question.

**Q.** Let me put it a different way, Mr Mishcon. In your statement, you tell us that the Department of Health rejected the bid for funding -- for enhanced funding -- in part because of the absence of any discussion of empowerment.

**A.** Yes.

**Q.** That might suggest that the Department was seeking to shape the direction of the board's decision-making. Would that be right to understand that?

**A.** Yes, I think it would.

**Q.** But do we also understand from your own answer a few moments ago that the issue of empowerment was something that at least Mr Stevens himself thought was something that the board should be considering?

**A.** If you can hold just for one second, I want to see if ... *(Pause)*

No, I can't find what I was looking at. No, I'm sorry. I thought that there was something in the aide-memoire that would assist.

I do recall that the NSSC came up with policies for providing funds that could be said to be sort of

26

support was a matter for trustees to determine."

And so on. Again, we might pick up on some of these themes in a little while.

And then if we look at the next page, please, Soumik. If we look at the bottom half of the page, we can see a heading there, "Policy papers", and it says:

"The purpose of the two papers was to review possible shortcomings in the Trust's approach in policy terms to financial support disbursement, and, secondly, how the Trust might refine its approach to disbursing financial support, taking into account need as defined by Miss Fletcher."

Then we see four aspirations set out by the Chair:

"Clearer targeting of funds.

"The need to question automatic payments.

"The stage when non-affected widows are no longer deemed to qualify for support."

And I'm not quite sure -- I think the last then just refers to what's set out in terms of the debate.

We can obviously consider the document ourselves, Mr Mishcon, but is there anything, in particular, about the discussion that took place at the trustee development day and how it shaped thinking over the following years that you would wish to

28



1 highlight?

2 **A.** I don't think so. I refer in my dissertation -- I'm

3 sorry to keep going back to my dissertation -- that

4 not much was done subsequently by the board. So,

5 obviously, some things were done.

6 But the main issue that is raised there, not

7 only by the lawyers but also by Peter Stevens, was the

8 question of financial need. And it is said in this

9 paper -- it sort of actually talks about taking note

10 that there may be some members of the registrant

11 community who were sufficiently financially sound,

12 that they may not require the regular payments that

13 were being made. It was only a small proportion, but,

14 nonetheless, a proportion.

15 **Q.** I want to ask you next, Mr Mishcon, still on the theme

16 of communication with Government, about a letter that

17 you proposed should be sent by the trustees in

18 January 2013 to the minister. We'll go to the version

19 that you have exhibited to your witness statement.

20 It's WITN4474004. We can see it says:

21 "Dear minister ..."

22 And then it is recorded as expressing the

23 concern and dismay of all the trustees at the prospect

24 of having the annual allocation of funds further

25 reduced.

29

1 drafted with other trustees, or at least one other

2 trustee, and it wasn't. It was introduced by me under

3 any other business because there was no other place to

4 bring it in the meeting. It had been reported to us

5 that the Department were possibly going to reduce the

6 annual allocation and I felt that we needed to do

7 something quite dramatic. But, as Mr Evans has

8 suggested, that it was presented as a final draft that

9 needed to be signed there and then, that is very far

10 from the truth and it is quite clear that there are

11 square brackets in that letter and it is also the

12 case, from my recollection, that there was

13 a suggestion at the end that if the Board -- sorry, if

14 the Department of Health did reduce the allocation,

15 then the trustees would have to consider their

16 position as to whether they should resign.

17 Now, I'm going to take you back, if I may,

18 Ms Richards and Sir Brian, if you will allow me, to

19 the trustee development day 2006 because on page 2 of

20 that aide-memoire you will see reference to the

21 resignation of trustees.

22 **Q.** If you just let us get it back on screen, Mr Mishcon,

23 so others can follow. It's MACF0000016\_086.

24 **SIR BRIAN LANGSTAFF:** As a matter of note, the document

25 itself, I think, has the date 4 November 2007.

31

1 We've looked at the letter with Mr Evans,

2 Mr Mishcon, so I'm not going to go through every

3 paragraph, but we'll see from it the draft sets out

4 concerns about what the likely allocation was going to

5 be. And if we just go to the bottom of the page, you

6 say in the last few lines:

7 "The business case demonstrates the capital

8 needs of our community of care far exceed the amount

9 of our reserves, yet it appears our annual funding is

10 likely to be further reduced in order that we're

11 forced to utilise our reserves in making up the annual

12 allocation."

13 Then over the page, you refer in the second

14 paragraph to -- or seek to draw a comparison in

15 relation to the Caxton Foundation, and then in the

16 next paragraph refer to a commitment made to the

17 Thalidomide Trust.

18 Our understanding, Mr Mishcon, is that at

19 a board meeting in January 2013, you suggested that

20 a version of this letter should be sent to the

21 minister. Is that right?

22 **A.** It is right, but I do need to clarify certain things

23 that Mr Evans has said, both in his statement and in

24 evidence to the Inquiry.

25 He first of all implies that this letter was

30

1 **MS RICHARDS:** 2006.

2 **SIR BRIAN LANGSTAFF:** That's what it says but the note, if

3 you go down to the bottom --

4 **MS RICHARDS:** Oh, yes. Yes, you are right, sir. Just

5 below the list of those who are present it says:

6 "The trustee development they took place on the

7 4 November 2007."

8 **SIR BRIAN LANGSTAFF:** I think that number, that date, is

9 repeated at the end, I noticed.

10 **MS RICHARDS:** Yes. I think we can work it out. That may

11 be a mistake, not least because, if you look in the

12 bullet points further down the page, it talks about

13 making a supplementary one-off payment in January 2007

14 and preparing a framework for 2007/8. So I think that

15 combined with what we know about when Mr Stevens left

16 and when Mr FitzGerald took over as chair might

17 suggest it's more likely to be November 2006.

18 **SIR BRIAN LANGSTAFF:** So anyone reading the letter should

19 bear in mind that it's likely to be 2006.

20 **MS RICHARDS:** Yes, we'll double-check but that's my

21 current reading of it.

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

23 **MS RICHARDS:** Sorry, Mr Mishcon. So if we go then to the

24 second page and look at the bottom of the page,

25 I think this is what you were drawing our attention

32

1 to.

2 A. This is many years before the letter that you are

3 talking about now. It was clearly thought, even then,

4 that the Board of Trustees might resign *en masse* and

5 the advice from the solicitors -- and I was aware of

6 this advice even when it was being proposed because it

7 wasn't said "We will resign", "We may have to consider

8 resigning". I'm sorry I don't have any copy of the

9 original draft of my letter and the version that

10 I exhibited to my statement was from my computer,

11 which obviously was the revised version. But even

12 with the revived version, Mr Evans was unwilling to

13 sign.

14 Q. So if we go back then to the letter at WITN4474004,

15 why was it, in particular, that you wanted the

16 trustees to sent this letter? What did you hope it

17 might achieve?

18 A. Well, obviously, it was something that was far more

19 forceful than what was being said presumably by

20 Mr Evans and the chief executive at meetings with the

21 Department of Health. It would demonstrate that it

22 was the Board as a whole that felt this very, very

23 strongly and that if the threat were to be carried

24 out -- and I'm not suggesting for one moment that it

25 would be because, as I referred back to the trustee

33

1 an impossible position, rather than with a realistic

2 expectation of it leading to increased funding. Do

3 you have any comment to make on that?

4 A. Absolutely not, and there were so many trustees, not

5 the two or three that Roger Evans refers to, that were

6 in favour of such a letter -- I'm not going to say

7 "the letter" but such a letter -- being sent and that

8 is why I revised it and I sent it to all the trustees

9 and to Roger Evans, being the revised version that the

10 Board meeting had made certain comments about and that

11 is the draft that you have before you.

12 Q. Then if we just look --

13 A. Can I just add -- I'm sorry, Ms Richards -- I don't

14 think that it is such a letter that would have created

15 problems with the Department of Health in the way that

16 Mr Evans seemed to think it would and damage the

17 relationship that he felt he had with the Department

18 of Health. Mr Evans and his relationships, it may be

19 something that we will come back to.

20 Q. I will ask you a little more about, as it were, the

21 culture within the Board but, before we do that and

22 whilst we're still looking at the aftermath of this

23 letter, there were some email exchanges when you

24 revised your draft, and we'll just go to that please.

25 It's WITN1122029. If we to the next page, please,

35

1 development aide-memoire, it's not lawful for all the

2 board to resign *en masse* under charity law -- and that

3 the publicity, even the ability to say "we are going

4 to", the publicity would have been substantial and,

5 again, coming back to whether, you know, lobbying or

6 whatever is something that the Trust should be doing,

7 because it would get publicity, because questions

8 would be raised in Parliament, it was a way of

9 bringing to the Government's attention the outrage, as

10 it were, that had occurred.

11 Q. Mr Evans -- and I'm paraphrasing here but I think not

12 inaccurately -- expressed a concern that the letter

13 was sprung on him at the meeting without following the

14 proper process. Is that correct and, if so, why was

15 that the case?

16 A. There was no such process. He refers to standing

17 orders. As far as I'm aware, there never were any

18 standing orders. I had never heard or seen of any in

19 the years that I had been a trustee. It was something

20 that Roger Evans made up. I'm sorry to put it that

21 way, but it's true.

22 Q. Mr Evans also said in his witness statement, which

23 I know you've seen, and in his oral evidence that he

24 suspected that the production of this letter was done

25 with the prime objective of putting him in

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1 Soumik, to start with and pick it up at the very

2 bottom of the next page, just so that we can see the

3 sequence.

4 At the very bottom of the page, Mr Mishcon, we

5 have Mr Evans' email on 26 January to all trustees,

6 I think, "Dear Trustee", and then if we go to the next

7 page, and we look at the first paragraph, it says:

8 "In case you are still considering whether to

9 send an individual trustee letter, I want to clarify

10 a few factual points."

11 Then if we look at the third paragraph, he

12 refers it starts:

13 "Several of you have asked me what influence DH

14 has over the Macfarlane Trust. The answer is a lot."

15 There's then reference to how the Government

16 could close the Macfarlane Trust down and then, in the

17 last sentence of that paragraph, it says:

18 "a DH appointed Trustee challenging DH in the

19 proposed way would raise a number of questions within

20 DH about loyalty, for instance."

21 Was it your understanding, Mr Mishcon, as

22 a trustee not appointed, I think, by the Department of

23 Health or not nominated by the Department of Health,

24 that those of your colleagues who had been appointed

25 by the Department of Health owed some kind of loyalty

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1 to the Department of Health?  
 2 A. No, that's not what I felt but I think what Roger  
 3 Evans is saying is quite surprising. For example,  
 4 I think Elizabeth Boyd, who unfortunately is no longer  
 5 with us, was a Department of Health appointee and she  
 6 was much in favour of this letter being sent. She was  
 7 a very intelligent, wise woman, and there was one  
 8 other trustee, I won't name him, who was a Department  
 9 of Health appointee who was supportive of Roger Evans  
 10 on this.

11 But, I mean, maybe this is an issue that,  
 12 should there be split loyalties, quite clearly under  
 13 charity law, a trustee appointed to a Board has to be  
 14 independent of whoever has appointed them and if  
 15 they're not then they're not doing their job properly  
 16 as a trustee.

17 Q. Then I'm not going to go through the detail of this  
 18 paragraph by paragraph, we looked at it with Mr Evans,  
 19 but I want to look at your response, Mr Mishcon. So  
 20 if we go to the first page, Soumik, and we pick it up  
 21 at the very bottom of the page, this is you in  
 22 response to the trustees and copying Ms Barlow:

23 "At no time have I suggested, nor do I do so  
 24 now, that individual Board members right separately to  
 25 the Minister."

37

1 at. I was ... trying to persuade Roger to my way of  
 2 thinking but clearly to no avail."

3 A few lines further down, you pick up on  
 4 adjectives used by Mr Evans:

5 "If the adjectives, 'fractious' and  
 6 'dysfunctional', are appropriate to describe our  
 7 Board, what is the Chairman doing to ameliorate such  
 8 a situation?"

9 Then you pose a number of other questions.  
 10 There's one particular paragraph I want to come back  
 11 to but, before I do that, what was the  
 12 relationships -- again, without naming individual  
 13 members of the Board -- what was the culture of the  
 14 Board under the chairmanship of Mr Evans? To what  
 15 extent was there scope for disagreement and debate and  
 16 challenge?

17 A. I can only give a personal view, I believe it to be  
 18 shared by other trustees, that Roger Evans had his own  
 19 agenda. He did not like anyone disagreeing with him.  
 20 I think other trustees had a few problems but,  
 21 generally speaking, we were a cohesive board, even  
 22 under his chairmanship. I mean, I don't think, you  
 23 know, there was any sort of real hostility amongst  
 24 other trustees. It's quite apparent from the  
 25 correspondence that he and I did not enjoy

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1 Then top of the next page:

2 "A letter signed by all trustees is what gives  
 3 it its force and impetus.

4 I am trying, with difficulty, not to read into  
 5 Roger's reply another personal attack on me.

6 Trustees are not, or certainly should not be,  
 7 puppets. All of us are entitled to express our  
 8 opinions with moderation and to try and persuade  
 9 colleagues on the Board to a point of view.

10 "By sending you the letter I revised, following  
 11 comments at a Board meeting, I was trying to do just  
 12 that."

13 Then in the next paragraph you refer to  
 14 an email you sent to Mr Evans and you say in that:

15 "I have made 4 revisions to cover the points of  
 16 concern expressed by you and some trustees."

17 You say:

18 "I still strongly believe that such a letter  
 19 should be sent before a final decision is communicated  
 20 to us, notwithstanding Jan's expressed view. We have  
 21 to take the battle to the DH and not just be an Oliver  
 22 Twist asking for more when handing down the crumbs."

23 Then you say, further on:

24 "There is nothing, in my view, in the language  
 25 or tone of that email that anyone should take offence

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1 a particularly good relationship. I always felt that  
 2 whenever I wrote to him and copied in either the chief  
 3 executive or other Board members that I was doing what  
 4 I was meant to be doing as a trustee in putting  
 5 forward a view and, as I've said in these emails, that  
 6 the objective is to persuade other trustees to that  
 7 point of view but if you fail, you fail. Roger Evans  
 8 didn't have that view. It was a question of this is  
 9 what's going to happen.

10 Q. Then, if we look towards the bottom of the screen, at  
 11 about seven or eight lines up from the bottom, you say  
 12 this in your email:

13 "I do not recognise Roger's statement that 'In  
 14 the private part of the Board meeting on 24 September  
 15 we agreed, unanimously, that it was essential to work  
 16 corporately and present a united front'. If such  
 17 wording finds itself into the Minutes, my suspicions  
 18 about the recent past Minutes will be confirmed."

19 Now, you also, I think in a later document,  
 20 refer to concerns about minutes being tweaked. Can  
 21 you elaborate on what you meant either by suggesting  
 22 minutes were tweaked or by what you say here.

23 A. I was not satisfied that the minutes that we were  
 24 seeing under Roger Evans' chairmanship clearly gave  
 25 the view of the Board meeting. It's one thing for

40



1 a statement to be a true statement but if the minutes  
2 overall aren't a fair and accurate view of what was  
3 said in relation to a particular matter, then they  
4 weren't proper minutes, in my view, and I felt that  
5 what was said in minutes was restricted to Roger's  
6 view.

7 There was some correspondence that I had -- and  
8 I don't know if you have it -- where I was asking for  
9 the minute taker's notes, which I knew from discussing  
10 with her that she had, and she also had, because she  
11 told me she had, the amendments, the tracked  
12 amendments, that had been made to the minutes that she  
13 drafted from Jan Barlow and by Roger Evans, but she  
14 wasn't allowed to -- well, what she said was "I can't  
15 provide them to you without permission", and so I said  
16 "That's absolutely fine, please obtain permission from  
17 Jan", and I then get a phone call from Roger Evans to  
18 say, you know, "What's all this about you wanting  
19 these minutes? You're not going to get them", and  
20 I was surprised that, since it was Jan Barlow who  
21 would have been the relevant person to make any  
22 decision on this, had clearly discussed it with  
23 Roger Evans and it was Roger Evans who was responding,  
24 not Jan Barlow.

25 I don't think I need say anything more.

41

1 about the first. You identify there as a strategic  
2 challenge:

3 "Providing a viable and accurate assessment of  
4 financial need and seeking solutions to meeting that  
5 need."

6 What did you have in mind as the appropriate  
7 response to what you identify there as a strategic  
8 challenge for the Trust?

9 A. Well, again, this followed from Peter Stevens'  
10 comments in the working -- sorry, in the development  
11 day back in 2006, and I felt that the only way to  
12 really assess the financial need of the registrant  
13 community was by having an independent assessment  
14 done. The census forms that we were using at the  
15 time, and I don't know if they were sent out annually,  
16 did not -- in any way at all could they be said to be  
17 giving the necessary financial information to  
18 determine whether a registrant was in financial need.

19 Let me say straight away that 80 per cent of  
20 the registrants were clearly, no question at all,  
21 worthy of the charitable definition of need, financial  
22 need -- absolutely no question. And probably a much  
23 higher percentage than that whose incomes were more  
24 than £30,000 could be properly in financial need. But  
25 because regular payments were given to every

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1 Q. I want to next ask you, Mr Mishcon, to look at one  
2 passage in your dissertation. So the dissertation is  
3 at MACF0000029, please, Soumik. Can we go, please,  
4 to -- it's page 70 using the numbered pagination at  
5 the bottom of the page, Soumik. It's probably going  
6 to be electronic page 80 or thereabouts, if you try  
7 that and see where it gets us. Two pages further on,  
8 please.

9 I'm not going to go through the detail of the  
10 dissertation which we have and have read, Mr Mishcon,  
11 but we can just look at the bottom of this page,  
12 bottom half, this is in the conclusion section of your  
13 dissertation. You say this:

14 "The strategic challenges arising from these  
15 conclusions can therefore be summarised as follows:

16 "Providing a viable and accurate assessment of  
17 financial need for each primary beneficiary and  
18 seeking solutions to meeting that need.

19 "Mobilising Parliamentary and media support for  
20 additional financial assistance, both capital and  
21 income from the Government.

22 "Empowering those in MFT's community of care  
23 who want a future."

24 We touched, I think, on the second and third of  
25 those already, Mr Mishcon. I wanted to ask you now

42

1 registrant, irrespective of financial need, it seemed  
2 to me that we were not doing what we were required to  
3 do, in terms of what our requirements were under  
4 charity law.

5 So my view that if it was carried out  
6 independently, it would be clearly an accurate  
7 assessment that it was obvious that there would be  
8 some registrants, whether for privacy reasons or other  
9 reasons, would be opposed to that. I couldn't see any  
10 other way, although it was suggested that, first of  
11 all -- and this is a very fair point -- that the  
12 expense of doing such an independent assessment would  
13 be such that it just would not be practical; it could  
14 have negative effects on our allocation of funds, so  
15 that did have to be taken into account. And it was  
16 also felt by a number of trustees that this was  
17 a policy that had been in place since inception, in  
18 terms of giving regular payments to all beneficiaries,  
19 that it would be wrong to change that.

20 I think, again, if one looks at the lawyer's  
21 view given at the trustee development day that I've  
22 referred to in 2007 -- 2006, that was wrong in terms  
23 of charity law.

24 Q. You express the concern in your dissertation that the  
25 trustees might be in breach of their fiduciary duties

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1 and that perhaps legal advice should be sought. Was  
2 such advice sought, do you know, and if so, do you  
3 know what the gist of it was?

4 **A.** I do know that it was sought. I was told initially by  
5 Christopher FitzGerald that I was going to be involved  
6 in the discussions with the lawyers, but I never was.

7 There were -- there was not just one piece of  
8 legal advice, there were three in total, and each one  
9 was -- what's the word I need to use -- had  
10 a cushioning effect because of representations that  
11 were made to the lawyers.

12 The actual question in the final email of  
13 advice didn't really say specifically whether there  
14 was a breach or not. What they did say is what the  
15 consequences would be if there had been a breach, and  
16 that they felt that the -- that if there is a breach  
17 of fiduciary duty, it's a question of whether there  
18 has been a loss to charity funds. And they felt that  
19 it would not be something that the Charity Commission  
20 would willingly look into because it would be very  
21 difficult to ascertain whether there had been any loss  
22 or to quantify that loss.

23 They also said, from recollection, that the  
24 trustees -- this is something that I also said -- had  
25 always acted in good faith, which is a good defence to

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1 Macfarlane Trust commenting on your dissertation.  
2 Soumik, it's AHOH0000064.

3 It's a document headed "Possible reasons why  
4 the board may not wish for Russell Mishcon's  
5 dissertation to be published".

6 I'm not going to go through the detail of it,  
7 but if we just go to page 3, please, Soumik, bottom  
8 half of the page, we can see by reference to page 69  
9 there's a quote from the dissertation -- in fact,  
10 I think it's a quote from the Reverend Alan Tanner's  
11 interview set out. And then the observation is made:

12 "I am sure the DH would object to an MFT  
13 trustee publishing these comments."

14 And then we see the comment on page 70 just  
15 a little further down is, three lines in:

16 "Should a trustee be disclosing publicly the  
17 DH's strategy on future funding?"

18 Then if we go over the page, top of the page,  
19 we can see something being identified as very critical  
20 of the board. If we go down to the bottom of the  
21 page, we see the -- not the bottom entry but the one  
22 above that, it's being identified that the  
23 Reverend Tanner was highly critical of Government in  
24 his interview responses.

25 And then if we go to the next page where it

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1 any such breach and that in their view, provided going  
2 forward there was a proper ascertainment of financial  
3 need, everything should be okay. I think I've  
4 precised that advice. That is from my recollection.

5 **Q.** Before we leave the topic of your dissertation, I want  
6 to look at a document that --

7 **SIR BRIAN LANGSTAFF:** May I just ask: I'm struggling to  
8 understand your expression "cushioning effect"; that,  
9 in some way, there may have been a cushioning effect  
10 on the advice given by the lawyers from the nature of  
11 the questions asked or representations made.

12 **A.** Sir Brian, I am surmising that the initial advice that  
13 was received was not well received by the Chairman and  
14 maybe also by the Chief Executive. And they -- I am  
15 aware that they went back to Berwin Leighton Paisner  
16 with a view to the advice being -- I use the word  
17 "cushioned" -- amended.

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

19 **MS RICHARDS:** I want to look at a document that appears to  
20 have been produced --

21 **A.** Sorry. Can I -- forgive me. I should add that  
22 Christopher FitzGerald did not agree that there had  
23 been a breach of fiduciary duty.

24 **Q.** I'm going to ask you to look at a document that  
25 I think was produced internally within the

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1 says about ten lines down, section 2, page 4, it says:

2 "Peter [that's I think Peter Stevens] is  
3 critical of ministers/officials at a couple of  
4 points."

5 There are a number of other detailed points  
6 made, but it would appear that included amongst the  
7 possible reasons why the board might not wish for the  
8 dissertation to be published was the fact that it  
9 included criticisms of the board and criticisms of the  
10 Department of Health.

11 Were you -- did you see this document at the  
12 time, as far as you can recall?

13 **A.** I can't recall seeing this document.

14 I need to clarify something here. Talking  
15 about publication, anybody would think that one wants  
16 it to sort of I don't know be published to the world.  
17 The intention was only that the university would put  
18 it on its website and the reason -- and the only  
19 reason -- why I was persistent, and I was quite  
20 prepared to have all references to the Macfarlane  
21 Trust redacted, et cetera, et cetera, was that -- and  
22 this might sound as though I'm blowing my own trumpet,  
23 which I have no intention of doing, but it will  
24 probably come over like this -- this dissertation  
25 apparently had been given the highest ever mark by the

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business department of the university and they wanted to use it as an example of how a dissertation might be put together.

So it was only in relation to the university and it publishing it on its website, rather than a general publication.

**Q.** Did you understand why some, it would seem, possibly within the Macfarlane Trust, were concerned about a trustee publishing in the way in which you described criticisms of Government or of the Trust?

**A.** Well, we should all accept criticism and the Government is criticised on a daily basis. You only have to look in the press at the Government being criticised about its Covid policy. So I really thought that this sort of thing, and reading this, is a bit of a nonsense. It was prepared, I believe, by Nick Fish who was assistant to the chief executive, and he was probably just doing his job, having been told to go through it and see, you know, whether there was anything that we should be concerned about -- sorry, I should say that the Trust should be concerned about.

**MS RICHARDS:** Sir, I note the time.

**SIR BRIAN LANGSTAFF:** Yes.

**MS RICHARDS:** I still have quite a few questions for

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dispensed with at some point. As I understand it, from reading the material that's been sent to you by the Inquiry you have recalled that, in fact, there was a medical trustee, Dr Winter, I think, was replaced by Dr Martlew.

**A.** Yes, and obviously I wish to apologise to Dr Martlew for forgetting she was, in fact, the medical trustee.

**Q.** If we can look at an NSSC document from 2012, it's MACF0000025\_035. You'll see that these are the minutes of a meeting of the National Support Services Committee, 18 July 2012. You're not actually at this meeting but if we go to the second page, and we look at the paragraph numbered 4, which is about a third of the way down the page, it says:

"The NSSC agreed the following:

"(a) Russell Mishcon's definition for

Exceptional Circumstances ..."

Then we see the definition:

"... 'Exceptional circumstances are

circumstances that have arisen or are threatened which, in the opinion of the NSSC/Board of Trustees, are unlikely to have been anticipated by a beneficiary in the ordinary course of events and/or it is unreasonable to expect a beneficiary to have to deal with the financial outcome from their normal income'."

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Mr Mishcon and we have had a semi-break but not a proper break. I don't know whether you want to take perhaps a shorter break now?

**SIR BRIAN LANGSTAFF:** Yes. We will take a break until 12.05. It allows you to have some refreshment, knowing that you've the time to do so on this occasion, the same for those at home.

Now, at any break in evidence, since you're giving evidence, you must not, you are not at liberty to, talk about the questions you have been asked, the answers you have given or the answers which you think you may yet give as your evidence continues. You can talk about anything else you like but you can't raise those with your wife or anyone else in the meantime. I look forward to seeing you back at 12.05.

**A.** Thank you, Sir Brian.

(11.44 am)

(A short break)

(12.06 pm)

**SIR BRIAN LANGSTAFF:** Yes.

**MS RICHARDS:** Mr Mishcon, I'm going to ask you next a little about the NSSC. First of all, I think there was one point you wanted to clarify or correct arising out of your statement. You'd suggested in your statement that the position of medical trustee was

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Now, do we correctly understand that there came a point in the NSSC's history when the criterion which it applied when considering grant applications was exceptional circumstances as defined here?

**A.** My recollection, but it is such a long time ago, is that there was a change, that the amount be made available following the increases in Archer income meant that we had a restricted budget for direct grants and, consequently, it was felt that they should only be granted -- this is, I think, the NSSC, as opposed to office guidelines -- that there should be exceptional circumstances, and I was asked if I could draft something.

**Q.** So, prior to that change, which accords with the Inquiry's understanding from the documentation and other evidence, when you were sitting on the NSSC, what was, as far as you can recall and in broad terms, the approach to decision-making by the NSSC to applications that came before it?

**A.** I think it was on a case-by-case basis. Obviously, we did not know who the applicant was and there would obviously be information supplied in relation to each application for a grant and we, as I said, would consider it on a case-by-case basis.

**Q.** So would it --

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1 A. Now, I may be wrong. There may have been other  
2 factors but I cannot recall them at this time.

3 Q. So, as far as you can recall, is this right, that  
4 there wasn't any particular criteria or guidance, it  
5 was a question of the NSSC looking at the individual  
6 application and such office guidelines as might exist  
7 at the time and the information it had about the  
8 application?

9 A. That is my recollection.

10 Q. In relation to exceptional circumstances, perhaps  
11 inevitably, it might be said to introduce quite  
12 a considerable level of subjective judgment for the  
13 NSSC or Board of Trustees. Do you know whether there  
14 was any further guidance or assistance given to either  
15 the Board or the NSSC to help them apply this  
16 criterion in a consistent and firm manner?

17 A. No is the simple answer.

18 Q. As in no, you can't recall or no, there wasn't?

19 A. No, I can't recall.

20 Q. In your witness statement, if we just go back to that  
21 WITN4474001, please, Soumik. I've got a note it's  
22 page 12 but I'm not sure it is, Soumik. Sorry, it's  
23 paragraph 12, so page 7.

24 You say there, this is, I think, talking of  
25 your time on the NSSC:

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1 potential for making applications?

2 A. I'm not aware of anything specific but I think the  
3 newsletters, if they were read, and the sort of -- is  
4 it called the notice board, on the website -- again,  
5 there would be a whole number of applicants who would  
6 neither read the newsletter nor see anything that was  
7 on the website but I'm not aware of any other approach  
8 that was made to bring this to their attention. But  
9 I may be wrong.

10 Q. Then if I can just ask you about the appeal process.  
11 As I understand it, there was no formal appeal process  
12 if somebody wanted to appeal against a refusal of  
13 a grant application by the NSSC the matter might end  
14 up before the Board of Trustees; is that correct?

15 A. Not might, I think would have done. I think, again  
16 from recollection, that if new evidence was produced  
17 by the applicant, the NSSC would consider that new  
18 evidence but, otherwise, there was always an appeal to  
19 the Board.

20 Q. If we could look at MACF0000012\_127. If we go to  
21 page 7. Under the heading "National Support Services  
22 Committee", second paragraph, there's a reference  
23 there to case papers being available to trustees and  
24 it records you as saying:  
25 "Mr Mishcon felt it was important from

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1 "... each applicant had to show financial need.  
2 There were ... guidelines, which the NSSC was expected  
3 to follow ..."

4 You don't have any further recollection of  
5 that, and then you say this:  
6 "Whilst it was obvious to me that many members  
7 of the community of care never made applications to  
8 the NSSC, despite probably being in financial need,  
9 there were others who made numerous applications."

10 Can you recall whether the NSSC had any  
11 particular approach to there being repeated  
12 applications or multiple applications? Was that  
13 a factor which influenced the NSSC's decision-making  
14 process on individual grants?

15 A. No, it wasn't, as far as I recall. I mean, quite  
16 clearly there may have been members of the community  
17 whose means were such that they really did need  
18 assistance in relation to matters that they were  
19 applying for grants for.

20 Q. Then, in relation to the first part of that sentence,  
21 you say it was obvious that there were many members of  
22 the community of care who didn't make applications.  
23 Was any work ever undertaken by the Trust to try and  
24 encourage applications from those who never made them  
25 or to try and ensure that everyone understood the

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1 an appeal point of view that there were sufficient  
2 Trustees who had not seen the papers."

3 Can you recall what your concern was, in that  
4 regard, about the appeal process?

5 A. Well, obviously that those who were on the NSSC  
6 shouldn't take -- have a vote in relation to any  
7 appeal to the Board of Trustees.

8 Q. Do you recall whether that became a problem in  
9 practical terms, that there were not enough trustees  
10 on the Board?

11 A. No. I think Board meetings were always very well  
12 attended. I think, originally, there were 12 trustees  
13 and then that was reduced to nine whilst I was there.  
14 Again, I may be wrong about the numbers. But,  
15 obviously, the NSSC only had four or five trustees, as  
16 I recall, on it.

17 Q. I just want to ask you next a little about the working  
18 party on which you participated, that was looking at  
19 the position of widows and bereaved partners. If we  
20 go to MACF0000124\_083, we can see these are the  
21 minutes of a meeting of the National Support Services  
22 Committee on 2 April 2008. If we go to the second  
23 page, under the heading "Policy Issues", it refers to  
24 "minutes of the stage 2 Working Party", and then  
25 a paper containing final recommendations of the

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stage 2 Working Party, and then we can see set out, under the heading "Summary", reference to the recommendations of this working party.

If we go to the next page, under the heading "The Bereaved Beneficiary Community", it refers in 2.1 to an additional payment for those on benefits ceasing, and then at 2.2 it proposes payments for the newly bereaved, six months, and then to be reduced, and then payments for a further six months with an assessment of financial need in particular for those with dependent children. Then 2.3 says there should be notification of any reduction or cessation of regular payments.

First of all, is it right to understand that this was the recommendation of the working party that you were involved with?

A. I believe it was.

Q. This recommends, effectively, a reduction in the support for the bereaved, at least in relation to, as it were, new beneficiaries, new bereaved beneficiaries. Can you recall why it was proposed that the payment should be along these lines?

A. In all honesty, I can't.

Q. We can see --

A. Can I just, sort of, add that again -- and I know

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for additional support thereafter?

A. Sir Brian, I really can't recall. I'm just thinking whether there is something that I've got here that can help further but I'm not sure it would. It might take me some time to find it.

No, I'm afraid I can't find what I was looking for. I really can't recall what the effect of this was, in terms of assessing financial need.

**SIR BRIAN LANGSTAFF:** Well, it's either means "subject to an assessment" or "plus an assessment". Do you recall such assessments being made as a pre-condition for payment beyond six months or not?

A. I do not.

**SIR BRIAN LANGSTAFF:** Thank you.

**MS RICHARDS:** In relation to the proposed changes in payments for the bereaved, do you know whether there had been any consultation with the bereaved community about these proposals?

A. I can't recall. I don't think there was.

Q. Do you know whether any work was undertaken, either at this stage or subsequently, to understand what the impact had been or might have been on spouses or partners, or indeed other relatives, who might have given up careers to care for loved ones? Was that ever a subject of study or investigation by the Trust?

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I keep going back to this development day -- one of the things put forward, and I think we'd already discussed it earlier on, was that the bereaved should, as it were, be encouraged to, as far as they were able, to move forward with their lives.

Q. Was --

A. I -- sorry.

Q. No, carry on.

A. I think that -- I don't think I can add much to that.

Q. We can see then reference to three proposed designated funds. So paragraph 2.4 is a designated fund of --

**SIR BRIAN LANGSTAFF:** Just before you go there, can you help me to understand what is actually being said in paragraph 2.2. It might look as though it's ambiguous. The first part's clear:

"... newly bereaved ... to receive regular payments for 6 months at the rate the primary beneficiary were receiving the payments, to be reduced to £100.00 per month ... for a further 6 months ..."

So looking at the reduction for the further 6 months "... with an assessment of financial need through the NSSC."

Now, was that an assessment of financial need which was necessary before the further six months were paid or was that an assessment with a view to looking

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A. It was certainly a concern that I had and that I expressed because I don't think -- I mean, I can put it this way: there was a time that the bereaved were not really taken care of at all. So, again, with limited funds that were available, this was felt to be the best that one could do on the basis that regular payments were to continue to the registrant community.

Q. Do you know whether there had been any work to try and understand or investigate the physical or psychological health and other difficulties that might have been faced by widows and other bereaved?

A. No. Again, part of my dissertation survey, as far as I recall, sort of asked questions in relation to that.

Q. If we then look at just the rest of this document, there are three designated funds proposed, so paragraph 2.4 proposes designated funds of £50,000 for the bereaved community, presumably for applications to be made on an individual basis, and then paragraph 3.1, if we go a little further down, refers to a designated fund of £35,000 for empowerment to make available opportunities for people to get on with their lives, and then paragraph 4.1 refers to a designated fund of £100,000 for dependants.

I think in your statement you were not able to recall the precise extent to which any of these

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proposals were implemented. Do you have any further recollection now about any of those funds and whether they were set up?

A. I think the funds were set up. I don't know how they were utilised. I can't recall how and by whom that they were utilised.

Q. One further document on the question of provision for widows and the bereaved. MACF0000015\_003.

You'll see, Mr Mishcon, these are the minutes of a Board of Trustees meeting, 1 September 2010. If we go to the second page, there's a heading "Discretionary disbursements to the non-infected community", and then reference is made to some information provided by a social worker and clinical nurse specialist. And then if we go further down the page, there's then in the paragraph beginning, "In light of the support services manager's report", there's reference to the Chairman's view that the best way to support the bereaved community would be to introduce a system of banded regular payments for all widows.

Then if we go to the bottom of the page, you are recorded as expressing this view:

"Mr Mishcon stated his view that the difference between widows and primary beneficiaries was that the

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than, as it were, be treated like primary beneficiaries, there should be an assessment of whether they had moved on.

Why was there no consultation with beneficiaries about that proposal?

A. I can't recall why there wasn't or if there was.

Q. We then see in the next paragraph this is recorded:

"The Chairman responded that the Trust must soon be in a position to say to the DH what it had done with the money that had been allocated to relieve the needs of the bereaved community.

"Mr Evans agreed it was vital the Trust could show it had done something. He thanked Mr Mishcon for his paper which was immensely helpful and agreed that the detail he was suggesting would be interesting but also that it would be very time-consuming; would create a lot of work for the office and would be interpreted by many as means testing."

Then if we go to the next paragraph, the Chair reminded the board about Lord Archer's report; a system of financial support for widows unconditionally.

And then if we go to the last paragraph, if I ask the question, picking it up three lines into the last paragraph, we see this:

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latter would remain infected with HIV for the rest of their lives, and that the aim of the Trust should rather be to help widows move on with theirs and to provide that incentive. He referred to his paper ... which sought to establish the specific needs of each widow individually so that the Trust could utilise its resources to relieve those needs. Each widow would have very different circumstances. Some would have remarried, been divorced, have dependants, et cetera."

And then there's reference to what is said to be a supportive email from Mr Spellman.

Now, just pausing there for the moment. This is a couple of years further on from the minutes we looked at a moment or two ago. Do you know whether there had been any consultation with the bereaved community about the proposal to assess the specific needs of each widow individually?

A. No is the answer.

Q. As in you don't recall?

A. As I don't believe there was any.

Q. And then if we go to the -- sorry, actually, before I move on, can you assist us: why was that? This was potentially something that could be fairly fundamental. It might cause considerable concern to those who had been bereaved, this idea that rather

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"The Chairman appreciated this [that's an issue about benefits] but reminded the board that initially the Department of Health had set aside circa £2 million for the relief of the needs of the non-infected community and that the Trust had already persuaded them to allow half of this to be used for the benefit of PBs [primary beneficiaries]. It would simply not be right to divert any more of the money that had been designated for the relief of the needs of the non-infected community, at least until those needs had been ascertained and so far as possible relieved."

So if we just go back to the previous page, is it right, Mr Mishcon, as far as you can recall, to understand the minutes as indicating, first of all, that the Department had provided around £2 million intended for the relief of the needs of the non-infected community, and the Trust had effectively decided that half of that would be used for the benefit of primary beneficiaries instead, in place of the non-infected community? Is that correct, and if so, can you assist us with why?

A. I really have no recollection that would be helpful on this.

Q. The second question, and it may be you can't assist,

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Mr Mishcon, for the same reason, but the second question is this: if we look at, say, the second paragraph on this page, it reads as if the Trust feels that the Department is somehow accountable to the Department, or the Department's approval was required as to how it expended this £2 million.

Do you have any recollection of that as an issue or why the trust might be looking to the Department to approve or allow its decisions?

A. I can see it written there loud and clear, and it's obviously -- the Chairman felt that he would have to do what the DH seemed to be requiring, and that indicates my feeling that the Trust was an instrument of Government.

Q. If we move on then to --

A. Can I just say, because I haven't said it in this Inquiry, there were other trustees who shared my view, and even -- or the Chairman have shared my view that it was totally wrong for this fund of money from the Government to be put into -- set up as a charity and for a charity to be administering the funds. Totally wrong. It has been shown to have been totally wrong, and yet it was repeated with Caxton, so I think that certainly needs to be taken on board. But, I mean, we were faced with what we were faced with and had to

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A. No. It wasn't so much their financial means; it was to do with their living conditions. There were other aspects, too, not -- that money could potentially be used for. But I felt that it's all very well, and there were people who never applied for grants -- we've already discussed that -- and there may be people who had applied for grants but their living conditions, because they hadn't had sufficient monies to do anything about it, could be such that capital grants on this -- from the reserves would really assist them, whether that was -- I mean, maybe, you know, they were living without central heating. Maybe their kitchen was in dire need of replacement. Whether their windows were, you know, leaking air and there was damp and things like that. But they had not felt it possible or they didn't want to apply for any one-off grants, and they just didn't have enough money to rectify the situation.

We would only be doing by a one-to-one assessment that this could really be achieved effectively. Otherwise, you'd get people applying for grants. And if it wasn't checked that they were actually in need of those grants, it wouldn't be an appropriate use of charitable money.

Q. If we go to the second page, we can see in the first

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deal with it as best we could.

Q. Then if we just move to a couple of questions relating to the second working party which was looking at the reserves. If we go to MACF0000025\_009, we can see it's a notice of a meeting to be held on 28 November 2011 -- sorry it's the minutes of the meeting.

And then if we go further down, we can see at 4.1 there's reference to a proposal by Mr Mishcon.

And this is, as I understand it, in relation to the reserves:

"To concentrate on primary beneficiaries where there is need by doing a one-to-one assessment which would be conducted on a voluntarily basis. Although it was felt that the current income received by primary beneficiaries should now be adequate, it does not make up for the past inadequacies. The assessment can determine what areas of their lives need improving, and the current reserves could provide approximately £8,500 per primary beneficiary."

Is it right to understand, again just in broad terms, that what you were proposing was individual assessment of primary beneficiaries to ascertain their financial needs and then allocate money from the reserves to them?

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half of the page just above point 5, issues that have arisen, we can see it says:

"The proposal by Mr Mishcon was agreed in principle and would be presented to the Department of Health."

Then there's reference to a working party to work out the scope of the project.

Are you able to assist with why the question of this programme and whether to embark upon it would need to be presented to the Department of Health?

A. Well, it shouldn't have been. If you take a charity as being an independent legal entity, the decision as to how its money was to be spent should have been by the Board of Trustees. But, clearly, we were this instrument of Government, and they controlled the purse strings, and consequently it was felt, presumably, that we needed to get the approval of the Department of Health for this proposal.

Q. We can take the document down, thank you.

During the course of your tenure on the Macfarlane Trust board, Mr Mishcon, what consideration, if any, was given to the needs and circumstances of the bereaved, beyond widows and their dependant children? For example, the position of parents whose children had died, or children who had

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1 lost parents, to what extent were their needs the  
 2 focus of consideration at any stage that you can  
 3 recall?

4 **A.** I cannot recall that consideration was given. Again,  
 5 our funds were so inadequate to, you know, consider  
 6 such a wide range of people because if we had done,  
 7 I presume the actual amounts available would have been  
 8 niggardly, to use the word that was used by  
 9 Reverend Tanner and also by Peter Stevens.

10 **Q.** Now, we've seen from the materials that we've looked  
 11 at that a number of your proposals over the years  
 12 involved some form of individual assessment, and some  
 13 of the proposals I think would have entailed home  
 14 visits.

15 What was the reaction, as far as you can  
 16 recall, of the beneficiary community to proposals for  
 17 home visits and individual assessments?

18 **A.** Well, there was a vociferous number who were opposed  
 19 to such visits on the basis, quite understandably,  
 20 that it was an invasion of their privacy. None of the  
 21 beneficiary community liked the idea of effectively  
 22 receiving charitable hand-outs. And, again, for the  
 23 reasons I've just explained that it should never have  
 24 been -- these monies shouldn't have been in a charity,  
 25 as I said, very, very understandable. But, on the

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1 for widows. A number of widows -- I think we've heard  
 2 from other evidence or seen from other evidence -- had  
 3 fallen out of contact with the Macfarlane Trust  
 4 because there hadn't been a continual form of, for  
 5 example, regular payment to them.

6 What steps were taken, as far as you can  
 7 recall, by the Macfarlane Trust to try and ensure that  
 8 all those who might be eligible for such payments were  
 9 informed of their potential entitlement?

10 **A.** I can't recall.

11 **Q.** The final document I want to ask you to look at,  
 12 Mr Mishcon, is a letter you wrote after you stepped  
 13 down from the Trust. It's WITN4474002. It's a letter  
 14 from you and from Ms Elizabeth Boyd, to whom you've  
 15 already made reference, who had also been a trustee of  
 16 the Macfarlane Trust, to the Secretary of State, then  
 17 Jeremy Hunt. You say in the first paragraph:

18 "We write as former Trustees of the above  
 19 charity, having served 13 years and 7 years  
 20 respectively before retiring at the end of last month,  
 21 to express our concerns at the way in which the  
 22 charity is being 'administered' by the present  
 23 chairman and chief executive. It is only now we feel  
 24 able to write to you, having endeavoured and failed to  
 25 correct perceived wrongs from within."

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1 other hand, how could we discharge our duty as  
 2 charitable trustees without making these proper  
 3 enquiries?

4 Now, it is a fact that the census form was  
 5 completely rewritten, as I recall, in order to try and  
 6 elicit more information that could ascertain whether  
 7 a beneficiary who was receiving monies from the  
 8 charity was in financial need. The lawyers also  
 9 advised that spot checks -- I think that's an  
 10 appropriate expression -- should be made to make sure  
 11 that the information given in census forms was  
 12 accurate. There were people who objected to the  
 13 census forms. They saw it as, again, another kind of  
 14 means testing which they found objectionable. Again,  
 15 one can understand it, but, equally, we couldn't just  
 16 dispense money, or we shouldn't have just dispensed  
 17 money -- and I'm coming back to the regular payments  
 18 situation -- to just everybody to try and give  
 19 equanimity.

20 We should have done far more detailed  
 21 assessments to see if everybody was in financial need,  
 22 and those that weren't should have had funds either  
 23 reduced or, in certain circumstances, taken away.

24 **Q.** In relation to widows, there came a point post-Archer  
 25 when the Trust introduced some form of top-up payment

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1 Then if we go to the fourth paragraph, you say  
 2 this:

3 "Since his appointment, the chairman has failed  
 4 to consult the adequately, in our view, with the Board  
 5 on matters of importance and upon strategy or to take  
 6 trustees' views into account. The minutes of Board  
 7 meetings, which he oversees, are, we believe,  
 8 'tweaked' towards his own agenda and he does not  
 9 suffer being challenged lightly."

10 Just pausing there, Mr Mishcon, we've touched  
 11 on these matters already in the course of your  
 12 evidence. Is there anything further, by way of  
 13 examples or concerns, that can help us understand why  
 14 you wrote to the Secretary of State in these terms?

15 **A.** Look, I know it's very difficult to criticise and I've  
 16 already been quite critical. I even wrote to the  
 17 Chairman, and that was obviously before I retired and  
 18 felt it necessary to spell out what the roles of  
 19 a Board of Trustees was and what his role as Chairman  
 20 of the Board was.

21 Again, he took any comments from me, which were  
 22 intended to clarify matters to be helpful -- you know,  
 23 again, one needs to try and be a supportive trustee,  
 24 not only to other trustees but also to the Chairman.  
 25 It was just very difficult because Mr Evans had his

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own agenda. He wanted to abolish the NSSC, various things happened in that regard. It was not an easy time and it wasn't only Elizabeth Boyd and myself who felt that way.

Q. If we go --

A. But because we had served our time as trustees and we couldn't be, as it were, reappointed, we felt we had tried to do our best to put the Board and the Chairman in their, sort of, dare I use the word, "proper" place and we had failed and we felt it was necessary, going forward, to put others on notice. We also wrote to the chair of the Charity Commission. So, you know, it wasn't just a question of trying to make a political point, it was also our concerns were as to the status of the Board as a charity.

Q. If we go to the next page and we look at the bottom half of the page, the penultimate paragraph, and again this is still on the topic of your concerns that you're expressing in this letter about the chair, you say:

"The medical conditions affecting most of MFT's beneficiaries warrant a substantial differentiation in financial support, which the chief executive appears to ignore, as does the chairman, neither of whom want to 'rock the boat' with the Department of Health."

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apply with -- he implies in his statement that he was part of this external process. That is not the case in relation to his appointment in 2000 and whenever it was.

He had applied for the chairmanship back in 2000 and whenever it was, when Christopher FitzGerald was appointed chairman, and he was aggrieved for a number of reasons as to why he wasn't then appointed.

So I was away, Elizabeth Boyd was away for the Board meeting, which Mr FitzGerald had asked for the situation to be postponed until, I think it was the April Board meeting, when we would both have been in the country, and I was told -- I hear it -- I realise it's hearsay but I think the evidence points to this. He had made it clear to the Board that he was only prepared to be appointed as chairman and not -- he didn't want any longer to be the interim chairman, and it had to be immediate because he had to make arrangements with his consultancies, so that he could take on that job on a permanent basis, rather than just on an interim basis. I hope I've answered your question.

Q. Yes, I think you have. Then just going back to this letter, the last paragraph, and this is picking up on

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Then you say this and you alluded to it earlier, which is why I wanted to ask you about it:

"The chairman was formerly a chief executive of NHS trusts and, it is believed, currently has consultancy arrangements with the NHS and/or the DoH, which may or may not have a bearing on the issue."

Why did you include that observation in your letter to the Secretary of State?

A. Because it shows a potential conflict of interest and there was always -- going back to his appointment as chairman, I had a correspondence with him and with the former chairman about the conflict of interest that existed with him being also the chair of the Caxton Foundation. Now, although I've seen his evidence, it doesn't accord with my recollection or, indeed, the real evidence, which was that he said he didn't regard there to be any conflict of interest and he didn't want to relinquish the chairmanship but emails that I wrote to the Board persuaded the Board to make that a requirement of his being appointed chairman.

Again, my understanding was that he was only going to be interim chairman until there had been a further process for appointing a chairman from an external -- what's the word I need to use? Well, a procedure where one went out to seek -- he didn't

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the concerns you expressed about the chief executive's position. You record in this letter, you and Ms Boyd, your view that there was a conflict of interest for the chief executive being both chief executive of the Macfarlane Trust and chief executive of the Caxton Foundation because -- is this correct -- both charities were -- is it right -- essentially competing or could potentially be in competition for a pot of money from the Department of Health? Was that your concern?

A. Very much my concern and there was evidence by the business cases that were put forward by the chief executive in relation to MFT and Caxton. The Department of Health, and I have never understood the reason for this, apparently wanted to be able to, I think the expression is, read across between the two charities and, to my mind, it was grossly unfair but also showed a lack of understanding on the part of the Department of Health that Caxton beneficiaries should be treated necessarily in the same way as Macfarlane Trust beneficiaries, because Macfarlane Trust beneficiaries were all haemophiliacs, not all Caxton beneficiaries were haemophiliacs, and they also had HIV.

Now, anybody with any real understanding of the

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condition of severe haemophiliacs with the problems with joints, the bleeds into joints which cause disfigurement, cause immobility and everything else, that is something that should, in my view, have been taken into account, let alone sort of HIV and everything else, in terms of a differentiation in support. There were far more people who came along with hepatitis C and were part of Caxton than there were left in MFT.

Now, I don't want to, in any way, disparage the fact that people who were -- that the registrants, or whatever the right definition is, of Caxton shouldn't have had substantial support from Government, but not to the detriment of MFT and I felt that -- and it was clear, I made my position quite clear, and said that the business case for MFT should be altered to reflect this, and the chief executive was not prepared to do so. So in my mind there was a very, very clear conflict of interest.

**Q.** Did you receive any kind of response from the Secretary of State or a minister to this letter?

**A.** I can't recall. I'm sorry, I know that sounds ridiculous but I really can't recall. I don't think that I did. I certainly received something from the Charity Commission. Again, I don't have a copy, but

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transfusion, but the medical conditions were very different. And, as I said, we had a much smaller cohort, and, therefore, it was not surprising that they were dealt with very, very differently. And because there was such a small number, it was done on a much more I suppose you could say personal basis. And we also had a very competent case worker who was in close communication with all the beneficiaries. I think her name was Susan Daniels?

**Q.** Yes, we're hearing from her this week.

Mr Mishcon, those are the questions I have for you for now.

Sir, I note the time. I'm going to suggest that if we take the lunch break now, that will give the Core Participants and their legal representatives the opportunity to send any further questions they have arising out of Mr Mishcon's evidence this morning. We could pick that up, perhaps, at 5 to 2, conclude Mr Mishcon's evidence. It would mean a slightly delayed start for Mr Murray, but I don't think that's problematic, and he's aware that that's a possibility.

**SIR BRIAN LANGSTAFF:** Yes. Very well. You think 5 to 2 gives you enough time?

**MS RICHARDS:** I do.

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it was to the effect that we aren't in a position to take -- to do anything about it.

**Q.** We can take that down, thank you. Last question for now, Mr Mishcon. It's just in relation to the Eileen Trust. You were a trustee of the Eileen Trust for number of years. I'm not going ask detailed questions, we have later witnesses, who this week will be telling us a bit more about the Eileen Trust. Do you have any particular observations to make about differences or similarities between the way in which the Macfarlane Trust and the Eileen Trust operated? We're conscious, of course, there are was a far smaller number of beneficiaries of the Eileen Trust.

**A.** I was going to make that point. It was tiny by comparison to Macfarlane and, indeed, the Eileen Trust didn't suffer from haemophilia. Sorry, I had better make sure that that is correct. Yes, they were non-haemophiliacs who were infected with HIV and Hep C. I am right there, aren't I?

**Q.** Well, I think it's not for me to answer the questions, Mr Mishcon, but essentially the Eileen Trust was --

**A.** I'm sorry. I'm getting -- so, again, everybody who received a transfusion of contaminated blood, because it was a transfusion, clearly had an underlying health issue or some sort of trauma that had required the

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**SIR BRIAN LANGSTAFF:** Very well. We will take a slightly earlier lunch than we normally do, but I am afraid I am going to have to ask you to come back afterwards at 5 to 2. I hope that's not inconvenient. But I shall see you then. Thank you very much.

(12.55 pm)

(Luncheon Adjournment)

(1.55 pm)

**SIR BRIAN LANGSTAFF:** Yes.

**MS RICHARDS:** Mr Mishcon, I have just a few questions

I have been asked to ask you arising out of your evidence this morning. So these are questions that have been raised by Core Participants to the Inquiry.

You recall we discussed before lunch your and Ms Boyd's February 2014 letter to the Secretary of State and to the Charity Commission to whom you sent a similar letter. Do you recall why the Charity Commission declining to become involved?

**A.** No, I don't. I don't think they gave any particular reason, but that's -- I may be wrong on that.

**Q.** And then I asked you about the work of the working party looking at the position of widows.

Was any particular consideration given by that working party or by the board, to your recollection, about the position of those who were bereaved and were

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1 also HIV infected?

2 A. If they were HIV infected, they would have been PBs,

3 primary beneficiaries, so they would have received the

4 same regular payment as other primary beneficiaries.

5 Q. So is this right, that there was no expectation --

6 might not be quite the right word, but expectation

7 that widows in that category would move on?

8 A. No, I don't recall that ever being suggested.

9 Q. You referred in your evidence this morning to

10 Mr Evans, in his capacity as chair of the Trust,

11 having his own agenda. What did you mean by that?

12 What did you understand his agenda to be?

13 A. What I think I meant by that was that whatever

14 Mr Evans thought should happen was to happen,

15 irrespective of the views of trustees. It is not, on

16 my understanding, the role of the Chairman to row his

17 own boat. It is for the Board of Trustees who have

18 the ultimate responsibility, individually and

19 collectively, for the general control and management

20 of the administration of the charity, and they

21 comprise the board. When it comes to making decisions

22 about the charity, it's for the trustees to make them

23 together, not the Chairman off his own bat.

24 Q. The message comes across in your written statement,

25 and I think possibly in your oral evidence too, that

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1 A. Well, I can't answer that directly. I think what

2 I would say is that the availability of these grants

3 was advertised to the beneficiary community,

4 presumably, and I have to say "presumably" because

5 I don't know for sure through the newsletter and the

6 website, and it all depended on who applied. My

7 recollection is that there were very few applications.

8 Q. Did the Trust ever give any consideration during your

9 time there to other ways or possibly ways of

10 facilitating empowerment? So rather than simply

11 waiting for people to apply, perhaps organising

12 events, training and the like directly?

13 A. Not that I recall.

14 Q. Turning then to the use of the reserves for the work

15 on home capital payments that you referred to before

16 lunch, can you assist with this: what investigation

17 was in fact undertaken by the Macfarlane Trust into

18 the extent of the need for home adaptations, aids and

19 equipment?

20 A. Well, the -- as I recall, the survey went out, and

21 over 200 people responded positively to it. Some of

22 the applications were regarded as a little over the

23 top in terms of the amounts involved without any real

24 clarification.

25 As I recall -- but, again, my recollection may

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1 the trustees of the Macfarlane Trust consistently were

2 concerned that the annual Department of Health

3 allocation would be withdrawn or materially reduced.

4 What was the basis for that concern? What was said or

5 done by the Department of Health to give rise to it?

6 A. Well, I didn't have discussions directly with the

7 Department of Health, but it was the feedback from the

8 Chief Executive and the Chairman that in their

9 discussions with the Department of Health, because of

10 austerity, because of cutbacks in budgets imposed by

11 the Treasury, that there was the possibility of

12 a reduction.

13 I don't think it was ever discussed that there

14 was -- well, not to my knowledge that it was going to

15 ever come to an end. But the annual allocations only

16 started happening before my time as a trustee, but

17 I think it was only around 2002 -- I may be wrong. As

18 I said, you know, it's a long, long time ago. I mean,

19 before that, there were capital payments but no annual

20 allocation.

21 Q. I asked you earlier about empowerment and empowerment

22 grants.

23 To what extent do you think that the objective

24 to provide empowerment grants for educational or

25 business development purposes was achieved?

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1 not be correct -- there were visits that were made by

2 an independent company, and decisions were made in

3 relation to a lot of those applications -- favourable

4 decisions, I should say.

5 Q. And then if we can look at a document we looked at

6 this morning. Soumik, it's MACF0000025\_009.

7 These were the minutes of the special meeting

8 of the National Support Services Committee,

9 November 2011, that we looked at. If we go to the

10 second page, please, and we look at the top half of

11 the page. We looked earlier, Mr Mishcon, at your

12 proposal or your working party's proposal in relation

13 to the use of the reserves. We can see here

14 a proposal by Mr Dolan:

15 "To consider the issue of underwriting

16 insurance for death, mortgages and travel. To also

17 consider ring-fencing some on the reserves to cover

18 the possible loss of DLA to primary beneficiaries ..."

19 Do you have any recollection as to why that

20 proposal was not apparently taken forward?

21 A. Looking at the proposal by Mr Spellman, enquiries were

22 made of insurance companies, as I recall, even for a

23 relatively small amount of cover. But it was --

24 I mean, the premiums that were being quoted were out

25 of all proportion.

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1 As for Mr Dolan's proposal, this is a question  
 2 of the charity underwriting, and I think it was  
 3 felt -- I don't know if this went to trustees --  
 4 sorry, this is a board meeting, isn't it, so it would  
 5 have been discussed by trustees -- and it was felt  
 6 that this was not what a charity should be doing; this  
 7 was for the Government to do or, whatever, the  
 8 Department of Health. Other countries did have  
 9 a method of -- I think it was Ireland, if I remember  
 10 correctly, whose policy was that if individuals could  
 11 get insurance, and this I think also included travel  
 12 insurance, that if there was an uplift in premium  
 13 because of their HIV status, the Government would pay  
 14 that uplift. But if it wasn't possible for them to  
 15 get insurance, the Government there would underwrite  
 16 it. It was not something that was followed by the UK  
 17 Government.

18 **SIR BRIAN LANGSTAFF:** May I just correct something you  
 19 said there. You referred to this as a board meeting.  
 20 It wasn't. My understanding is these are minutes by  
 21 the NSSC.

22 **A.** Right.

23 **SIR BRIAN LANGSTAFF:** It was a special meeting of the  
 24 NSSC, but it was the NSSC. Does that make any  
 25 difference to your answer?

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1 beneficiaries -- that they were always as helpful as  
 2 they could be. The objective was not to prevent  
 3 appeals going forward but to help people with making  
 4 representations to the NSSC and, if you're talking  
 5 about an appeal, to the board.

6 **Q.** Were reasons provided to an applicant if the appeal  
 7 was rejected?

8 **A.** I presume they were, but it wasn't part of the NSSC's  
 9 remit to, as it were, write to those who had applied  
 10 to give them reasons. I'm assuming, but it is an  
 11 assumption, that the support services staff would have  
 12 given reasons. Assuming, of course, that the  
 13 committee gave reasons, which I think that they did.

14 **Q.** We can no doubt check that from the records,  
 15 Mr Mishcon.

16 Then penultimate question is this: I asked you  
 17 this morning about whether any particular  
 18 consideration was given to those parts of the bereaved  
 19 community who were not widows (so children and  
 20 parents, by way of example) and I think your answer  
 21 was to the effect that you don't recall any particular  
 22 consideration being given.

23 Is this right, that the trust deed didn't  
 24 create any particular hierarchy of relatives? Was any  
 25 consideration given as to whether treating widows in

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1 **A.** It doesn't, but thank you for pointing that out,  
 2 Sir Brian.

3 **MS RICHARDS:** Did the Macfarlane Trust ever lobby the  
 4 Government during your tenure to try and introduce  
 5 some form of either Government contribution to  
 6 insurance or Government underwriting of insurance?

7 **A.** I can't recall if it was in any business plan, and I'm  
 8 not aware of anything specific.

9 **Q.** We can take the document down, thank you.

10 In relation to appeals, so appeals to NSSC and  
 11 appeals to the board, what information about either  
 12 the procedural requirements for an appeal, whether new  
 13 evidence was required or the like, or the basis of an  
 14 appeal, what information was provided to registrants;  
 15 do you know?

16 **A.** I do not.

17 **Q.** Was any help provided for appellants in the  
 18 presentation of their appeals?

19 **A.** I'm not aware of any, but I would have thought that  
 20 the support services staff, who I can only commend, or  
 21 the ones that I was working with, and that's Ros Riley  
 22 and Keisha -- she had a double-barrelled name; sorry,  
 23 I can't remember it -- from my knowledge of how they  
 24 dealt with cases -- and sometimes I was in the office  
 25 when they were speaking to registrants or

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1 one particular way and other members of the bereaved  
 2 community in another way, whether that was consistent  
 3 with the trust deed?

4 **A.** If -- I think the support that we gave to widows had  
 5 additions for dependant children. I cannot recall if  
 6 there was any hierarchy. I don't think that there  
 7 was.

8 **Q.** Final question: it's come across clearly in your  
 9 evidence and I think reflected in your dissertation  
 10 that you felt that distributing funds to registrants  
 11 via a charity was an inappropriate response to what  
 12 had happened.

13 For the benefit of those listening who will not  
 14 necessarily have read your dissertation or indeed your  
 15 statement, could you just explain for us why that was  
 16 your view?

17 **A.** Well, charity trust deeds have very strict requirement  
 18 by law in what they can do with charitable monies, and  
 19 that all comes back to financial need.

20 If a trust had been set up, not a charitable  
 21 trust, by the Government into which funds had been  
 22 put -- and I'm thinking of the Thalidomide Trust that  
 23 was set up actually by Distillers to which the  
 24 Government subsequently made contributions -- a trust  
 25 then has completely different powers which would be

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1 determined by its trust deed, but it doesn't have to  
 2 follow the legal requirement of financial need as  
 3 a charity does.  
 4 **Q.** Thank you. Sir, those are the questions --  
 5 **A.** Can I just say it would have been far better if the  
 6 Government had made payments to beneficiaries direct,  
 7 rather than setting up this MFT. I use the word  
 8 "cushion" in another context, but it really did create  
 9 a barrier between the beneficiaries of the Government  
 10 which was clearly beneficial to the Government or the  
 11 Department of Health, and that meant that instead of  
 12 the Government or the Department of Health getting  
 13 stick from beneficiaries, MFT did.  
 14 **MS RICHARDS:** Thank you. Sir, those are the questions  
 15 I have that I propose to ask from Core Participants.  
 16 **Questions by SIR BRIAN LANGSTAFF**  
 17 **SIR BRIAN LANGSTAFF:** I've got a couple of questions which  
 18 I'd like to ask. And the first really arises out of  
 19 reflecting on what you had to say this morning, in  
 20 particular by reference to your exhibit, WITN4274002.  
 21 This is your letter, together with Ms Boyd, to Jeremy  
 22 Hunt as Secretary of State.  
 23 **MS RICHARDS:** Sir, for the transcript, I think it is  
 24 4474002.  
 25 **SIR BRIAN LANGSTAFF:** Thank you. Thank you very much.

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1 board, but it does go to my sort of feelings that if  
 2 somebody didn't agree with Mr Evans and what he wanted  
 3 to do, he expressed his dissatisfaction with them.  
 4 Maybe "dissatisfaction" is the wrong word, but he  
 5 chose to ignore those views.  
 6 **SIR BRIAN LANGSTAFF:** So was the board truly cohesive at  
 7 that stage?  
 8 **A.** It wasn't always at one but then you wouldn't expect  
 9 a Board of so many trustees always to be in agreement.  
 10 But a Board of Trustees has to look at issues and come  
 11 to some sort of conclusion, and I've always felt that  
 12 the majority view must hold. If a Chairman chooses to  
 13 exercise what I might refer to as undue influence,  
 14 then I don't think it's appropriate, and I'm recalling  
 15 the letter that was shown to me earlier today which  
 16 talked about the DoH appointees virtually having  
 17 a duty to support the Department of Health on this.  
 18 **SIR BRIAN LANGSTAFF:** So was it your view that he was  
 19 exercising undue influence?  
 20 **A.** Well, with comments like that, there is a suggestion  
 21 of undue influence. I think I would put it that he  
 22 was ignoring opinions which were contrary to his.  
 23 **SIR BRIAN LANGSTAFF:** Well, if that was the case, how  
 24 could the trustees operate except as a rubber stamp?  
 25 **A.** Well, I hear what you say.

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1 This is essentially a letter which complains  
 2 about the way in which Roger Evans has exercised his  
 3 Chairmanship, is it?  
 4 **A.** Yes, Sir Brian.  
 5 **Q.** Earlier, you said to me that one of the first meetings  
 6 under his chairmanship -- that would have been the  
 7 meeting in, I think, 2012 -- you drafted a letter,  
 8 a letter to the Department of Health which you invited  
 9 other trustees to consider, with a view to sending it  
 10 to put pressure on the Department to pay money, and  
 11 that caused a certain amount of vigorous debate, to  
 12 say the least, amongst the trustees and ended up in  
 13 Mr Evans expressing the view that the trustees were  
 14 fractious and dysfunctional.  
 15 You recall that?  
 16 **A.** Yes, Sir Brian.  
 17 **Q.** Now, how against that does your evidence that the  
 18 trustees were generally a cohesive body sit? Because  
 19 it must be quite unusual for both the Chair to  
 20 describe those who are trustees as "dysfunctional and  
 21 fractious" and a couple of the trustees who, when they  
 22 leave after lengthy service, and a variety of a number  
 23 of different chairs write in order to complain about  
 24 the chairmanship of the current Chair.  
 25 **A.** Well, I don't agree with Roger Evans' view as to the

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1 **SIR BRIAN LANGSTAFF:** Well, it's a question.  
 2 **A.** Well, I don't think we did act as a rubber stamp.  
 3 It's quite clear from my evidence that I had contrary  
 4 views as to how the Trust should go about its business  
 5 in order to comply with my understanding of charitable  
 6 law and that I had wanted individual assessments,  
 7 whether that was carried out through the census or  
 8 some other practical way, and, clearly, I was not in  
 9 the majority and therefore had to abide by the  
 10 decision of the board not to go down that route but to  
 11 continue paying out regular payments, irrespective of  
 12 financial need.  
 13 **SIR BRIAN LANGSTAFF:** Now, can you help me with this  
 14 second matter. This relates to the legal advice which  
 15 was given by Paisners to the trustees on their  
 16 development day and subsequently. You think that the  
 17 advice had at least three different iterations to make  
 18 it more comfortable for the Board in their -- at least  
 19 they hoped it might. Did you ever see that legal  
 20 advice?  
 21 **A.** Yes, I have seen it. I'm not sure that I saw the  
 22 first two because only the third one was provided to  
 23 the Board of Trustees.  
 24 **SIR BRIAN LANGSTAFF:** Did it seem right to you, in the  
 25 sense of legally correct, probably?

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1 A. Well, I think, Sir Brian, you would have to see the  
2 other letters and there was also some correspondence.  
3 I asked for and received it from Russell-Cooke, the  
4 firm of solicitors who all the papers of the  
5 Macfarlane Trust were given to and I was told that  
6 I wasn't to divulge those opinions without the consent  
7 of the Skipton Fund.

8 **SIR BRIAN LANGSTAFF:** I'm not asking you to divulge it but  
9 it's really a question of your reaction to it, which  
10 you presumably remember, whether you thought, "Oh,  
11 this is absolutely correct, its obvious", or whether  
12 you thought, "Well, I'm not sure about this".

13 A. Well, I thought that the first opinion was very  
14 accurate and good. The final version was -- I will  
15 use the word "watered down".

16 **SIR BRIAN LANGSTAFF:** Now, throughout this period, you  
17 were in practice as a solicitor.

18 A. I still am.

19 **SIR BRIAN LANGSTAFF:** Yes, and tell me is that for Mishcon  
20 de Reya?

21 A. No, not presently it isn't. I'm a consultant at  
22 Mishcon de Reya but I'm also general counsel to two  
23 companies.

24 **SIR BRIAN LANGSTAFF:** So does Mishcon de Reya have,  
25 amongst those who work for it or are partners in it,

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1 full, time sort of moved on. So I can't really see  
2 why you're asking me why I should have taken a second  
3 opinion.

4 **SIR BRIAN LANGSTAFF:** Well, part of the reasoning is  
5 this -- this really involves Ms Richards. We have  
6 a copy of the Trust Deed as it was in 1988. So far as  
7 you are aware, Mr Mishcon, was the Trust Deed that you  
8 were considering during your early trusteeship, and  
9 possibly your later trusteeship, was it still the  
10 unamended 1988 deed, do you know?

11 A. I honestly can't recall, Sir Brian.

12 **SIR BRIAN LANGSTAFF:** That's why I thought you might be  
13 able to help, Ms Richards.

14 **MS RICHARDS:** There were multiple amendments, I'm afraid,  
15 and we didn't provide this to Mr Mishcon.

16 **SIR BRIAN LANGSTAFF:** In that case, I shan't pursue this  
17 line of questioning but I think, in due course, it  
18 might be worthwhile looking at those and letting them  
19 be disclosed to Core Participants, if they haven't  
20 already been. What I have in mind is simply this,  
21 that clause 4 of the original Trust Deed makes no  
22 particular reference to finance, it makes reference to  
23 needs and plainly it envisages that financial needs  
24 will be amongst the needs but it does not necessarily,  
25 in its apparent wording, restrict the scope to

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1 individuals who are knowledgeable about trust law and,  
2 in particular, that part of trust law which involves  
3 charities?

4 A. Very much so, sir.

5 **SIR BRIAN LANGSTAFF:** So it would have been open to you,  
6 had you wished to do so, would it, to have gone and  
7 chatted informally to one of your colleagues, "Well,  
8 I've just got this problem, can't give any particular  
9 details except these details", and you could do it in  
10 a way which didn't breach confidentiality, I'm sure,  
11 and find out their opinion.

12 A. With respect, Sir Brian, the Trust took the opinion of  
13 Berwin Leighton Paisner, an equally reputable company,  
14 and I didn't see it as appropriate. I was aware and  
15 I'd said this in evidence today, that the Chairman of  
16 the trust, Christopher FitzGerald did not share my  
17 view.

18 Q. I'm not saying that you should have done it but, if  
19 there were grounds for seeking a second opinion, as  
20 there might have been if you are right, you might  
21 asked someone "Can we get a second opinion, I'm not  
22 sure that this is correct".

23 A. Well, Sir Brian, the advice that was given was that  
24 certain steps should be taken and with that I fully  
25 agreed. So the fact that those steps weren't taken in

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1 financial need. If that be so, there may be  
2 a question whether any other principle of charity law  
3 or charity statute might affect the position. I leave  
4 it there.

5 **MS RICHARDS:** Yes, we can certainly look into that, sir.  
6 I've got in front of me the text of the original  
7 version of clause 5 and then the 2012 amendments,  
8 which introduce an idea of financial assistance and  
9 other benefits and charitable need, but what I don't  
10 have and certainly hasn't been provided, are all the  
11 iterations in between, so I wouldn't want to be saying  
12 anything about it --

13 **SIR BRIAN LANGSTAFF:** Well, I was aware that there had  
14 been a number. It is, I think, clause 4 in the  
15 original, not clause 5.

16 **MS RICHARDS:** Yes, by the time it gets to what I've got  
17 from 2012, it's certainly clause 5, yes.

18 **SIR BRIAN LANGSTAFF:** Yes, and the words "charitable need"  
19 do come in to later drafts, as I recall, from  
20 documents you have already shown me, but I don't want  
21 to trespass, I think, in an area where there are  
22 various amendments about which I haven't been fully  
23 informed, and I'm in no position to draw any  
24 conclusions at all, just to raise questions.

25 **MS RICHARDS:** No, and we didn't trouble Mr Mishcon with

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1 those documents.

2 **SIR BRIAN LANGSTAFF:** No, well, I can understand why. I'm

3 sorry to trouble you with that last point, Mr Mishcon.

4 **A.** Sir Brian, I only would want to add one thing, if

5 I may. I refer to the definition of need at page 16,

6 again, of my dissertation and where I say, halfway

7 through that, "from a charity law perspective, however

8 need refers to financial need", and there is

9 a footnote which says:

10 "Trustee information pack prepared by Berwin

11 Leighton Paisner, November 2006, at para 2.2."

12 I do not know whether that helps you but --

13 **SIR BRIAN LANGSTAFF:** Well, it only helps me to know that

14 Paisners said it. It doesn't help me to know how

15 correct it actually was, but I shall leave it there.

16 **A.** Thank you, sir.

17 **MS RICHARDS:** Those are the questions. Mr Mishcon, do you

18 have anything you would wish to add?

19 **A.** No, I don't.

20 **SIR BRIAN LANGSTAFF:** Well, it remains for me to thank you

21 very much for fleshing out a lot of the information

22 that we have about the way in which the Macfarlane

23 Trust in particular operated during the years that you

24 were a trustee of it from 2006 through to 2014 and

25 your insight into the way in which the personalities

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1 **THE WITNESS:** I am there on my own. I have opened

2 a window, if it causes any disturbance let me know and

3 I'll shut it but it's quite warm in here.

4 **SIR BRIAN LANGSTAFF:** Keep it open and we'll let you know.

5 Now, you're talking to a room which has about -- it

6 has, in fact, nine people in it at the moment and

7 that's at Fleetbank House in London but the people you

8 are really talking to are the 200/250, thereabouts,

9 people beyond who are watching remotely and will be

10 picking this up either on Zoom or on YouTube. So

11 that's your audience.

12 Ms Richards will be asking you the questions

13 but, first, Mary will invite you to take the oath or

14 in your case the affirmation.

15 **ALASDAIR JAMES MURRAY, affirmed**

16 **Questions by MS RICHARDS**

17 **MS RICHARDS:** Mr Murray, you were appointed as a trustee

18 of the Macfarlane Trust in March 2014; is that right?

19 **A.** I think that's right. I think my first Trustee Board

20 meeting was May though, so I can't remember the

21 precise appointment time.

22 **Q.** That's correct. You took over as chair in May 2016

23 when Mr Evans resigned?

24 **A.** That's correct.

25 **Q.** As I understand it, his resignation was unexpected and

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1 worked together, or not, on the Board is fascinating

2 and informative. I would like to thank you for that

3 and for your thoughtful exploration of some of the

4 principles which lay behind the view points which you

5 took and expressed. Thank you very much.

6 **A.** Thank you, Sir Brian.

7 **MS RICHARDS:** Sir, we will have Mr Murray next but we will

8 need a break in order to set up the link.

9 **SIR BRIAN LANGSTAFF:** Yes. We must make sure this link is

10 working efficiently from the start.

11 **MS RICHARDS:** Yes. I think ten minutes is usually enough

12 but it might be safer to --

13 **SIR BRIAN LANGSTAFF:** Shall we say quarter to 3?

14 **MS RICHARDS:** Certainly.

15 **SIR BRIAN LANGSTAFF:** Quarter to 3. Thank you very much,

16 Mr Mishcon.

17 **(2.28 pm)**

18 **(A short break)**

19 **(2.46 pm)**

20 **SIR BRIAN LANGSTAFF:** Mr Murray, you are at home, are you?

21 **THE WITNESS:** I am at home, yes.

22 **SIR BRIAN LANGSTAFF:** You can hear and see me, that's

23 obvious, because you have answered.

24 **THE WITNESS:** I can.

25 **SIR BRIAN LANGSTAFF:** Are you there on your own?

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1 the Board decided, because there was uncertainty over

2 the future of the Trust by that stage, to appoint as

3 chair one of the existing trustees?

4 **A.** That's certainly my understanding of the Board's

5 decision which obviously wasn't mine.

6 **Q.** You remained chair until the Macfarlane Trust wound

7 up?

8 **A.** That's correct.

9 **Q.** Your background is/was in journalism and public

10 policy. Is this right, that between 2010 and 2019 you

11 were director at Quila consultants, a public affairs

12 and strategic communications consultancy?

13 **A.** That's correct.

14 **Q.** So that was your employment whilst you were trustee at

15 the Macfarlane Trust?

16 **A.** Yes, it was.

17 **Q.** You are now director of external affairs at KPMG?

18 **A.** That's correct.

19 **Q.** Prior to your appointment in 2014 as a trustee of the

20 Macfarlane Trust, did you have any knowledge or

21 experience of the background to the blood

22 contamination disaster or the institution of the

23 Macfarlane Trust?

24 **A.** Not in any meaningful way.

25 **Q.** What led you to apply to become a trustee?

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1 A. I was approached by a recruitment firm who were  
 2 seeking new trustees, who -- you know, so basically  
 3 talking me through the Macfarlane Trust and suggested  
 4 I, you know, go on and talk further with the chair and  
 5 the CEO.  
 6 Q. Did you receive -- either at the appointment stage or  
 7 once you took up your post as trustee, did you receive  
 8 any induction materials or any training to give you  
 9 a better understanding of the background?  
 10 A. As far as I recall, there were materials, but there  
 11 was also a very thorough training briefing with the  
 12 chair and the CEO. I was also introduced to a number  
 13 of members of staff at that point.  
 14 Q. If we look at MACF0000061\_057, please. Now, these are  
 15 the notes of a meeting not attended by you; it was the  
 16 Macfarlane Trust annual review of the Department of  
 17 Health from December 2014. But if we go just a little  
 18 further down the page to paragraph 3 (a), it refers to  
 19 the Macfarlane Trust having trustee vacancies and the  
 20 board being pleased to appoint trustees with relevant  
 21 skills and experience for the Trust. And then you're  
 22 identified at 3 (a) (2), and it says this:  
 23 "You have experience with Parliamentary affairs  
 24 and lobbying."  
 25 What was the basis on which it was thought that

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1 the largest part of my job in the sense that  
 2 Government had begun the reform process that was going  
 3 to lead eventually to the move to NHSBSA and also the  
 4 closure of the Trust, in precise form to be decided,  
 5 and therefore a lot of what I was doing was dealing  
 6 with that process and trying to ensure that it ran  
 7 smoothly and effectively in the best interests of the  
 8 beneficiaries.  
 9 Q. We can take the document down, thank you.  
 10 What did you understand -- in 2014 when you  
 11 were appointed as trustee, what did you understand the  
 12 principal role and function of the Macfarlane Trust to  
 13 be at that point?  
 14 A. To provide fundamentally financial but other  
 15 assistance where it was deemed appropriate to the  
 16 primary beneficiaries but also to a much wider array  
 17 of people who had been affected through the primary  
 18 beneficiaries, including secretary beneficiaries  
 19 dependants, the bereaved, and so on.  
 20 Q. We've heard from other witnesses that Macfarlane Board  
 21 of Trustees had not participated in what might be  
 22 called campaigning; had not taken a public role,  
 23 advocating or agitating for additional funding but had  
 24 preferred to make its requests for additional funding  
 25 privately and directly to the Department of Health.

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1 that experience might be useful to the Trust; do you  
 2 know?  
 3 A. So I mean, you'd need to ask the trustees who  
 4 appointed me at the time to be sure, but my feeling  
 5 from informal conversations was that we were already  
 6 entering a period where it was expected that  
 7 Government was going to be heavily involved, in terms  
 8 of the way the trusts and Trust more broadly were  
 9 organised, and that it would be useful for someone who  
 10 had some experience of Parliament and some experience  
 11 of political affairs, rather than lobbying, to be  
 12 involved.  
 13 I would also say that, you know, my work was  
 14 also around communications, principally  
 15 external-facing rather than internal, i.e. dealing  
 16 with beneficiaries and staff, but there was a feeling  
 17 it would be helpful in terms of where they were  
 18 communicating with Government in particular that  
 19 I might have some useful skills.  
 20 Q. To what extent did you, either as trustee or Chair,  
 21 have to bring those skills to bear? What involvement  
 22 did you have with Parliament or Government over the  
 23 following years?  
 24 A. So there was a fair degree of involvement. In fact,  
 25 I think in my time as Chair, arguably it was probably

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1 Were you aware of that, and was that something  
 2 you expressed any views about to your fellow trustees?  
 3 A. So, as far as I recall, I don't think there was ever  
 4 a formal discussion about that in my time with the  
 5 Macfarlane Trust. I think it was informally mentioned  
 6 to me when I was in the joining process that this is  
 7 the state that the Macfarlane Trust was focused on its  
 8 service provision and ensuring through that that, you  
 9 know, it could achieve the best deal possible.  
 10 Q. If we go to your witness statement, WITN3076002,  
 11 please, Soumik. And if we go to page 6. If we pick  
 12 up the top paragraph, which is paragraph 20 of your  
 13 statement. It begins on the previous page, but I just  
 14 want to look at the last couple of sentences.  
 15 You say that during your time on the board  
 16 there were no further appointments as trustee, and in  
 17 the last two sentences you say:  
 18 "Once it became clear in March 2017 that MFT  
 19 would be closing, there would have been no purpose in  
 20 recruiting additional trustees."  
 21 Then you say this:  
 22 "Had MFT not been closed, I think it would have  
 23 been desirable to appoint additional trustees who had  
 24 not served previously."  
 25 Why would that have been your preference?

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1 A. Because by the time it closed, there were quite an  
2 array of trustees who had served for a very long time.  
3 And in my experience and knowledge of governance, of  
4 charity governance, you know, it is proper and fit  
5 that after 10/12 years maximum that there should be  
6 some changeover to bring, you know, fresh ideas and  
7 fresh interests on to a board to ensure it was going  
8 to continue to be effective.

9 Q. We can take that down, thank you.

10 You have said in your statement that you  
11 understood the Macfarlane Trust to be entirely  
12 independent from the Department of Health. Others  
13 have described the Macfarlane Trust effectively as an  
14 arm of Government or an instrument of Government, in  
15 large measure because of the dependence upon the  
16 Department of Health for funding.

17 Do you have any observations or comments to  
18 make on that?

19 A. Well, this is a grey area. I mean, this is true of  
20 all charities and funded bodies of this nature, that  
21 you can have Government independence, but, of course,  
22 indirectly there will always be some impact through  
23 your funders. And, you know, many organisations are  
24 lucky in having a vast array of funders which reduces  
25 that -- you know, reduces that impact. But, clearly,

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1 to, but I don't think so.

2 Q. Once you became Chair, can you tell us what kind of  
3 meetings or interactions you had with the Department  
4 of Health? I'm not expecting you to remember precise  
5 dates, but in terms of the nature of the interactions.

6 A. Yes, I think the main interaction was through the  
7 Partnership Group that was set up to help steer the  
8 financial reform process the Government was  
9 undertaking. I think I conducted one annual review  
10 meeting because there was actually only one year of  
11 budget that I was Chair for that the annual review  
12 meeting took place. I think that's largely it.

13 I think there was an introductory meeting to  
14 a new Director General at one stage who was, you know,  
15 the ultimate person response and there may, through  
16 that, also have been a meeting that was directly  
17 connected to the NHS BSC handover rather than the  
18 Partnership Group.

19 Q. When you say "Partnership Group", do you mean the  
20 reference group?

21 A. Reference group. Apologies. Yes, reference group.

22 Q. Were any of your meetings or interactions with the  
23 Department of Health minuted, as far as you can  
24 recall?

25 A. We took an informal note and reported back to the

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1 when you have only got one funder who is the  
2 Department of Health, there is some implicit impact  
3 which doesn't affect its ultimate governance  
4 independence. I think in my time, where we didn't  
5 have, as far as I understand it, Department of Health  
6 or other appointments, it didn't affect our ability to  
7 make independent decisions.

8 Q. But is this right, that what the Macfarlane Trust  
9 could in practice do, by way of service provision,  
10 financial assistance, was ultimately highly  
11 constrained by what the Department of Health allocated  
12 to it, in terms of funding?

13 A. I think that's completely true.

14 Q. During the time that you were either trustee or Chair,  
15 do you recall the Department of Health trying to  
16 influence the Macfarlane Trust more directly, in terms  
17 of how it should spend its limited allocation?

18 A. Not in terms of how it spends its money. I think that  
19 was respected, that that was the choice of the Trust  
20 and the board.

21 Q. Did you have any interactions with the Department of  
22 Health yourself directly prior to being appointed  
23 Chair?

24 A. I don't think I attended a meeting before Chair, but  
25 there may be a case that I did attend one in addition

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1 board. I would have thought the reference group  
2 meetings were minuted. I can't see why they wouldn't  
3 be. I'm afraid I can't remember. There were  
4 officials in the room. It's normal for them to be  
5 minuted, so -- but I think that, you know, you'd have  
6 to ask the Department of Health.

7 Q. You say in your witness statement -- if we just put it  
8 back on screen, Soumik, sorry, WITN3076002, and we go  
9 to paragraph 42, page 11, I think. Yes, bottom of the  
10 page you say this:

11 "During my time at the Trust, MFT made an  
12 annual request for funding based on our assessment of  
13 likely need. There were two repeated problems with  
14 the process. First: as previously noted, the trustees  
15 did not regard the amount allocated as sufficient to  
16 meet beneficiary need without using part of MFT's  
17 reserves."

18 Now, before we come on to the second problem,  
19 in relation to that first problem, was it your  
20 understanding or experience that what was allocated by  
21 the Department of Health was not based upon any  
22 particular assessment of likely need but essentially  
23 was simply: this is what we're willing to give you?

24 A. So I don't think that's quite fair in the sense that  
25 we made an assessment which suggested what we thought

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1 the full budget based on experience from previous  
2 years should be. I did feel that the Department of  
3 Health were aware of the reserves and then made an  
4 offer on the basis that they thought we could run down  
5 our reserves to cover the difference.

6 **Q.** Was there ever, in your experience, any engagement by  
7 the Department of Health with the detail of your  
8 funding bids?

9 **A.** They certainly looked through and responded, normally  
10 in the form of a letter. So I believe they must have  
11 reviewed them. But I'm afraid you would have to ask  
12 them to what extent and, you know, how detailed that  
13 actually was.

14 **Q.** And then the second problem you identify, you say:

15 "Second: as far as I can recall, in most  
16 financial years the Government did not confirm our  
17 funding allocation until the new financial year had  
18 started which created uncertainty about whether we  
19 would have the funding necessary to deliver the  
20 support we planned to provide to beneficiaries (and  
21 absent the reserves could have posed cash flow  
22 problems)."

23 Did you take that up with the Department, that  
24 particular issue?

25 **A.** It was taken up, in my experience every year. I mean,

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1 going into 2017/18 and that we would most likely be  
2 given allocations on a quarterly basis because of the  
3 uncertainty about the procurement timetable. You also  
4 advised us that you were minded to reduce MFT's  
5 allocation for 2017/18 as a way of forcing MFT to use  
6 up its reserves."

7 Just pausing there, Mr Murray. We've explored  
8 the issue of the reserves with a number of other  
9 witnesses, including your two predecessors as chair.  
10 What was your understanding, if any, when you joined  
11 the Board of why it was the Trust still had  
12 substantial reserves that it hadn't expended?

13 **A.** My understanding is the reserves dated back to  
14 a period where the funding was different. It wasn't  
15 an annual fund. It was a lump sum and therefore some  
16 of this capital had remained in place, that over time  
17 the nature of that funding changed, we'd moved to  
18 an annual fund and that caused the issue of what  
19 should be done with the reserves to run those down.

20 **Q.** If we look at the bottom of this page, we can see you  
21 refer, in the last paragraph, to the special grants  
22 programme run by the Trust at 2013/14. I'll come back  
23 to that at a later stage. If we go over the page, in  
24 the last long paragraph, second half of the page,  
25 beginning "As we have discussed", you set out,

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1 as I said, I think I only had one year when I was  
2 Chair that I actually went through this process. And  
3 that was a particularly difficult year because, by  
4 that stage, we knew the transfer was going to happen  
5 to NHSBSA, and we were in a position where at one  
6 point they wanted us to use the reserves basically  
7 first before giving us an allocation. So we pushed  
8 back very strongly on that, and that was not the  
9 outcome we achieved.

10 My understanding is there was, you know,  
11 regular exchange over the period between the annual  
12 review and the beginning of the new financial year  
13 between the chief executive and probably previous  
14 chairmen and the Department of Health about the need  
15 to get this resolved.

16 **Q.** Just so that we can complete the factual picture,  
17 we'll look at such information as we have about the  
18 one review meeting that you attended.

19 Soumik, it's MACF0000061\_050. We'll see it's  
20 a letter from you dated 10 February 2017 to Ailsa  
21 Wight at the Department of Health. The first  
22 paragraph reads:

23 "At the annual review meeting which Jan Barlow  
24 and I attended with you on 16 January 2017, you  
25 advised us that MFT would continue to be operational

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1 I think, a concern of a cliff edge. You say:

2 "... we are determined to ensure there is no  
3 'cliff edge' where available funding is dramatically  
4 reduced. This objective has inevitably been  
5 complicated by the fact that the timetable for change  
6 has been delayed repeatedly. In light of the  
7 information you have shared with us, the board  
8 considers it would not be prudent to be forced into  
9 a position of using up all its reserves in the  
10 immediate future, when the period of time it will  
11 continue to operate is so poorly defined."

12 What was the particular concern you and the  
13 chief executive and the Board had at this time?

14 **A.** Well, the fact the financial reform process which, in  
15 turn, was leading to a structural reform process had  
16 had repeated false starts, missed deadlines, there was  
17 a move, initially, for example, to go out to  
18 procurement, the Government then changed courses then  
19 completely changed its mind, came up with the NHSBSA  
20 article, I think this letter is probably just before  
21 that was done, so I think it was written when it was  
22 in a pause period and we had no confidence that the  
23 Government was going to be able to meet its timetable.

24 I mean, there were other factors in play like  
25 the judicial review. Again, I'm not quite sure where

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1 this letter sits in that timetable, but it was just  
2 causing the Government to frequently stop and start  
3 again. In fact, that went further back, because you  
4 can go back to 2015, when an initial move,  
5 a suggestion, from the Prime Minister that there was  
6 going to be a change in funding and the amount of  
7 funding was stopped because of the general election.

8 **Q.** Was that the announcement by David Cameron after the  
9 Penrose Report? There was a £25 million announcement?

10 **A.** Yes.

11 **Q.** I was going to ask you about that but it might be  
12 a convenient point at which to do it now. So that  
13 funding -- did the MFT have any advance knowledge of  
14 that announcement?

15 **A.** None that I'm aware of, although I was not chair at  
16 the time.

17 **Q.** Is this the correct way to understand your evidence,  
18 that -- is this right -- none of that £24 million, in  
19 fact, came to the Macfarlane Trust?

20 **A.** No, I don't think that's correct. I mean it would be  
21 difficult to do a forensic trace through from that  
22 announcement to the ultimate outcome. What was clear  
23 was, you know, that there was going to be a big change  
24 in the way financial support was provided. At that  
25 point it hadn't been exactly decided how.

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1 **A.** I think there were ways the beneficiaries were  
2 informed about ongoing discussions. You know, I would  
3 need to think through fully. I wasn't aware that it  
4 was a particular issue at the time. I think it would  
5 have been difficult for us to maintain a running  
6 commentary in detail before we are able to make  
7 a clear decision on what our approach to the  
8 Department of Health was, that clearly was going to go  
9 into the public domain.

10 **Q.** If we go to the top of the next page -- actually,  
11 sorry, we'll just pick it up at the bottom of the  
12 previous page. My apologies, Soumik.

13 So we can see in the last paragraph:

14 "JB [that's Ms Barlow] reported that she and AM  
15 [so you, Mr Murray] had attended the annual MFT review  
16 meeting with DH on 16 January 2017. At the meeting  
17 Ailsa Wight had confirmed that the Alliance House  
18 entities would continue to operate for at least part  
19 of 2017/18, although she had given contradictory  
20 messages as to the length of time they would do so.  
21 She had also indicated that officials would be  
22 exploring with Lord O'Shaughnessy the extent to which  
23 he was committed to the procurement going ahead."

24 So that would suggest you are right, Mr Murray,  
25 that the point in time at which this meeting occurred

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1 **Q.** Then just then returning to the January 2017 annual  
2 review, can we go to MACF0000027\_088. These are the  
3 private and confidential part of the minutes of  
4 a meeting held on 30 January 2017. Can I just ask  
5 this, Mr Murray. If we go down the page, there's  
6 a discussion on MFT loans and advances but then we can  
7 see there's a discussion about discretionary top-up  
8 payments, which isn't concerned with individual  
9 beneficiaries, and then, if we go over the page,  
10 you'll see the heading, halfway down the page,  
11 "Additional information regarding ... Government  
12 Reforms". I'm going to ask you a bit about that in  
13 a moment but why does this kind of discussion appear  
14 in the private and confidential part of the minutes?

15 **A.** I think it was -- I mean, this was a practice  
16 established before I joined, as either a trustee or  
17 a chair. I think it was to allow trustees to have  
18 a full sense of debate around something that was very  
19 sensitive in terms of, you know, the difficulties of  
20 the relationship with the Department of Health, and to  
21 reach the position where it could then report back to  
22 the Department of Health its position. I would assume  
23 that is the reason.

24 **Q.** Was that not something that beneficiaries would be  
25 entitled to be fully informed about?

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1 was the pause in the procurement process, and I'm  
2 going to ask you about that in a little while.

3 Then this first main paragraph:

4 "JB and AM had been advised that MFT would be  
5 given allocations on a quarterly basis for 2017/18.  
6 AM [so this is you] reported that Ailsa Wight had made  
7 it very clear that DH intended to reduce MFT's  
8 allocation as a way of forcing it to use up reserves.  
9 This was very concerning as she clearly did not  
10 understand the current level of reserves that MFT  
11 held, in spite of JB attempting to clarify the figures  
12 with her. She had also not remembered yet that MFT  
13 had been implementing a planned reduction of reserves  
14 in recent years."

15 Then the Board goes on to express concern at  
16 the prospect of DH reducing the allocation or  
17 withholding funds.

18 Do you have any additional recollection of that  
19 meeting or of the matters that are set out here in  
20 which you have reported your concerns about the  
21 Department of Health's lack of understanding?

22 **A.** No, I do think the CEO and I were a little frustrated,  
23 given that, you know, the running down of reserves to  
24 fill the hole had been a thing for a number of years,  
25 that we had a clear reserves policy set out in our

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annual report, which was in line with, you know, charity commission guidance, that this didn't seem to have occurred and there seemed to be an assumption in the Department of Health that there were much more in the reserves than was actually the case, and it was certainly the case that, you know, if we had been forced just to go to reserves, I mean, who knows. It would be a very close thing of us run entirely out of money before the move over would have been made, but at that point we didn't even know when the move was likely to be made.

**Q.** Then if we go to a letter from the Department of Health to you at MACF0000061\_049, we can see it's a letter from Ailsa Wight to you, 7 March 2017. Second paragraph, it says:

"I understand your concerns, particularly during this time of uncertainty ... we expect that the current schemes will continue in their current form until the end September 2017. We will continue to provide funding to the schemes until the new scheme administrator is established."

Then this:

"We are not currently in a position to confirm the funding allocation for 2017/18 as we are waiting for the Departmental budgets to be finalised. As soon

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that that funding went to the Department of Health and then the Department of Health made an allocation to you that you would drawdown on?

**A.** I'm afraid I couldn't confirm but I do not recall any discussion of that issue in the meetings I attended, which does suggest that it was all wrapped up into one single budget allocation by the Department of Health but I can't confirm that.

**Q.** If we go to MACF0000045\_001. This is the annual financial report for the year ending 31 March 2016. If we go to page 3. We can see in the first paragraph, under the heading "Chairman statement" that this is your first statement as chair following your appointment in May 2016.

If we go over the page, please, Soumik, the second paragraph says this:

"During 2015/16 the Scottish Government established a Review Group to examine the financial support provided to those infected in Scotland, and their families. In March 2016 the Scottish Government announced it would be adopting the recommendations made by the Review Group to increase financial support to those infected in Scotland. The model of support which has been adopted for Scotland is considerably more generous than that which currently exists in the

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as we are told, we will issue the allocation letters.

I appreciate this is difficult in terms of timing and planning; as you know we are rarely able to confirm the allocations in advance of the financial year."

Is that your understanding of what had been the pattern previously as well?

**A.** Yes, absolutely. That is my understanding that this was common problem. I mean, it should be noted, of course, that, you know, it may not have sat with that Department, that it may have been higher up the chain in Government, in terms of every (unclear) allocations.

**Q.** We can take that down, thank you.

Did you have any contact during your time either as trustee, or perhaps more likely as chair, with any of the devolved administrations?

**A.** I don't think I did directly. It is the case that probably before I was chair, but again I would need to check the timing, that the Scottish scheme, you know, separated, in any case, probably around the time I took over as chair, but, no, I didn't have any direct contact with the devolved administrations.

**Q.** So I think funding was or, until Scotland, as it were, set up its own scheme, had been received from the devolved administrations but was it your understanding

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rest of the UK, and the payments are greater than those announced for England. At the time of writing, it is not known which model of support Wales and Northern Ireland will adopt. However, there will no longer be a unified system of support across the UK."

To your knowledge, had the Macfarlane Trust, or anyone on the Board of Trustees or chief executive, participated at all in the Scottish Government's Review Group or been asked to supply information to it?

**A.** So I do recall some discussion of their review. I don't recall whether anybody had participated in it. I'm afraid we would need to go back through the minutes to confirm or not that.

**Q.** I think the new Scottish Infected Blood Support Scheme began, I think, on 1 April 2017. We have it as a matter of record. I hope I've got that right.

Is it correct that there was then, therefore, a period of time in which the Macfarlane Trust was administering payments to Scotland or to Scottish beneficiaries which were higher than the payments it was administering to beneficiaries in other parts of the UK?

**A.** I think it was the case before that was transferred out into -- I think it ended up in the Scottish

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1 equivalent of the NHSBSA but I think there was  
 2 a period of transition before that took place.  
 3 Exactly how long, I'm afraid I can't remember.  
 4 **Q.** Did you have, as far as you can recall, any direct  
 5 dealings with the representatives of the devolved  
 6 administrations in either Wales or Northern Ireland  
 7 either?  
 8 **A.** No, I did not.  
 9 **Q.** We can take that down, thank you.  
 10 We turn then to the question of contacts with  
 11 or involvement with beneficiaries. Did you have any  
 12 regular contact with or more meetings or involvement  
 13 with beneficiaries during your time either as trustee  
 14 or Chair?  
 15 **A.** There were some contact and meetings. I would not  
 16 define it as regular.  
 17 **Q.** In what kind of circumstances did contact take place?  
 18 **A.** So I had to attend one or two All-Party Parliamentary  
 19 Groups. There was some communication on the difficult  
 20 issues. And I also attended a meeting at an MP's  
 21 office with a beneficiary.  
 22 **Q.** Why was there no more regular or frequent interaction  
 23 between you as Chair and the beneficiary communities?  
 24 **A.** Because the regular and frequent action was undertaken  
 25 by the CEO and the staff team. I was a chair,

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1 Partnership Group ceased before I joined the board --  
 2 that they had just not been very effective, and there  
 3 were other ways to get the same kind of information.  
 4 **Q.** Did you have any dealings yourself with The  
 5 Haemophilia Society during your time as either trustee  
 6 or Chair of the Macfarlane Trust?  
 7 **A.** I had some limited dealings. As I recall, I think  
 8 I attended one or two of the APPG meetings that I also  
 9 attended. There were also members of the reference  
 10 group that I attended.  
 11 **Q.** In terms of the decision-making on payments and grants  
 12 by the Macfarlane Trust, would you agree, as a matter  
 13 of principle, that it was important that the  
 14 Macfarlane Trust's approach should be transparent,  
 15 fair and consistent?  
 16 **A.** Indeed.  
 17 **Q.** Are you able to assist with what steps were taken by  
 18 the Macfarlane Trust to secure that?  
 19 **A.** So, again, I think important steps were taken before  
 20 I joined the board, in terms of redoing the grants  
 21 policy. I understand that a summary of that policy  
 22 was available and shared with beneficiaries.  
 23 I think in terms of the board, the way we held  
 24 the staffing to account, there were very clear  
 25 metrics. They would demonstrate that they were

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1 a charity chair, a non-executive chair. I was  
 2 available for, you know, direct communication when  
 3 there were issues that involved the staff team or  
 4 needed to go above it, but I think this is a very  
 5 normal way to run a charitable organisation.  
 6 **Q.** I think we know that previously there had been some  
 7 participation in the operation of the Macfarlane Trust  
 8 through something called the Partnership Group, but  
 9 that ceased in around 2014.  
 10 Was anything, to your knowledge, put in its  
 11 place to ensure, if not directly meetings with you,  
 12 some form of direct interaction or participation by  
 13 beneficiaries or representatives of the beneficiary  
 14 community in the Macfarlane Trust's operations?  
 15 **A.** I think there were a number of ways the  
 16 Macfarlane Trust communicated with beneficiaries.  
 17 I mean, there was almost constant communication, in  
 18 terms of the financial support. There was an annual  
 19 census. There was frequent communication via  
 20 newsletters. There was a website. We also had user  
 21 trustees on board who were able to give an overview of  
 22 what they were hearing and their own position. And  
 23 I think it was felt that -- I mean, it was almost  
 24 daily contact with the beneficiaries, so I think it  
 25 was felt -- you know, my understanding -- and the

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1 meeting, you know, expectations around delivery of  
 2 grants, in terms of times.  
 3 We were aware of quantum as well. There was  
 4 a sort of data board that was taken at meetings, and  
 5 then there was an appeals system when people were  
 6 unhappy with the outcomes.  
 7 **Q.** If we look at MACF0000171\_042, please. So these are  
 8 grants guidelines for 2014/15 produced in  
 9 around May 2014, as you will see from the date there,  
 10 which is I think around the time of your first trustee  
 11 meeting.  
 12 If we go on to page 3, please, you will see in  
 13 the first paragraph under the heading "Introduction",  
 14 the second sentence that this:  
 15 "... is intended for internal use only. It  
 16 will not be distributed to beneficiaries."  
 17 If we go to the next page, without taking you  
 18 through it in detail, you will see from this,  
 19 Mr Murray, it sets out a number of specific respects  
 20 in which grants can be awarded and what a maximum  
 21 amount that could be, I think, permitted by the office  
 22 staff would be, and it sets out what the applicant  
 23 must send in relation to each of these.  
 24 Now, I just want to then next take you to what  
 25 was published by the Macfarlane Trust, then ask you

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about it. So if we go to MACF0000171\_049, you will see here, Mr Murray, what was published was something much shorter. It identifies under the heading "Application criteria" some very broad areas where grants could be made. It sets out areas where grants will not be funded. And if we go over the page, it provides some basic information about the process and appeals.

Why not simply publish the full office guidelines?

A. I'm afraid I don't know. I was aware that guidelines existed. I wasn't aware that there was a big gap between the two. I can speculate, but I don't have any formal knowledge of it. As far as I recall, it was never an issue that was raised or discussed in detail during my period actually on the board.

Q. If we go in this document to the bottom of the first page, please, Soumik, and see at the very bottom of the page under the heading "Making an application", the last paragraph. It says:

"As a charity, the Trust is required to be able to demonstrate charitable need and, as such, consider whether someone applying for a grant has the ability to fund it from their own resources. This is why we ask for details of income and expenditure when grant

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terms of the judgment as to whether it was reasonable to expect the applicant to fund something themselves, are we right in understanding that there were no specific guidance for decision-makers in relation to that; it was simply an individual judgment in every case?

A. Without having the guidelines in detail, I wouldn't be able to answer that. It didn't feel -- as I say, there were a few appeals to reach there. And in my memory, the most common reason was about scope or where, unfortunately, you know, there needed to be quotes and people had struggled to get theirs and there was some reason why they wished to speed up that procedure. But I remember very few coming up. And I remember -- you know, I can't remember a case where there was an assessment of need in this sense done at board level.

Q. In terms of the annual census, could we look at MACF0000027\_088. If we look at the very bottom of the page. These are the minutes of a meeting on 30 January 2017. Again, it's part B of the minutes; the same minutes that we looked at previously.

If we look at the last paragraph on this page, you will see reference there to the annual census that was usually carried out to review household income and

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requests are made."

Now, I don't think you were on the Grants Committee, Mr Murray; is that right --

A. (Unclear)

Q. -- but from time to time, presumably appeals came before the board in which they would have had to themselves consider these matters?

A. They did. As I recall, they were pretty infrequent to come to the board, but I think one or two did during my time.

Q. What was your understanding, either as trustee or indeed as Chair, as to how the decision-makers, whether it's the board or the Grants Committee or indeed the office staff, how they were supposed to assess whether charitable need existed?

A. I mean, there was an application form, and there were the guidelines which were supposed to marry them up, and then they made an assessment in the Grants Committee of whether they met the guidelines and this was backed up by a charitable need. That was my understanding.

Q. In terms of considering whether someone, the applicant, has the ability to fund from their own resources, you might have had a form which had the household income and the basic outgoings. But in

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therefore eligibility for discretionary top-up

payments. And then in relation to the year 2016/17:

"... because of uncertainty as to whether MFT would still be in existence for the entire financial year, it had been agreed that the annual census should not be carried out in full, but the beneficiaries should be written to advising them to contact MFT if their financial circumstances had changed over the last 12 months."

Now, is this right, that prior to this decision all beneficiaries had to, if they wish to be considered for any form of assistance, had to complete a census every year, even if their circumstances had not changed at all.

A. That would imply it was the case. I'm afraid I can't answer whether that happened every year or whether there were other years where that wasn't done. But also, those minutes implied this was specifically for discretionary top-up payments, so presumably if you didn't want the top-up payment for whatever reason, you didn't have to do the census but could still apply for other assistance.

Q. Did the board, in the time you were a trustee or Chair, ever consider whether the census scheme was imposing unnecessary burden on beneficiaries?

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1 A. I don't remember that ever being raised as an issue.  
 2 Q. During your time as trustee or Chair, did the  
 3 Macfarlane Trust negotiate, amend or cancel any  
 4 secured or unsecured loans that you can recall?  
 5 A. I believe there were a couple of occasions where that  
 6 happened, and I think with unsecured loans,  
 7 particularly in the wind-up process, there was  
 8 a review, and it was felt they were unsustainable so  
 9 needed to be cancelled.  
 10 Q. Was there any policy or any guidance or criteria as to  
 11 the circumstances in which that would happen?  
 12 A. I think they were done on a case by case basis, but it  
 13 was assessed -- the reasons for the cancellation were,  
 14 I believe, you know, purely about the recoverability  
 15 and whether it was a viable, much as, you know, any  
 16 other loan issuing organisation would assess.  
 17 Q. I want to ask you next about the APPG report which was  
 18 January 2015. If we go to MACF0000022\_012. This is  
 19 a report from the chief executive to the Board of  
 20 Trustees. If we look at the second paragraph,  
 21 Ms Barlow says this in the third line:  
 22 "... the report is nowhere near as bad as it  
 23 could have been."  
 24 And if we then go to MACF0000022\_048. These  
 25 are the minutes of a board meeting, 26 January 2015.

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1 Q. If we go to the report itself, so RLIT0000031. And if  
 2 we then go, please, Soumik, to page 9, bottom of the  
 3 page. I'm not going to go through obviously anything  
 4 like the full report, Mr Murray. But if we look here,  
 5 we can see five points regarded by the two MPs who  
 6 produced the foreword and were co-chairs of the APPG  
 7 as being worthy of particular emphasis:  
 8 "Many Trust beneficiaries are in poverty ..."  
 9 And then over the page:  
 10 "The worst form of modern-day begging that  
 11 I know of."  
 12 We can see if we just look in the text there  
 13 about four lines down:  
 14 "Many respondents to our survey find the whole  
 15 process highly demeaning and onerous. Some have been  
 16 reduced to tears because of it."  
 17 And then we see in the next paragraph:  
 18 "Left in the dark ..."  
 19 Again, picking it up four lines in to where it  
 20 might be more relevant to the Macfarlane Trust:  
 21 "Even though those who do successfully register  
 22 with the charities report about being left in the dark  
 23 about support available to them."  
 24 I won't trouble you with the other two bullet  
 25 points which are perhaps more structural issues.

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1 And under the heading "Political developments", you'll  
 2 see Mr Evans inviting comments on the actual report,  
 3 and then there are contributions from MG. And then in  
 4 the last sentence, you're recorded as saying this:  
 5 "AM felt that the report was as good as could  
 6 have been expected in the circumstances."  
 7 Now, that might suggest that you and/or  
 8 Ms Barlow and/or others thought that there were more  
 9 critical findings that could legitimately have been  
 10 reached. Was that the case? Why did you express  
 11 yourself in these terms?  
 12 A. I can't speak for the former chief executive, but what  
 13 I would have understood that she said is that I  
 14 certainly was saying, which is this kind of APPG  
 15 report, of which I have some experience, is  
 16 a political report. There are good quality and bad  
 17 quality political reports of this nature, and this was  
 18 a good quality report that had tried very hard to look  
 19 right across the range of issues and consider  
 20 recommendations to make things better, and we broadly  
 21 supported that.  
 22 It was equally possible that the report could  
 23 focus and put political pressure on one or two  
 24 organisations, or one or two individuals, and it  
 25 didn't do that.

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1 Then there is elsewhere in the report  
 2 beneficiaries' views recorded that they didn't know  
 3 why applications were refused, they weren't kept in  
 4 formed about the progress of applications, they felt  
 5 driven to give up on making applications because of  
 6 the process, there's a particular comment about the  
 7 Macfarlane Trust getting worse, staff becoming more  
 8 distant, and so on.  
 9 What, if anything, did the Macfarlane Trust do  
 10 in response to those parts of this report which either  
 11 recorded criticisms of the Macfarlane Trust's  
 12 processes or set out beneficiaries' experiences of the  
 13 Macfarlane Trust which were negative and critical?  
 14 A. I don't think there was a specific response but  
 15 I think there was a bit more context to this, which is  
 16 that -- my understanding, having only recently joined,  
 17 was that much of this related to an earlier period,  
 18 people's experience from before, and there had been  
 19 considerable effort to improve and you see, for  
 20 instance, the grant guidelines for 2014. So it wasn't  
 21 strictly reflecting the immediate period prior to --  
 22 you know, at this point.  
 23 My understanding too is that, you know, whilst  
 24 this definitely reflected some people's views of  
 25 beneficiaries, it was certainly not -- beneficiaries'

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views of the way the Trust was acting, it was certainly not reflective of the majority, and I think that is reflected elsewhere in the survey.

Also, it was almost immediately apparent that the Government was going to change the way financial reform -- financial was given and, in particular, you know it needed -- we felt it needed to look again at the charitable issue, that the fundamental problem was more structural, which is, as a charity, we were forced to have a means test around it.

**Q.** So is it right to understand from your answer that, for whatever reason, and you've suggested some, the Macfarlane Trust didn't itself take any specific action in response to the report?

**A.** There was no formal action plan drawn up, no.

**Q.** Does that not give you any cause for concern?

**A.** I think, you know, here we are with the benefit of hindsight. As I've said there were contextual reasons missing from this board summary and the other fact is that time moved very quickly and very quickly it was apparent that the Macfarlane Trust would not be giving out money, in the way it had been giving it out in previous years, in the near future. But, yes, if you stop the clock at that moment and I went back over I would say we should probably have examined this in

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there was no involvement of the beneficiary community or no direct involvement of the beneficiary community in the preparation of the Alliance House organisations' response?

**A.** It's actually the views of trustees who were very involved, it would be correct, yes.

**Q.** If we go in this same document to page 7. Under the heading "Organisational model", the document says this, and picking it up in the second line:

"We are aware that the Alliance House organisations have been the subject of ongoing criticism from a small minority of beneficiaries, notably those active in campaigning. However, we also work with a large number of beneficiaries/registrants who are very happy with the support they receive from us ..."

Reference is made then to positive feedback:

"The canard that the existing organisations are 'not fit for purpose' has been initiated and adopted by a minority whose complaints are really about the schemes that the organisations operate, and the funding available for these, rather than the organisations themselves."

Now, do you consider that to be a fair and accurate reflection of the nature of the criticism

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more detail.

**Q.** If we go next then, so if we move from 2015 and the APPG report to 2016 and the Government's consultation, if we go to CAXT0000094\_121, this is a joint response from the Alliance House organisations to the Department of Health's 2016 consultation. If we look at the second paragraph, we can see it says:

"We are acutely aware of the fact the people we support have a very wide range of views about the existing organisations and any new scheme. It would therefore be impossible to us to respond at a very detailed level to the consultation in a way that would be representative of the beneficiary/registrant community as a whole. It would also be impossible for us to propose an alternative model of future support which would be seen as acceptable to the entire beneficiary/registrant community. We are therefore focusing our response to the consultation on what we consider to be the broader issues contained in the proposals."

It's said that reference is then made to many years' experience of supporting individuals and some feedback following the launch of the consultation.

Would it be right to understand that, perhaps for the reasons set out there but as a matter of fact,

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that had been directed at the Alliance House organisations, that it was simply a small minority of beneficiaries active and campaigning?

**A.** Looking back on this, I think there could have been more reflection about meeting some of the criticisms and improving the processes, as my previous answer intimated but I think, overall, the point that was being made was that the charities were working very hard, within the constraints of the funding they have and their charitable nature, to try and supply the best deal they could to beneficiaries and that, actually, the real problem was the nature of the funding and the nature of doing this through charitable vehicles.

Of course, it should be said by this stage MFET was in operation, so there was some support already that was non-discretionary available to some beneficiaries.

**Q.** Now, if we just move on in the course of 2016 to MACF0000027\_075, these are part B of the minutes of a meeting 31 October 2016. If we go a little further down the page, so we see the first paragraph under the heading "Additional information regarding item 849.16 Government Reforms", we can see there reference to the Alliance House Board's engaging a specialist company

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1 to assist with the bid writing and submission and you,  
2 Mr Pond and Ms Barlow had interviewed companies and  
3 decided to appoint a particular one.

4 Is this correct, Mr Murray, that the Alliance  
5 House organisations decided that they would  
6 participate in the procurement process and put in  
7 a bid for, essentially, an Alliance House-run single  
8 scheme?

9 A. That's correct.

10 Q. What did the Macfarlane Trust and, if you are able to  
11 assist through discussions with others, the other  
12 Alliance House organisations -- why did you think that  
13 that's something that you would be able to deliver and  
14 deliver successfully?

15 A. I mean, the Alliance House organisations had extensive  
16 experience of delivering. They were, you know,  
17 constantly in contact with beneficiaries and aware of  
18 needs and, in terms of getting payments out and,  
19 again, I point to the fact that MFET was, by this  
20 stage, a considerable part of the financial support in  
21 place for many beneficiaries, you know, we're used to  
22 doing this process.

23 In discussions with the Department of Health we  
24 were not discouraged. In fact, I would say we were  
25 encouraged to consider applying. Clearly, if the

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1 understanding was that minister reappraised the  
2 situation and came up with this as the solution.

3 Q. If we go to MACF0000027\_089. These are the minutes of  
4 a Board of Trustees meeting, 27 March 2017. If we go  
5 to page 2, top of the page, we can see a heading  
6 "Meeting with Minister, 6 March 2017":

7 "JB advised the board that a meeting with the  
8 Minister had been arranged for the afternoon of  
9 6 March 2017, but on the day, the Minister had asked  
10 to speak with herself and the three Chairs  
11 individually on the telephone that morning. During  
12 the course of the telephone discussions, the Minister  
13 had announced that launch of the consultation and the  
14 fact that DH had decided to appoint NHS Business  
15 Services Authority as the new scheme administrator."

16 So was that the very first that you knew of it?

17 A. Yes.

18 Q. Did you gain, either from the conversation you had  
19 then with the minister or through any subsequent  
20 dealings you had, whether with the reference group or  
21 otherwise, did you gain any understanding of the  
22 reason that the Minister had decided to change course  
23 and, rather than proceed with the procurement process,  
24 to set up the NHSBSA scheme?

25 A. I don't recall the Minister giving a full explanation.

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1 Department of Health said absolutely not, there's no  
2 chance, the criteria will not be suited, we would not  
3 have considered it.

4 Q. Then is this right -- we can take that down, thank  
5 you -- that the procurement process was then, as it  
6 were, put on pause or delayed, so no bid was actually  
7 submitted?

8 A. No bid was actually submitted. I'm not aware a bid  
9 was even written.

10 Q. Then I think in March 2017, the decision was taken by  
11 the Department of Health not to proceed with the  
12 procurement process and to transfer, in terms of  
13 England, the support scheme to NHSBSA?

14 A. That's correct.

15 Q. Did the Macfarlane Trust or anyone in it, including  
16 yourself, have any involvement in that decision-making  
17 process? Were you consulted at all?

18 A. None at all. I was informed as chair by the Minister  
19 on the day it was announced.

20 Q. Were you informed who within the Department had taken  
21 that decision?

22 A. I understood it to be the Minister. The Minister was  
23 still new in post and that was the reason why the  
24 original procurement -- one of the reasons, I think,  
25 that the original procurement was paused, and that my

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1 It was presented as -- very politely and nicely as  
2 a done deal. I can hazard a number of reasons,  
3 speculate why this was chosen, but I don't think I've  
4 got any firm evidence for my view.

5 Q. Sir, just noting the time. I've got some questions  
6 now on the reserves and the transfer to the Terrence  
7 Higgins Trust, which are important questions. If  
8 acceptable to you, sir, and Mr Murray it might be most  
9 sensible for me to complete my questions now and then  
10 take a break. It will be a slightly later break and  
11 longer afternoon but that will allow core participants  
12 at that stage to suggest any further questions.  
13 Otherwise, we will have to take two breaks.

14 SIR BRIAN LANGSTAFF: Yes, how long will you be, do you  
15 think, roughly?

16 MS RICHARDS: No more than half-an-hour.

17 SIR BRIAN LANGSTAFF: Okay let's do that.

18 MS RICHARDS: Famous last words ...

19 So I want to come on then to ask you about what  
20 was then done with the reserves, Mr Murray. I'm going  
21 to look at two aspects of what was done. The grants  
22 programme, what was called the time-limited grants  
23 programme, and then the transfer to the Terrence  
24 Higgins Trust.

25 So if we can pick it up MACF0000027\_107,

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1 please. Minutes of a meeting on 31 July 2017, we've  
2 got the heading "Future of the Macfarlane Trust". If  
3 we go further down the page, we can see four options  
4 set out there for using the reserves post transfer  
5 and:

6 "Option 1 -- distribution to beneficiaries  
7 through a targeted, time-limited grants programme  
8 administered by MFT, at the end of which the Trust  
9 would be wound up."

10 Option 2 is the same but administered by  
11 a third party:

12 "Option 3 -- to continue to run [down] the  
13 Trust, refocusing its work and [perhaps] using the  
14 reserves as an endowment fund ...

15 "Option 4 -- merger with another  
16 appropriately-focused charity."

17 Now, I think the decision we can see at the  
18 bottom of the page, last five lines:

19 "... after discussion it was agreed to pursue  
20 the first option, of distributing the bulk of the  
21 reserves through a targeted time-limited grants  
22 programme administered by MFT. Following this, any  
23 remaining reserves would be given to a third party  
24 charity for distribution in line with fixed criteria."

25 So that's July 2017. Was there any

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1 six months or so, and then given only a few weeks to  
2 complete and return their application forms.

3 Why those timings, which wouldn't give  
4 beneficiaries very much time to get themselves  
5 organised?

6 A. Personally, I think the deadline there was  
7 aspirational, to encourage beneficiaries to return --  
8 and, I think, in fact, it was a much longer process in  
9 the end to enable as many people as possible to  
10 participate fully.

11 What you have to remember is from July to  
12 November, the Trust had to basically transfer almost  
13 its entirety over to NHSBSA, and that was the focus.  
14 And in terms of the amount of money that was going to  
15 come from NHSBSA, it was very, very important that was  
16 going to be done correctly.

17 So, I mean, we're a small organisation that  
18 simply couldn't do everything all at once. And then  
19 by the time that changeover was completed, we'd lost  
20 most of our staff. It went smoothly, as far as I can  
21 remember, which was really, really important because  
22 that was where the regular money and other money was  
23 going to come from in the future, but then we only had  
24 two members of staff. We also had responsibility for  
25 winding down all the other trusts and organisations

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1 consultation with the beneficiary community about what  
2 you should do with the reserves?

3 A. There wasn't a direct discussion. There was, however,  
4 input from our user trustees who were very much aware  
5 of it. But this was seen as very much a two-phase  
6 thing which is, firstly, to do this option and then  
7 reconsider, when we saw how much money was left, as to  
8 what to do with the remainder.

9 Q. If we then go to MACF0000028\_006. So the document we  
10 looked at were the minutes, July 2017. We're now  
11 March 2018. This is a report from the chief executive  
12 and director of operations to the Board of Trustees.

13 If we go to the second paragraph, we can see it  
14 says:

15 "Beneficiaries were written to in the first  
16 week of January 2017 [that must, I think, be  
17 a mistake; it's 2018] and were given until  
18 26 February 2018 to complete and return their  
19 application forms along with at least two quotes for  
20 work required. Beneficiaries are informed the Trust  
21 would also consider grants towards work that had  
22 already been carried out."

23 So just in terms of the timing, from the  
24 preliminary decision in July 2007, it appears that  
25 beneficiaries weren't then contacted for some roughly

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1 within the Alliance House group as well.

2 Q. Then if we look at the nature of the grants  
3 programme -- we can see if we just go up the page --  
4 sorry, to the top of the page -- we can see from the  
5 heading of the document "Subject: specialist equipment  
6 and health and mobility-related repairs and  
7 improvements to property grants".

8 Can you recall why the one-off grant programme  
9 to use up reserves was focused upon health and  
10 mobility-related repairs, property and specialist  
11 equipment? There had already been a reserves  
12 programme in 2013/14 which was property based.

13 A. As I recall, there was an analysis paper presented by  
14 the staff which concluded that this would be the most  
15 effective way to use the reserves, that these were  
16 large -- likely to be large grants that were not going  
17 to be available under the new NHSBSA system and would  
18 be perhaps the best way to get as much of the money  
19 out of reserves in this period.

20 Q. Was any consideration given to perhaps running  
21 alongside it a further grants programme which could  
22 perhaps be more directly pitched at the bereaved  
23 community?

24 A. I can't remember if that was discussed.

25 Q. Then if we look at MACF0000028\_018. These are minutes

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from January 2018, and an update is being provided. If we just go further down the page a little, Soumik. Under the heading "Macfarlane Trust reserves grant", if you look at the second paragraph:

"JB advised the team had heard from various sources that beneficiaries were intending to boycott the grants programme. Questions are being raised regarding the application form, and some had claimed that it was too onerous to fill in. However, the form was the same as had been used previously and followed the same information requirements as had previously been used for standard grant applications."

Now, bearing in mind that the APPG report revealed people being concerned about the onerous nature of applications, why was the decision taken just to use the same form, which we see then give rise to the concern expressed here, rather than adapting something that could be applied for more simply and straightforwardly?

A. I'm afraid that's a question for the chief executive and the staff team. I do not recall that discussion.

I would add, though, that that deadline, as I say, was aspirational, and I know the staff team worked very hard to ensure that everybody who wanted to apply could apply.

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to a third party organisation?

A. At that point, we were under intense pressure to shut down, which was partly resource connected. We were going to lose our office. We were almost out of staff time and DH funding to finish the process of winding down, so it was felt there wasn't time to run another programme. By transferring, of course, the money doesn't disappear; the money is still there. And as far as I understand, it's still available for beneficiaries at this time.

Q. Is it correct that there was no consultation with beneficiaries in connection with the decision to transfer to the Terrence Higgins Trust?

A. It is correct. It was discussed. Again, it was felt there were time pressures that we could not undertake a meaningful consultation. I remember, there was also discussion and it was felt unlikely that we would achieve consensus and that there would be, you know, people who would be critical, no matter what form of winding down the reserves and passing them on we undertook.

Q. Was there any consultation or discussion with the Department of Health about the proposal to transfer either in principle to a third party organisation or specifically to the Terrence Higgins Trust?

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Q. Now, I don't think we have necessarily a clear and precise figure for the amount that was dispensed under the grants programme. It was somewhere between, I think, £400,000 and £650,000, but that left, as I understand it, a significant amount of money by way of reserves; is that right?

A. It left a reserve pot, yes.

Q. We can take the document down.

That reserve pot was transferred to the Terrence Higgins Trust.

A. Mm-hm.

Q. Before I ask you to look at a couple of documents, what's your recollection of why the decision was taken to transfer the assets of the Macfarlane Trust to the Terrence Higgins Trust?

A. As I recall, there was more money than perhaps we hoped left. Therefore, with the decision made to transfer to a third party, we were looking for an organisation that understood the issues, had a track record of helping in this area and we felt would be willing and able to take on the reserves because, obviously, we put a restriction on it, and many charities would not necessarily be able to do that.

Q. Why not distribute the remaining reserves directly to beneficiaries, rather than -- why transfer it at all

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A. The Department of Health were informed of our plans, but there was no discussion or consultation about it.

Q. What about the other devolved nations who would have contributed to the pot that made up the reserves? Was there any discussion or information provided to them?

A. Not to the devolved nations, but there was a discussion about the fact that they had contributed and this money should be available to all the devolved nations as well as England.

Q. Was any legal advice taken as to whether it would be within the powers of the Board of Trustees to allocate the money without requiring specific grants if there wasn't time for a further programme -- allocate the money to the beneficiary community?

A. There was legal advice taken throughout the winding-down process. I cannot remember if specific advice was issued on that issue.

I would also point to there is a precedent here which is MFET, which, in my understanding, had been set up to make non-discretionary payments because they could not be made through a charity.

Q. I can take you to the document if need be, but the Eileen Trust funds were, according to the documentation, apportioned amongst beneficiaries. Not necessarily with everybody receiving an identical

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amount, but apportioned according to an understanding of need.

Why could that course not have been taken with the Macfarlane Trust beneficiaries?

A. If there was an apportion of need, then there was potential for that to be done. But, again, I would point you to the timetable we had. That would have been a considerable process, not least as you remarked. That money had been accrued over 30 years and was not just geographically devolved nations involved, but also all our beneficiaries and their dependants, bereaved, et cetera, we would need to contact them and to organise a system that was fair and effective, and that would have taken some considerable period of time.

Q. You would have known, would you not, from March 2017 that this was something that might need to be done. Was there not the time at least to explore with beneficiaries how they might want to have these monies expended?

A. I think, with hindsight, that we had a very strict process for winding up all the Alliance House organisations. That then meant, in the end, we had too little time to consult fully enough at the end. And I think, with hindsight, it would have been better

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And then if we go over the page:

"As recorded in the minutes of the board meeting on 31 July, four options were discussed ..."

That's the document we looked at. And then you say this:

"As I recall, other potential ways of distributing the money had been considered, including the option of dividing the reserves equally between the beneficiaries. However, we were advised by the chief executive that this would not meet the definition of charitable need, and the board agreed with this analysis. A flat distribution of charitable funds would not meet the definition of charitable need ..."

And then reference made to the MFET.

Now, is it right to understand from this that this particular piece of advice emanated from the chief executive, rather than being a specific piece of legal advice?

A. The chief executive had taken legal advice around the options. As I say, I don't recall specific legal advice being tabled at that point. I do recall a discussion on the board on the issue.

Q. Then we can see that the issue that's being discussed there is flat distribution. It doesn't appear that

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to rework that process. But it was a process that it was -- was problematic there, rather than the outcomes.

Q. Was any consideration given to the particular sensitivities that might arise from transfer to the Terrence Higgins Trust in circumstances where those originally infected in the 1980s had been subjected to horrific stigma through HIV? Was any consideration given to how beneficiaries might react or any concerns they might have?

A. This issue was discussed, but there were two points raised about it. Firstly, there was a history of working with Terrence Higgins in the past. This was not a new thing. And, secondly, Terrence Higgins itself precisely works in this area, dealing with the stigma of HIV, and therefore was a great organisation for dealing with that issue.

Q. Then if we just go to your witness statement, please, Mr Murray. WITN3076002. Soumik, my version is not paginated, but it's six pages or so from the end, if that helps. Paragraph 123.

So we can see at the bottom, in paragraph 123, you say this:

"I'm asked to comment on the time limited grants programme ..."

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any consideration was given as to whether some kind of banded distribution might be a relatively straightforward and permissible way of disbursing the reserves to beneficiaries. Would that be right?

A. I think that's right.

Q. If we just look at MACF0000028\_019. So it's the board meeting, 26 March 2018. If we just go to the last page, please, Soumik, the very last paragraph at the bottom of the page, we can see there reference to a deed of gift from the Skipton Fund gifting the Macfarlane Trust their assets on closure.

Can you recall what those assets comprised from the Skipton Fund?

A. So with the other closures, it certainly wasn't money, as far as I'm aware. It may very well have been items in the office but I'm afraid I don't fully recall.

Q. Then if we go to MACF0000028\_018, we've already looked at this the minutes of the meeting on 29 January 2018. If we can now look at the bottom two paragraphs, you will see reference there to the Honeycombe Memorial Fund and the Wilson Empowerment Fund, and we can see there a decision taken to run a one-off, time-limited grants programme to disburse the remaining 40,000 or so in the Honeycombe Fund. Then in relation to the Wilson Fund, of which there was a much smaller amount

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left, 1,485 that would be apportioned across applications that met the studying and improvement criteria.

As far as you can recall, was the small Wilson Fund amount fully apportioned out?

A. I can't recall. I can recall the Honeycombe Fund wasn't.

Q. No, that's right. Then I think if we go to MACF0000028\_056, and we go to -- it's minutes of a meeting, November 2018. If we go to the third page, under the heading "Honeycombe Fund":

"Following receipt of an unrestricted donation, Trustees had designated this fund to provide support to widows and bereaved partners without children to achieve social financial independence."

Then there's reference to the final grants programme, but an outstanding balance of £27,000. We can see they were added to the general reserves which, as the Inquiry understands it, were then transferred to the Terrence Higgins Trust; is that right?

A. That's right, yes.

Q. Why was the remaining 27,000 not distributed to widows and bereaved partners?

A. For the same reason that we didn't choose that course of action with the main fund. By this stage, we

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formally been made."

Do we correctly understand that the Department of Health was informed of the Trust's direction of travel, in terms of its thinking, some time before beneficiaries were told?

A. That would seem correct, yes.

Q. Why was that?

A. To the best of my recollection, the feeling was that with still great uncertainty about the final outcome on that loans and nothing changing in the interim, that actually it would cause more angst and concern than sending a letter saying we may or may not do this.

Q. Is this correct, that there was no consultation with the beneficiaries concerned, prior to the Trust making the decision that what it would do would be to transfer the loans to the Terrence Higgins Trust?

A. That is correct.

Q. Why was that? There was only a small number of beneficiaries so it can't have been a problem of timing. Why not consult with those most directly affected?

A. Because, again -- yes, that's a good question. I'm not entirely sure why there was no consultation, apart from returning to the original issue that there was

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wouldn't have been able to, in the time we had left, and it was -- you know, it was a way to ensure this money would carry on and be available in the future.

Q. We can take that down, thank you. The penultimate topic I have is in relation to the transfer of the loans to the Terrence Higgins Trust. Now, we can, if necessary, go through the documents to look at timings but I'm hoping I can do it slightly more swiftly without the documents in relation to that.

There's just one document I want to ask you to look at, MACF0000061\_012, your letter, 30 November 2017 to Ailsa Wight. If we go to the third page, bottom of the third page -- sorry, it's Ms Barlow's letter, not your letter -- under the heading "Other":

"Only the Macfarlane Trust has made loans to beneficiaries."

Then she says, in the third line:

"... it is likely they will be assigned to another Third Sector organisation so that when the loans are eventually repaid, the funds received can be used for the benefit of the Trust's beneficiary community. Please note that this information is not in the public domain; we will write to the small number of beneficiaries affected when the decision has

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a feeling until there was certainty about what we were going to do that there was nothing really to consult on.

Q. I think it's right, we can look at the letters if need be, but you received letters, I think, from the Minister, Jackie Doyle-Price, expressing concern about the continuing uncertainty governing the outstanding MFT loans and the impact of that uncertainty upon the affected beneficiaries?

A. Indeed, I did, yes.

Q. Were any steps taken to alleviate that uncertainty in relation to the beneficiaries, that you can recall?

A. Well, yes. I mean, the steps we were taking were to, as quickly as possible, resolve the outstanding issues about the reserves and the loans and have the final solution that we could communicate.

Q. What, if any, consideration was given to the privacy of those who had taken loans which were secured on their properties, and the fact that the Terrence Higgins Trust would become the registered charge holder on Land Registry Office copy entries?

A. Well, I mean there was thorough legal advice taken around what information could and should be communicated, to enable THT to take on the loans, and I think no more than that information was transferred.

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1 Q. Forgive me, that's not quite the question I asked, but  
 2 the fault may be mine.  
 3 I understand that advice was taken about what  
 4 information might need to be transferred about the  
 5 beneficiary to the Terrence Higgins Trust. My  
 6 question's a slightly different one: Terrence Higgins  
 7 Trust is synonymous with HIV --  
 8 A. Yes.  
 9 Q. -- and so the Terrence Higgins Trust would now become  
 10 the registered charge holder on Land Registry Office  
 11 copy entries, which may be publicly accessible  
 12 documents. Was any consideration given to the impact  
 13 of that on beneficiaries?  
 14 A. I don't think that actually we (*unclear*) our team at  
 15 the time.  
 16 Q. You are aware that the Terrence Higgins Trust wrote  
 17 off all the remaining loans --  
 18 A. I am aware, yes.  
 19 Q. -- which was something that the Macfarlane Trust had  
 20 decided not to do. I'm not going to take you to the  
 21 detailed advice that the Terrence Higgins Trust took  
 22 and accepted in relation to that, unless you want me  
 23 to, but I know you've been sent it. Do you have any  
 24 reflections on that? With hindsight, do you think  
 25 that that's the course that the Macfarlane Trust

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1 further down the page, you'll see, on the left-hand  
 2 side, "Funds transferred to the Terrence Higgins  
 3 Trust" £1,160,620. So if you just keep that figure in  
 4 your head for a moment, please, Mr Murray.  
 5 Then if we go to the Terrence Higgins Trust  
 6 annual report 2019, so, Soumik, that's RLIT0000493,  
 7 and if we go to page 70, it's not very easy to read.  
 8 So these are the Terrence Higgins Trust's consolidated  
 9 financial statements as at 31 March 2019. It's in  
 10 alphabetical order, so if you look down the list, you  
 11 will get to Macfarlane Trust and, if you read across,  
 12 you will see the figure is 841,000.  
 13 A question has been raised, which I have been  
 14 asked to explore with you, as to whether you are able  
 15 to assist with why there's a difference. Does that  
 16 reflect the loans or is there some other reason?  
 17 A. I would assume that reflects the way they've treated  
 18 the loans, as different to the way we treated them,  
 19 because our 1.16 figure is all the assets that we made  
 20 over, which includes the loans. I think the loans  
 21 were in the region of £300,000, off the top of my  
 22 head, so that would explain it but I think you  
 23 probably need to speak to the accountants at either  
 24 end to clarify.  
 25 MS RICHARDS: Thank you.

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1 should have taken?  
 2 A. I think that this is an incredibly difficult issue  
 3 that I certainly struggled with and I believe the  
 4 Board struggled with, in terms of balancing  
 5 individuals' perception of fairness, with our sense of  
 6 a real fairness which is that only a number of  
 7 individuals had ever had access to the loans, lots of  
 8 people hadn't, and, just as importantly, a lot of  
 9 people had already repaid loans so how would they feel  
 10 if other people were having them written off.  
 11 I can't speak for the Board of THT's final  
 12 decision but, of course, it's starting from  
 13 a completely different place with different parameters  
 14 and a different organisation and I would say  
 15 I understand their decision.  
 16 Q. Final issue from me for now is just to see whether you  
 17 can assist us with what, at first blush, might look  
 18 like a discrepancy in the figures.  
 19 If we go to MACF0000263, please, Soumik. So  
 20 this is the annual financial report "for the cessation  
 21 period ended 31 January 2019" which, as I understand  
 22 it, is when the Trust finally closed. Can we go to  
 23 page 11.  
 24 So, this is the statement of financial  
 25 activities for the cessation period and, if we look

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1 Sir, those are the questions I have for  
 2 Mr Murray but obviously we need to give Core  
 3 Participants and their legal representatives the  
 4 opportunity to suggest any further ones.  
 5 SIR BRIAN LANGSTAFF: We will take a break. We'll say not  
 6 before 25 to 5, that gives you at least 20 minutes.  
 7 The reason why I'm putting it that way is it's  
 8 possible that there may be more questions for  
 9 Ms Richards to garner and consider than 20 minutes  
 10 would allow, so we will just say not before and we  
 11 will come back as soon as she is ready after that.  
 12 I imagine it probably will be 25 to 5. See you then.  
 13 You mustn't discuss the evidence you have given with  
 14 anyone in the interim.  
 15 A. Thank you.  
 16 (4.16 pm)  
 17 (A short break)  
 18 (4.41 pm)  
 19 MS RICHARDS: Mr Murray, I have a handful of questions  
 20 from Core Participants for you.  
 21 Could we go, please, to your witness statement.  
 22 Soumik, it's WITN00076002. It's four pages from the  
 23 end. Next page, please. Thank you. If we go to the  
 24 paragraph at the bottom of the page.  
 25 Mr Murray, I have been asked to ask you whether

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there was any ring-fencing of the funds transferred to the Terrence Higgins Trust, and I think you answer that here in paragraph 131 of your statement. You say six lines from the bottom:

"A restriction was placed on the funds [that's the funds transferred to Terrence Higgins Trust] so that they can be only used to support haemophiliacs who were infected with HIV as a result of contaminated NHS blood products, their spouses, partners and dependants."

First of all, is that correct? That's your understanding?

A. Yes. It's my understanding that we basically used our own trust deed as the parameters for that restriction.

Q. In relation to that bit of it, the £27,000 of it that that from Honeycombe Fund, was any particular restriction placed upon that 27,000 for it to be used for widows, or did it simply go into the overall pot and subject to the overall restriction?

A. There wasn't any particular -- any restriction for that. It went in the overall pot, but there was a feeling that the restriction we placed would include that within its parameters.

Q. We can take the statement down, thank you.

I've asked you in the course of the afternoon

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that was done because of the need to keep data open for the ability of the Inquiry, first and foremost. It was done in discussion with the Inquiry and in discussion with lawyers. So I'm afraid I don't know whether explicit consent. It may well have been that there wasn't explicit consent needed for that.

MS RICHARDS: I should say we do have written statements from I think Ms Barlow's successor which may assist in answering that question.

A. The interim CEO works incredibly hard around this difficult issue to try and make sure that it was done in a way that was -- protected data security but also enabled the Inquiry to do its work.

Q. Given the difficulties experienced from time to time, or perhaps all the time, in securing the required levels of funding from the Department of Health, was any consideration ever given, to your knowledge, to attempting to liaise directly with or approach directly the Treasury?

A. No, it wasn't. It was always communicated through Department of Health.

Can I just make an aside?

Q. Yes.

A. I have to say that would be unlikely to receive any particular benefit as it was Department of Health

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how the Macfarlane Trust during your time there ensured representation or participation from the wider registrant community, and I think your principal answer, not your sole answer but your principal answer, has been by reference to the board's user trustees.

A. Mm-hm.

Q. Without please identifying any trustee by name, were there any trustees, user trustees, from the bereaved community as opposed to primary beneficiaries?

A. Not to the best of my knowledge.

Q. And so was there any means by which the views and interests of the bereaved community were sought or communicated to the board?

A. Not directly through the board process, but these were -- you know, the staff team should have been in contact with the bereaved community as well and should have been able to bring matters to the Board.

Q. Next question is about the transfer of data from the Macfarlane Trust to the Skipton Fund when the Macfarlane Trust was closing down.

Can you assist with what consent was sought from beneficiaries in respect of the transfer of their data?

A. Whatever was legally deemed as necessary. I mean,

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money and, you know, the Treasury would only have allocated the whole budget to the Department of Health.

Q. On the issue of loans, I think you told us earlier that there had been some loans written off during your time before the winding up of the Macfarlane Trust. And then I asked you why the final loans were not written off, and you said it was because it was regarded as being unfair.

Why was it fair to write off some loans at an earlier stage but not write off the outstanding loans at the end?

A. I think some loans were written off because there were mistakes made in their execution. And some loans were written off because they weren't secured on property or secured in any way, and, therefore, there was no expectation they could be ever repaid.

Q. I don't know whether you can assist --

A. Sorry. Just as a reminder: many loans, in my understanding, were repaid.

Q. I don't know whether you can assist with the next question I must ask you, but I am going to ask it in any event and see.

How many people were registered with the Macfarlane Trust when it closed?

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1 A. I think it was about -- well, primary beneficiaries  
 2 I think was about 300. I'm afraid I don't know what  
 3 the wider community who had accessed funds were and  
 4 whether they are defined as registered or not.  
 5 Q. And then can we look, please, at MACF0000027\_119.  
 6 This is a report from the chief executive, so  
 7 from Ms Barlow to the Board of Trustees,  
 8 30 October 2017. Look at the fourth paragraph. It's  
 9 about the reserve grants programme. It says this:  
 10 "At the current time, the paperwork is written  
 11 as if intended only for beneficiaries infected  
 12 in England, Wales and Northern Ireland as they have  
 13 transferred to the new respective schemes from  
 14 1 November 2017. However, it's possible that we need  
 15 to open up applications to those infected in Scotland  
 16 as well, even though they transferred to the new  
 17 Scottish scheme on 1 April as the reserves were built  
 18 up during the years when it was a UK-wide scheme. I'm  
 19 currently taking legal advice on this. If we do need  
 20 to allow applications from those infected in Scotland,  
 21 it's anticipated it will be more difficult for these  
 22 individuals to demonstrate charitable need as the  
 23 level of payments they receive under the new Scottish  
 24 scheme are considerably higher than those in the other  
 25 three UK countries."

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1 that THT is open to discussion on how best to use it.  
 2 Q. During the period you were involved with the  
 3 Macfarlane Trust, do you know what, if any, work was  
 4 undertaken with the Terrence Higgins Trust?  
 5 So, first of all, prior to the decision to  
 6 transfer the monies, you had referred to some previous  
 7 involvement with the Terrence Higgins Trust. Was that  
 8 still ongoing at the time you were at the Trust?  
 9 A. I believe it was before I was at the Trust. I think  
 10 there is a reference in our minutes to when that was,  
 11 but I'm afraid I can't remember off the top of my  
 12 head.  
 13 Q. Then as part of the decision to transfer the reserves,  
 14 do you know what interactions took place between the  
 15 Terrence Higgins Trust and the Macfarlane Trust, in  
 16 terms of the transfer?  
 17 A. So, principally, there was communication between the  
 18 interim CEO and the Terrence Higgins Trust CEO. The  
 19 interim CEO would report it back to us, and I think  
 20 that is contained in the sets of minutes in the autumn  
 21 and winter of '18.  
 22 Q. The next question is still about Terrence Higgins  
 23 Trust.  
 24 Do you know whether widows were informed that  
 25 they could make claims on the funds of the Terrence

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1 Do you know how this was resolved? Was the  
 2 scheme opened up to include Scottish beneficiaries?  
 3 A. I'm afraid I can't remember, and so there must be  
 4 legal advice on the outcome and some reference to it  
 5 further on, but I can't remember it.  
 6 Q. Again, perhaps I can say for the benefit of those Core  
 7 Participants who have a particular interest in this,  
 8 I think we will be able to find the answer in the  
 9 paperwork, and we can hopefully communicate that  
 10 answer to them.  
 11 More broadly relating to the question of what  
 12 was done with the reserves, you've said there wasn't  
 13 enough time to run another grants programme or to  
 14 consult.  
 15 Was any consideration given to asking the  
 16 Department of Health to extend the timetable for the  
 17 winding up of the Macfarlane Trust in order to ensure  
 18 that all avenues for distribution were properly  
 19 examined?  
 20 A. They weren't, and I think the reason for that is we  
 21 were under considerably pressure to close down, and  
 22 there was no expectation given that we could have  
 23 possibly asked for that.  
 24 The other fact is that by doing a transfer,  
 25 that money is still alive and available, and I believe

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1 Higgins Trust?  
 2 A. I don't know they were specifically informed, but  
 3 also, I'm not aware that they were, you know, not  
 4 informed, if you see what I mean. There was a letter  
 5 written about the transfer which was done by the  
 6 remaining staff, the interim CEO and director of  
 7 operations. I can't say I know precisely what the  
 8 mailing list was there. I imagine it was fairly wide.  
 9 Q. Was the possibility of transferring the reserves of  
 10 the Macfarlane Trust to The Haemophilia Society  
 11 considered at any time?  
 12 A. It was mentioned briefly as one option.  
 13 Q. Why was it not pursued?  
 14 A. There wasn't any enthusiasm within the Board for that  
 15 option.  
 16 Q. Was that because of the fall-out between the two  
 17 charities in the aftermath of the alleged libel by The  
 18 Haemophilia Society's chief executive?  
 19 A. I don't think that was specifically referenced but one  
 20 would imagine that that would have some impact on  
 21 people's views. I would also just note that there are  
 22 at least two members of the Board, who had served as  
 23 The Haemophilia Society trustees and therefore had  
 24 very good knowledge of the organisation.  
 25 MS RICHARDS: Sir, those are the further questions I've

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1 been asked to ask. Do you have questions, sir?

2 **Questions by SIR BRIAN LANGSTAFF**

3 **SIR BRIAN LANGSTAFF:** Well, just one really. It follows  
4 from the questions you've just been asked about the  
5 transfer of funds and your telling counsel that you  
6 didn't have very much time and therefore didn't take  
7 steps which, if you had had time, you might have  
8 taken.

9 **A.** Not just -- sorry.

10 **SIR BRIAN LANGSTAFF:** Go on.

11 **A.** Not just time, resource as well. As I think I said,  
12 you know we were on skeleton staff by this stage.

13 **SIR BRIAN LANGSTAFF:** That's what I was going to ask --

14 **A.** Oh, sorry.

15 **SIR BRIAN LANGSTAFF:** -- just to be clear. No, you have  
16 answered it, in a sense. The Trust, as such, was  
17 independent of Government, so it couldn't be closed  
18 down as a formal act, closing down the Trust, that  
19 would follow.

20 **A.** Yes.

21 **SIR BRIAN LANGSTAFF:** But the staff who are employed  
22 weren't employed by Macfarlane at all, were they?

23 **A.** They were transferred -- when Caxton, who held the  
24 employment contracts, was closed they were transferred  
25 over to Macfarlane Trust.

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1 **SIR BRIAN LANGSTAFF:** Yes, I see. Well, I think you have  
2 answered the question which was in my mind as to why  
3 you didn't simply go on until you consulted and  
4 decided what to do with the funds. The answer would  
5 presumably be that there would be less funds to give  
6 away because they had been used up paying staff.

7 **A.** Absolutely.

8 **SIR BRIAN LANGSTAFF:** Was it ever rationalised in that  
9 way?

10 **A.** To whom, sir?

11 **SIR BRIAN LANGSTAFF:** Internally?

12 **A.** Yes. I mean, it was understood that we had to move  
13 really rather quickly, quicker than perhaps we would  
14 have liked. I would add again that I did say earlier  
15 that, with the benefit of hindsight, there was  
16 a process put in place in '17, that could have been  
17 rewired to have perhaps done a bit more earlier but we  
18 were under intense pressure with limited staff to do  
19 an awful lot of things, not just in Macfarlane, as  
20 I say but the staff of other Trusts as well.

21 **SIR BRIAN LANGSTAFF:** Yes, I see. That's all I ask.

22 Thank you.

23 **MS RICHARDS:** Mr Murray, is there anything that you wish  
24 to add?

25 **A.** No, thank you.

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1 **SIR BRIAN LANGSTAFF:** So they did work for Macfarlane?

2 **A.** At that point, yes.

3 **SIR BRIAN LANGSTAFF:** Who financed their employment?  
4 Obviously it would come out of Macfarlane funds but  
5 the funds, presumably, for their continued employment  
6 would come from the Department?

7 **A.** Yes, indeed. It was agreed with the Department of  
8 Health who initially, again, had hoped we could wrap  
9 up even quicker than we did but, in reality, partly  
10 because of the lease, which was only due to expire in  
11 February 2019, after which we would have no premises,  
12 but also the reality of shutting down five  
13 organisations is really complex and challenging, but  
14 we needed more funding to cover that time because the  
15 only alternative would be to use the reserves to do  
16 that final work.

17 **SIR BRIAN LANGSTAFF:** Is this the position, if you had had  
18 time, you would have had to effectively buy that time  
19 by paying the staff salaries in the meantime?

20 **A.** Absolutely.

21 **SIR BRIAN LANGSTAFF:** So you could have done it but it  
22 would have come at a cost which the Government,  
23 because they were the sole funder, wouldn't repay,  
24 would that be right?

25 **A.** The Government were clear that we needed to shut.

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1 **SIR BRIAN LANGSTAFF:** Well, can I thank you very much,  
2 Mr Murray. You've filled in the gap, as it were, from  
3 the evidence that we have already had -- we've had it  
4 covered in part by Ms Barlow but not from the point of  
5 view of a chair of the Macfarlane Trust -- between the  
6 ending of Mr Evans' term and the transfer over of  
7 assets that remained to the Terrence Higgins Trust.

8 Can I thank you for that. Can I thank you also  
9 for your patience in bearing with us for a late start  
10 and it follows, I'm afraid, a rather later finish than  
11 you might have hoped for. So I hope it hasn't  
12 disrupted your evening too much but thank you for that  
13 and for the information you have given us and your  
14 explanations as we have gone along. Thank you.

15 **A.** Thank you. I hope I was helpful, sir.

16 **MS RICHARDS:** Sir, tomorrow 10.00, we have the evidence of  
17 Susan Daniels.

18 **SIR BRIAN LANGSTAFF:** Yes, it's just Ms Daniels tomorrow.

19 **MS RICHARDS:** It is, yes.

20 **SIR BRIAN LANGSTAFF:** Very well, 10.00 tomorrow. Thank  
21 you.

22 (4.57 pm)

(Adjourned until 10.00 am the following day)

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<b>H</b>	<b>helping in</b> [1] 146/20	161/8	46/12 46/14 47/12	43/15 48/16 50/2 58/9	<b>I may</b> [5] 53/1 55/9
<b>heading...</b> [20] 28/6	<b>helps</b> [3] 97/12 97/13	<b>hm</b> [2] 146/11 162/7	78/19 80/2 80/3 99/1	59/19 60/2 61/4 62/20	56/14 82/17 97/5
55/21 56/23 57/2 57/4	150/21	<b>hold</b> [2] 26/19 91/12	157/18 164/22	77/10 77/23 77/25	<b>I mean</b> [26] 37/11
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21/16 23/2 23/14 24/2	<b>here</b> [15] 27/9 34/11	<b>honestly</b> [1] 95/11	106/24 110/24 119/5	151/21 152/16 157/14	<b>I meant</b> [1] 81/13
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48/10 60/10 64/3 68/5	<b>herself</b> [1] 139/10	153/11 161/16	166/25	<b>I exhibited</b> [1] 33/10	<b>I need</b> [4] 41/25 45/9
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76/9 76/14 76/19	88/6	153/11	9/14 15/4 15/9 16/13	<b>I expressed</b> [1] 60/2	<b>I never</b> [2] 4/22 45/6
78/24 82/2 82/5 82/7	<b>Higgins</b> [30] 140/7	<b>hope</b> [8] 1/6 22/4	17/10 23/23 39/17	<b>I feel</b> [1] 17/10	<b>I note</b> [2] 49/23 79/13
82/9 85/8 89/11 89/12	140/24 146/10 146/15	33/16 75/22 80/4	55/10 58/9 60/2 65/10	<b>I felt</b> [8] 5/5 11/18	<b>I noticed</b> [1] 32/9
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106/2 106/5 106/11	154/6 155/17 156/20	146/17 170/8 172/11	143/20 148/22 153/6	<b>I fully</b> [2] 25/22 94/24	<b>I point</b> [1] 137/19
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109/3 109/7 110/14	159/5 159/8 161/2	<b>horrific</b> [1] 150/8	10/1 13/2 26/21 41/14	5/5 25/7 34/18 34/19	<b>I propose</b> [1] 89/15
110/21 114/20 114/22	161/6 167/4 167/7	<b>hostility</b> [1] 39/23	48/13 53/19 57/23	41/7 60/1 74/11 78/16	<b>I quote</b> [2] 9/24 17/12
115/8 117/4 117/13	167/15 167/18 167/22	<b>hour</b> [1] 140/16	59/6 59/19 61/5 63/6	92/3 92/6 121/18	<b>I realise</b> [1] 75/14
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137/23 138/1 138/11	<b>higher</b> [4] 43/23	99/7 115/17 134/5	86/23 95/1 99/20	<b>I have</b> [22] 2/23 3/6	59/7 64/23 77/23
144/6 144/9 147/23	118/10 120/21 165/24	135/3 135/10 136/1	108/2 119/8 121/3	5/21 8/6 25/21 48/23	<b>I recall</b> [7] 56/16
148/1 155/3 163/16	<b>highest</b> [1] 48/25	136/25 137/5 137/7	127/15 128/15 130/12	76/14 79/11 80/10	83/13 83/20 83/25
163/21 163/25 164/3	<b>highlight</b> [1] 29/1	137/12 137/15 144/1	144/24 153/6 158/11	80/11 83/4 89/15	96/19 126/8 146/16
166/16 170/8	<b>highly</b> [4] 20/18 47/23	149/22	166/3 166/5 167/11	92/21 95/20 99/1	<b>I refer</b> [3] 9/23 29/2
<b>Health's</b> [2] 116/21	106/10 131/15	<b>household</b> [2] 126/25	168/7	130/15 154/5 159/13	97/5
134/6	<b>him</b> [9] 12/13 13/4	127/25	<b>I cannot</b> [5] 25/22	160/1 160/19 160/25	<b>I referred</b> [1] 33/25
<b>hear</b> [10] 1/5 2/5 15/1	34/13 34/25 37/8	<b>how</b> [35] 3/16 4/17	53/2 69/4 88/5 148/16	163/24	<b>I remember</b> [3] 85/9
15/4 15/4 16/11 16/12	39/19 40/2 74/11	15/6 16/18 22/1 28/10	<b>I certainly</b> [1] 77/24	<b>I haven't</b> [2] 65/16	127/14 127/15
75/14 91/25 98/22	74/13	28/24 36/15 49/2 61/4	<b>I conducted</b> [1] 107/9	96/22	<b>I repeat</b> [1] 7/11
<b>heard</b> [7] 13/21 13/23	<b>himself</b> [1] 26/17	61/5 65/6 68/13 70/1	<b>I could</b> [1] 52/12	<b>I hear</b> [2] 75/14 91/25	<b>I retired</b> [1] 72/17
24/6 34/18 71/1	<b>hindsight</b> [5] 133/18	86/23 90/17 91/23	<b>I couldn't</b> [2] 44/9	<b>I honestly</b> [1] 95/11	<b>I revised</b> [2] 35/8
103/20 145/5	149/21 149/25 157/24	92/4 97/14 106/17	119/4	<b>I hope</b> [7] 1/6 22/4	38/10
<b>hearing</b> [2] 79/10	171/15	106/18 109/12 113/25	<b>I did</b> [12] 5/7 10/1	75/22 80/4 120/17	<b>I right</b> [2] 1/13 17/7
122/22	<b>his</b> [34] 13/4 25/20	121/3 126/12 126/14	10/2 13/13 39/25	172/11 172/15	<b>I said</b> [7] 21/22 22/5
<b>hearsay</b> [1] 75/15	25/20 30/23 34/22	140/14 142/7 149/19	77/24 106/25 109/2	<b>I imagine</b> [2] 160/12	41/15 52/23 79/2
<b>heating</b> [1] 67/12	34/23 35/18 39/18	150/9 158/9 162/1	118/17 121/8 156/10	168/8	82/18 169/11
<b>heavily</b> [1] 102/7	39/22 47/24 49/18	164/24 166/1 167/1	171/14	<b>I joined</b> [3] 114/16	<b>I saw</b> [2] 3/2 92/21
<b>held</b> [5] 66/5 114/4	61/24 62/4 63/14 72/3	<b>however</b> [8] 18/9 97/7	<b>I didn't</b> [4] 15/4 82/6	123/1 123/20	<b>I say</b> [5] 97/6 127/8
116/11 123/23 169/23	72/8 72/19 72/25	120/4 135/13 142/3	94/14 118/21	<b>I just</b> [9] 8/1 11/14	145/23 151/21 171/20
<b>Helena</b> [1] 13/15	74/10 74/14 74/20	145/9 151/9 165/14	<b>I discovered</b> [1] 3/17	12/11 22/21 46/7	<b>I sent</b> [1] 35/8
<b>help</b> [12] 25/10 53/15	75/1 75/3 75/20 81/10	<b>HSOC0028245</b> [1]	<b>I do</b> [17] 7/21 9/12	56/17 85/18 104/13	<b>I shall</b> [2] 80/5 97/15
58/13 59/4 62/3 72/13	81/11 81/12 81/16	22/9	25/14 26/24 30/22	124/24	<b>I shan't</b> [1] 95/16
86/17 87/3 92/13	81/23 90/2 90/6 91/3	<b>Hunt</b> [2] 71/17 89/22	37/23 39/11 40/13	<b>I keep</b> [1] 58/1	<b>I should</b> [6] 6/25
95/13 97/14 107/7	91/22 99/25		45/4 59/13 79/25	<b>I knew</b> [2] 3/9 41/9	46/21 49/21 84/4 95/2
<b>helped</b> [1] 25/10	<b>history</b> [2] 52/2	<b>I</b>	86/16 116/22 119/4	<b>I know</b> [8] 34/23 57/25	163/7
<b>helpful</b> [6] 63/14	150/12	<b>I actually</b> [1] 110/2	120/11 145/21 151/22	72/15 77/22 131/11	<b>I still</b> [1] 93/18
64/23 72/22 87/1	<b>HIV</b> [14] 4/14 18/7	<b>I also</b> [4] 13/13 45/24	<b>I don't</b> [60] 6/25 9/14	145/23 157/23 168/7	<b>I suggested</b> [1] 37/23
102/17 172/15	18/9 62/1 76/24 77/5	121/20 123/8	16/18 22/11 23/23	<b>I leave</b> [1] 96/3	<b>I suppose</b> [1] 79/6
<b>helping</b> [1] 146/20	78/18 81/1 81/2 85/13	<b>I always</b> [1] 40/1	24/5 29/2 33/8 35/13	<b>I look</b> [1] 50/15	<b>I then</b> [1] 41/17
	150/8 150/16 157/7	<b>I am</b> [11] 2/6 8/18	39/22 41/8 41/25	<b>I made</b> [1] 77/15	<b>I think</b> [143] 1/18 2/15

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<p><b>I</b></p> <p><b>I think...</b> [141] 3/3 4/1 4/16 5/16 5/18 6/9 6/17 7/8 9/24 12/25 13/5 14/13 19/5 20/12 21/9 21/11 21/17 21/19 22/13 25/6 25/7 25/17 27/12 27/19 28/19 31/25 32/10 32/14 32/25 34/11 36/6 36/22 37/2 37/4 39/20 40/19 42/24 44/20 46/3 46/25 47/10 48/2 50/22 51/4 52/10 53/24 55/2 55/15 55/15 56/11 56/12 58/2 58/9 60/24 65/23 69/13 70/9 71/1 75/12 75/15 75/24 76/16 78/20 79/9 81/13 81/25 82/17 83/1 85/2 85/9 85/11 87/13 87/20 88/4 88/9 89/23 90/7 91/21 93/1 95/17 96/14 96/21 98/11 99/19 102/25 104/5 104/22 106/4 106/18 107/9 107/13 108/5 108/9 110/1 112/1 112/20 112/21 114/17 115/4 118/23 120/16 120/25 121/1 122/4 122/23 122/24 123/7 123/19 123/23 124/10 124/21 126/9 129/6 132/15 133/2 133/17 136/4 136/7 138/10 141/17 142/16 143/6 143/8 146/4 152/5 153/8 156/5 156/25 159/20 159/22 161/2 162/3 163/8 164/4 165/2 166/8 166/20 167/9 167/19 169/11 171/1</p> <p><b>I think, with</b> [1] 149/25</p> <p><b>I thought</b> [5] 3/9 3/10 11/16 26/22 93/13</p> <p><b>I took</b> [1] 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