

Thursday, 4 March 2021

(10.00 am)

SIR BRIAN LANGSTAFF: Good morning, Mr Evans.

THE WITNESS: Good morning.

SIR BRIAN LANGSTAFF: You can hear me then obviously. You can see me as well.

THE WITNESS: I can hear you very well.

SIR BRIAN LANGSTAFF: Let me tell you who you are speaking to. There is a room here with eight people in it. There are three members of the legal team and four members of the staff, apart from me, one of whom is Soumik, whose job it is to make sure that you get the right document and sometimes the highlighted parts of it when counsel asks you questions about it.

Beyond us, there are something like 200 or so people who are interested to watch. The number may fluctuate throughout the day but it will be about that or just over 200 for most of the time. So you are not just speaking to us, you are speaking to them, and amongst them there are a number of legal representatives whose job it is to listen, represent their clients' interests, and in due course they may suggest questions to counsel for you to be asked.

Now, you are at home are you?

A. I am, yes.

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your capacity as chair of the Macfarlane Trust later on?

A. Yes, I'd go from time to time to deal with and discuss sort of strategic financial allocation issues and suchlike but I would leave before any decisions or discussion took place on specific applications.

Q. You were also involved in setting up the Caxton Foundation. You were one of three founding trustees.

A. Yes.

Q. You stood down from that role, is this right, in early 2012, on being appointed chair of the Macfarlane Trust?

A. Correct, yes.

Q. Why was it thought appropriate for you to cease being a trustee of the Caxton Foundation at that point?

A. Well, my fellow trustees on the Macfarlane Trust, who were responsible for selecting and appointing me, asked if I would be prepared to stand down from the Caxton if I were appointed as chair because of -- they perceived there could be potentially some conflicts of interest.

Q. Did you agree with their position?

A. I agreed to stand down, yes.

Q. But did you share their view that there could be

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SIR BRIAN LANGSTAFF: Are you there on your own?

THE WITNESS: Yes, and I shall be all day and also tomorrow and tonight.

SIR BRIAN LANGSTAFF: Do you have a Bible with you?

THE WITNESS: I do, yes.

SIR BRIAN LANGSTAFF: Mary will now ask you to take the oath.

ROGER EVANS, sworn

Questions by MS RICHARDS

MS RICHARDS: Mr Evans, can you see and hear me?

A. Yes, very well, thank you, Ms Richards.

Q. You were appointed a trustee of the Macfarlane Trust in October 2006; is that right?

A. Yes.

Q. You remained a trustee, becoming chair of the Macfarlane Trust in 2012.

A. Yes.

Q. Then you stood down as trustee and chair in May of 2016?

A. Yes.

Q. During the period when you were trustee, you were a member of the NSSC for I think roughly a couple of years, 2007 to 2009 or thereabouts; is that right?

A. Thereabouts, yes.

Q. You also attended NSSC meetings from time to time in

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a conflict or the appearance at least of a conflict of interest?

A. I don't know if I ever expressed a view but I thought there was some benefit in having a trustee who was on both boards. It might have been helpful to have had someone other than myself as a chair on Caxton Foundation when I stood down, but I don't think even when I was a chair I ever -- I don't recall expressing that view or discussing it.

Q. Your background was in NHS management; is that right?

A. Correct.

Q. Your statement tells us you spent some 37 years as an NHS manager. Your senior roles were between 1982 and 1990 at St George's Hospital, when you were unit general manager and chief executive, and then 1992 to 2000 you were chief executive of the Mid-Kent Healthcare NHS Trust; is that correct?

A. That's correct.

Q. Then you explain in your statement that after leaving your post as chief executive of Mid-Kent Healthcare NHS Trust in 2000, you undertook a range of healthcare consultancy work with the NHS and Central Government?

A. Correct.

Q. That included reviews of what you describe as major service changes which you undertook on behalf of the

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1 Department of Health, and your statement says you have
 2 undertaken 58 of those reviews for the Department of
 3 Health in England and Northern Ireland; is that right?
 4 A. That's correct, yes.
 5 Q. So is this correct, that whilst you were a trustee of
 6 and then chair of the Macfarlane Trust, you were also
 7 undertaking the consultancy work for the Department of
 8 Health?
 9 A. Yes.
 10 Q. Did you consider that your experience of working for
 11 the NHS made you well equipped to undertake a role at
 12 the Macfarlane Trust?
 13 A. Yes, I did.
 14 Q. Why is that?
 15 A. Well, I think for several reasons. One is that I --
 16 I was also, incidentally, involved with some other
 17 charities, so I had sort of two branches to my
 18 experience. I had experience and knowledge of working
 19 with organisations in the public service and how they
 20 should operate and interrelationships and suchlike
 21 and, although I was not working -- although I had had
 22 a little bit of contact, although I wasn't working
 23 with the civil servants associated with blood
 24 products, I had a pretty good understanding of the way
 25 the Department of Health worked and operated and how

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1 the amount of work I was doing within or for the
 2 Department of Health was negligible and anything I did
 3 was, as far as I recall, predominantly with the office
 4 in Leeds rather than the one in London.
 5 Q. How did you come to be appointed as a trustee in 2006?
 6 What was the process as far as you recall?
 7 A. Well, I had a phone call from a recruitment agency
 8 asking if I would be interested in being the chair of
 9 the Macfarlane Trust and they probably told me just
 10 a little bit over the phone about what it was. I did
 11 some of my own research afterwards and I remembered
 12 just a little bit about what had happened in the
 13 1980s, and it seemed to me that it was an area I would
 14 be very interested in trying to help a group of people
 15 who had maybe not been dealt with well in the past.
 16 And I thought, with the experience I had and suchlike,
 17 I had a certain empathy and confidence I could be of
 18 help.
 19 So having expressed that interest and having
 20 had a meeting, informal meeting, with the recruitment
 21 agency, I was -- then saw Peter Stevens, who was the
 22 chair of Macfarlane Trust at the time, and we had
 23 a discussion about it. I decided I would go ahead
 24 with my interest. I think I was interviewed by two or
 25 three, probably three, of the trustees, but I may have

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1 to engage in the most effective way with them.
 2 Q. Did you consider whether it might be a disadvantage to
 3 be so closely associated with the NHS, given that the
 4 Macfarlane Trust's purpose was to assist those who had
 5 been injured by their NHS treatment?
 6 A. Well, I probably thought about it but I didn't see
 7 that as being a particular issue. As I understood it,
 8 the issues the Inquiry is particularly concentrating
 9 on regarding what happened to these boys and young men
 10 was nothing associated with any parts of the NHS where
 11 I'd ever worked, either then or subsequently.
 12 Q. You say in your statement that for the duration of
 13 your time as a Macfarlane trustee and chair you had
 14 a heavy paid consultancy portfolio. Did that impact
 15 upon your ability to devote sufficient time to either
 16 the Macfarlane Trust or the Caxton Foundation, in your
 17 view?
 18 A. No. During the time I was a trustee, I was -- had
 19 a much more heavy, if that's the right word, schedule
 20 of work than I did when I became the chair. I think
 21 I explained in my interview for the chair that I was
 22 running down my consultancy work at that stage. So
 23 I can't recall any occasion when there was a conflict
 24 of time between wanting to do Macfarlane Trust work or
 25 any other associated issues I had. Certainly by then

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1 got that slightly wrong. But I think I did have that
 2 sort of interview.
 3 I was told at the time that there was somebody
 4 else who was interested in being the chair but he was
 5 not prepared to take it on because -- "until",
 6 I quote, I remember what Peter said, "until the
 7 finances were sorted out at the Macfarlane Trust". So
 8 then a decision was made by the trustees to appoint
 9 somebody else as the chair and I was then asked if
 10 I was prepared to be a trustee and not the chair, and
 11 I readily agreed to that, which fitted in -- I did not
 12 know there was a possibility of just a board member.
 13 It fitted in very well with the work and et cetera
 14 I was doing at the time. So I was very pleased to
 15 take that on.
 16 Q. At the time that you were appointed and took up your
 17 role as a trustee, what did you know about the events
 18 that had led up to the establishment of the
 19 Macfarlane Trust?
 20 A. Well, when I was first approached by the consultant,
 21 I could remember nothing but, given my NHS background
 22 and sort of interest in public affairs generally, it
 23 just nudged in my mind that there was -- something had
 24 happened back in the 80s. I then did a bit of
 25 research on the internet and found out a bit more

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1 about what they did. And certainly Peter was
2 extremely helpful, Pete Stevens, when I saw him, where
3 he elaborated on that to me. And probably round about
4 that stage I found out a lot more about what the role
5 of the Macfarlane Trust was and, prior to that, my --
6 let me call it my homework had been largely about
7 finding out about the beneficiary community.

8 Q. Can you recall what, if any, information you were
9 given when you started as trustee about the history of
10 the establishment of the Macfarlane Trust and its
11 funding position?

12 A. Well, I would have been briefed by Peter and
13 probably -- it's a long time ago -- probably
14 Martin Harvey, who was the chief executive at the
15 time. And my recollection, if my memory serves me
16 correctly, was that it was explained to me that those
17 funds were available to give financial support to the
18 beneficiary community who we were serving.

19 I can't remember the sequence of information
20 but, certainly early on, I was informed about a lump
21 sum being available initially, and after that the
22 Trust was designated or set up to be able to give
23 ongoing support in certain ways to the community.

24 Q. Were you provided with any information about the views
25 or attitude of the beneficiary community towards the

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1 all, as trustee?

2 A. Well, soon after I was appointed a trustee, I was
3 asked to -- probably second or third board meeting if
4 I would like to be a member of the NSSC, which
5 I became. So those were monthly meetings. There was
6 a certain amount of work between the meetings when
7 there were urgent cases to be considered, with phone
8 calls and probably emails and stuff. The Board used
9 to meet I think only quarterly at that time. Not too
10 long afterwards, I was asked to do certain other
11 things, mainly with the long-term strategy, which
12 we'll probably come on to.

13 Q. Then as chair, what, broadly speaking, were your
14 primary responsibilities when you became chair
15 in 2012?

16 A. Well, they were overseeing the way in which the
17 Macfarlane Trust operated, ensuring that we
18 complied with the terms with which the Trust was set
19 up, engaging with the beneficiary community as far as
20 that was possible, but without standing on the toes of
21 the chief executive, and making sure money was spent
22 properly and to be the sort of the frontis -- face
23 piece of the Trust. In some respects it was a fairly
24 typical role of being chair of a charity; in other
25 ways, because of the uniqueness of the

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1 Macfarlane Trust?

2 A. I was probably -- if my memory serves me correctly,
3 I was probably briefed by Peter at that stage,
4 Peter Stevens. I was not given anything in writing
5 about it but I -- early on I certainly got the
6 distinct impression that it was a lot of --
7 justifiably -- people who felt they'd been very badly
8 dealt with, and inevitably, maybe, many of them still
9 were -- are bearing some feelings about that.

10 Q. As far as you can recall, was there any kind of formal
11 training or induction process for new trustees at that
12 time?

13 A. No, I don't think there was. But I did feel I was
14 quite well -- let's use the word "inducted", but
15 I never felt early on that I did not know enough but,
16 as with the complexity of something like the
17 Macfarlane Trust, I was learning all the time.

18 Q. In terms of the trust deed, do you recall being told
19 about, shown a copy of the trust deed and discussing
20 what the trust deed meant, what the Trust's powers
21 were at any early stage?

22 A. I don't recall being shown that but it is possible
23 I was. But I can't remember -- 15 years later I can't
24 remember.

25 Q. What, broadly, were your responsibilities, first of

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1 Macfarlane Trust, there were other aspects to it.

2 Q. We may come back to some of those as we consider some
3 of the evidence and documents.

4 What did you understand to be the primary
5 responsibilities of the Trust's chief executive?

6 A. Well, I thought of the chief executive role as being
7 the operational one, running the Trust on a day-to-day
8 and ongoing basis, to report in to me and the Board as
9 a whole, to support the Board and to make sure we
10 fulfilled what we were set up to do. It was
11 a difficult time when I became chair, from that point
12 of view, because Martin Harvey had had quite a lot of
13 time off sick. The poor man was very ill and, not too
14 long after I was appointed as chair, he retired and
15 not too long after that he died. So there was -- we
16 did not have a deputy. That's not the way it
17 operated.

18 So there was a need for some time before
19 Jan Barlow came into post to probably become involved
20 in certain areas which a chair would not normally do,
21 in order to give support to the staff.

22 Q. Is this correct: after Martin Harvey had to step down,
23 the Macfarlane Trust did not, as I understand it from
24 the minutes, appoint an interim chief executive the
25 next person to hold post was Ms Barlow?

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1 A. That's correct.

2 Q. The minutes suggest that you would effectively be

3 attempting to perform some of the responsibilities of

4 the chief executive in that interim period?

5 A. Well, before I became the chair, when Martin first

6 went off, I think he went off on sick leave on at

7 least two occasions, but he was off for a long time

8 but Christopher FitzGerald, shall we say, held the

9 shop. He covered whilst Martin was away. Martin came

10 back and then he went off again, and after that I --

11 around about that time I became the chair. So

12 I really -- and it worked out well when Christopher

13 was covering.

14 So I decided, or the Board decided, that we

15 would run without appointing someone in as an interim,

16 I think for several reasons. One is that bringing

17 someone in from outside who had no knowledge of the

18 culture, really, of the Macfarlane Trust and the

19 beneficiaries we were dealing with would probably not

20 work well.

21 Q. Is this also correct that the Caxton Foundation, by

22 contrast, did appoint an interim chief executive and

23 there was some concern expressed in the Macfarlane

24 Trust minutes, at least, about the costs associated

25 with that?

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1 a recommendation to them.

2 Q. Was there any attempt to ensure a degree of

3 representation on the Macfarlane Trust Board from

4 Scotland or Wales or Northern Ireland?

5 A. No, there wasn't. We looked for people with the right

6 qualifications -- with the right experience or skills

7 to come on. But we had -- for a number of years we

8 had a trustee who was in Scotland, we had one from

9 Northern Ireland certainly early on, I cannot recall

10 whether we had one from Wales. But, sorry, what

11 I should have said just now, which I think might be

12 helpful, is we were -- I can't remember if it's --

13 I think it in the constitution but, certainly, we

14 always had a direct -- a doctor who was a director

15 from a haemophilia centre, so that was one of,

16 I think, the three Macfarlane Trust appointees, and we

17 also had someone who was involved with the social work

18 services in one of the centres as well. We didn't

19 have a social worker but Elizabeth Boyd, who was the

20 member for a long time worked in the centre and she

21 certainly brought a lot of knowledge and experience to

22 us. So I should have said that before.

23 Q. You have described to us the way in which you learnt

24 about the Trust and its work, primarily from

25 a combination of your own research and information

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1 A. That's correct. But the Macfarlane Trust did not meet

2 any of the costs of the Caxton interim chief

3 executive.

4 Q. What involvement broadly did you have between 2006 and

5 2016 in the appointment of trustees to the

6 Macfarlane Trust?

7 A. Well, we had nine trustees. Three were appointed by

8 The Haemophilia Society and I was not involved in

9 their appointments, although latterly, when I was the

10 chair, the then -- Bernard Manson, the chair of The

11 Haemophilia Society invited me to sit in on one of the

12 appointment committees, which I did, but I did not

13 have a vote or suchlike in making the appointment.

14 The Macfarlane Trust itself appointed three

15 trustees and certainly whether we did it from the time

16 I was appointed in 2006 I cannot recall, but we

17 certainly advertised widely for those appointments.

18 It wasn't just done by knowing someone who might just

19 come in and help us out, it was done more formally

20 than that. The Department of Health also recruited

21 with a process to carry that out but I think you might

22 have to ask them what that was. I cannot recall,

23 except latterly when we had a vacancy or two, and so

24 did the Department of Health, they asked us if we

25 would carry out a process of recruitment and then make

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1 from Mr Stevens when you joined. Over the years that

2 followed, as trustees joined the Board, was there any

3 more formal process of induction or training that you

4 can recall being given?

5 A. Yes, there was. Before the selection process took

6 place, when we had a number of applicants, and we

7 certainly used a recruitment agency on at least one

8 occasion, those who were short listed were invited in

9 to the office, they had time with me, they had time

10 with certainly Martin Harvey, they must have had with

11 Jan -- I can't remember an occasion but I'm sure they

12 did -- and we filled them in on that. I'm sure we

13 gave them papers for them to take away and read and

14 I think we were -- bearing in mind they were only

15 candidates at that stage, we did tell them as much as

16 we really could about the sort of culture and ambience

17 of the Trust.

18 Q. To what extent, first of all, as trustee, so prior to

19 becoming chair, did you as a trustee or, to your

20 knowledge, your fellow trustees have much interaction

21 with the staff employed at the Macfarlane Trust?

22 A. Yes, we had a lot, certainly during up to Martin

23 Harvey standing down, because the office -- the

24 Alliance House office was a very small one, both in

25 numbers and also the space, so if we had a Board

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meeting which was in a room nearby, everyone used to pop in and talk to the staff and it was all very informal, perhaps have a cup of tea with somebody or sometimes Martin, and so on.

So, yes, had a lot to do with them and certainly up to the time I stood down I was very impressed with most of them and their, sort of, dedication and understanding and commitment.

Q. In terms of the responsibilities of the chief executive, did you understand the chief executive's role also to include advising the Board?

A. Yes. I mean, in some -- I mean, as you will see, as we talked about just a bit earlier, Ms Richards, I mean, I had a lot of experience as a chief executive in a charity and also the NHS, and in many ways the relationship, which -- the chief exec of the Macfarlane with the Board, had a number of similarities to that which you would have had in any other public or charity organisations.

Q. I'm going to just look with you at a handful of documents from around the time of your first year or so as chair of the Macfarlane Trust, so 2012 and 2013.

If we can start, Soumik, with MACF0000025_015, please. So if we go to page 6, please, these are the minutes of a meeting of the Board of Trustees,

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chair, may have been the chair even, of The Haemophilia Society. So they both had human resource backgrounds -- I think in the police, in a different area -- and we saw benefit in their being involved in the appointment, not only because of their skills but we thought it would -- relationships were, at that stage, quite good with The Haemophilia Society. They would actually help in terms of our continuing to have a good working relationship. £3,000, I can't remember the details, but that would have been sharing some costs, I presume, between John West -- and I think Liz was -- Eve Rook did most of the work actually but it probably was sharing the cost between them.

Q. Then just the last sentence of that paragraph records you inviting trustees to send you their thoughts on what particular skills would be required from the new trustee.

Broadly speaking, what kind of skills or characteristics did the Board look for in the appointment of trustees?

A. I can't recall what responses came in from that invitation but what we were looking for, and I think it was shared by all or nearly all of the trustees, was someone who would have empathy with the community we were serving even if they had not worked in that

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30 April 2012, and this is Mr FitzGerald's last meeting as chair and you take over at the following meeting.

If we can just -- this is just still on the theme of appointments to the Trust. If we look at the bottom of the page we can see you reminding the Board there will be a vacancy as trustee following Mr Fitzgerald's resignation.

Then if we look at the top of the next page, we can see a reference there to a recruitment process which was going to cost £3,000.

What was it about the process that was going to require expenditure of £3,000 in order to find another trustee?

A. Well, we wanted to have an open competition to see who would apply. As I was implying a minute or two ago, we didn't just want to touch someone on the shoulder and say, "Would you like to be a trustee for us?" So we wanted to get the best.

John West was -- I have forgotten the name of his company but he was a recruitment consultant who was instrumental in my name being put forward to be a trustee and was someone known well by Martin Harvey. Eve Rook and Liz Rizutto were trustees. I'm pretty sure they both were at that time. I think Liz was the

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type of charity before but they would have experience of working with people who had been -- had had difficulties not of their own making in their lives which affected their health and maybe their social areas. People who had some understanding of the way in which a charity and a committee structure would work. And individuals who would fit in, in a business-like way, with the rest of the Board.

Q. If we move to the next board meeting in 2012, so your first as chair, MACF0000025_030, we can see the date at the top of the page, 23 July 2012, and reference to you as chair.

If we could go to the second page, please, Soumik.

If you look at the heading halfway down the page, "Future Governance Arrangements for the allocation of single grants and, in due course, capital disbursements from the reserves". Now, I'm going to come on to ask you about the reserves issues in a little while, Mr Evans, but if we just look down here, picking it up as the fifth line or so:

"The Trust was entering a new phase, with the changes in place regarding payments to beneficiaries and, hopefully, the DH agreeing to the disbursement of reserves. The DH were looking for a review of

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Governance in advance of the Minister for Health reaching a decision on the reserves and were seeking reassurances."

Now, what was the Department of Health's role in reviewing the governance arrangements of an independent charity?

A. Well, there's a lot in that question. Our entire funding, as you will know, came from the Department of Health and they would want to be satisfied that the way in which we were administering the funds was in compliance with what they were expecting of us. I cannot remember whether there were any difficulties which led to this, them raising it at this particular stage -- I can't remember -- but there were two or three things happening. One is, which you will probably bring me on later, the question of spending reserves on -- substantially on carrying out some works, et cetera, and also this was not -- this was about the time of the establishment of the Caxton Foundation, not long afterwards. So it may have had something to do with our role changing somewhat.

The other thing is that around about that time -- and I'm sorry, I don't carry dates in my head -- was when we increased, were able to increase, the amount of regular payments which was made to

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"The Board considered a request from some beneficiaries that the previous minutes of the Board regarding the reserves issue be published. The general view was that, as these were 'historical documents' it would not be opportune to do so.

"The Chairman, in supporting this view, encouraged the Board to consider, positively, the future publication of its minutes. He reminded Trustees that this would be in line with contemporary charity and public sector culture.

"After a full discussion, it was agreed to reach a decision at the next meeting when the Board would have the benefit of seeing the minutes of the current meeting. It was generally agreed that, if the Board were to agree to publish their minutes it would only be after they had been approved by the Board."

Do we correctly understand from this that, up until this point in time, the minutes of the Macfarlane Trust's board meetings had not been published?

A. I can't recall but it would appear to be so from that minute.

Q. Do you understand what's meant -- sorry, if we go back to the previous page and look at the bottom of the page. In that first paragraph, under the heading

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beneficiaries. So, to some extent, that did change the focus of the Macfarlane Trust.

Q. Did it concern you, as chair of an independent charity, that you felt that you had to obtain the approval of the Department of Health to your governance arrangements?

A. I don't recall it did but the sort of underlying issue, which you will probably want to talk to me about later on was whether we were an independent charity and what our relationship was with the Department of Health. I mean, the fact that all our funding, whether we liked it or not, was coming from the Department and we were not able, and I don't think we wanted, to fund-raise, then there was bound to be an interest by the Department of Health on how we were running things.

If we were misappropriating, say, which we did not, public funds then clearly the Department would have some questions to answer from politicians but we did not do that.

Q. We'll certainly come back to some of those issues fairly shortly.

Whilst we're still in this document, could we go to page 5. If we look at the bottom of the page headed "Circulation of the Minutes", it says:

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"Circulation of the Minute", the sentence beginning:

"The general view was that, as these were 'historical documents' [in quotation marks] it would not be opportune to do so."

Can you assist us in understanding what that meant, what the concern was?

A. No, I'm sorry I cannot remember that at all and I cannot remember why there would have been reasons why it was felt those particular set of minutes should not be published. It's possible it had something to do with information which was in there about specific beneficiaries and what they were wanting. But I do not know, I'm sorry. That's a guess. Perhaps I shouldn't guess that. But, no, I cannot remember.

Q. Then if we move on to the next board meeting MACF0000024_003, please, Soumik. So these are the minutes of the board meeting of 24 September 2012 and you're present as the chair. If we go on to -- there's a long discussion about reserves but I'm going to come back to the question of reserves.

If we go on to page 4, we look at the bottom of the page, under the heading "Circulation of Minutes":

"After an in-depth discussion concerning the format of future minutes, it was agreed by a majority of 6:3, with no abstentions, that the minutes of all

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future Board meetings would be published on the Macfarlane Trust website once they had been agreed by the Board at the following meeting. Inevitably, there would be a need, from time to time, to have a private section when personal matters affecting beneficiaries and/or Trustees needed to be raised. These would be kept to a minimum."

So pausing there, Mr Evans, it would appear, and this seems to be consistent with what we see in the minutes that follow, that this September 2012 is the point in time at which Macfarlane Trust Board minutes start to be published for the first time but they are going to be in two parts, a part A and a part B is how we actually see them in fact in later meetings, with part B being matters that are confidential.

Does that accord with your recollection and understanding of this document?

A. That's correct, and I was very pleased that the Board agreed that we should do that but I was disappointed that we could not get a majority.

Q. Do you know why it took so long from --

SIR BRIAN LANGSTAFF: You mean a unanimous decision rather than a majority. You got a majority.

A. I beg your pardon. Yes, Sir Brian. I meant I was

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beneficiaries or trustees; is that right?

A. Correct, correct.

Q. If we just look at an example, from slightly later on, of the publication of minutes in these two parts, part A and part B, can we go to MACF0000024_047.

So these are the minutes of a meeting of the Board of Trustees on 29 April 2013, and these are, as I understand it, what would have been published. We can see if we just skip down the page, towards the bottom of the page we can see a report from the National Support Services Committee.

If we go over the page, there's a question about a letter to be circulated between beneficiaries.

If we go down the page, there's an investment report and, next page, discussion of financial allocation budget and then the reserves.

So that's, as I understand it, the open part of the minute.

If we then go to MACF0000024_063, you will see these are minutes of a meeting held on 29 April 2013. So same date. This is part B which, as I understand it, is how the confidential part or the unpublished part of the minutes was characterised.

If you look under the heading "Payments review", you will see there reference to:

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disappointed we couldn't get a unanimous decision.

That's what I meant. Sorry.

MS RICHARDS: Can you assist us with why it was only in autumn of 2012 that a Trust which had been operating by that time for over two decades was only at this point publishing its minutes so that beneficiaries could see what was being discussed and agreed?

A. Well, as you say, the Trust had been in existence for a long time. I think the relationship with -- the approach in early years anyway, from what I could read and so forth, was not necessarily particularly *(unclear: audio distortion)* with the beneficiary community. I think I was disappointed during the time I was a trustee and not the chair that the minutes were not being published. I thought by then that it was right we should do it. Whether I pushed that very hard at Board meetings, I can't recall doing that, and when I became the chair it was one of the early issues I wanted to get right because I thought it would improve relationships with the beneficiary community.

Q. We can see from this that that which may have to be from time to time in a private section -- so not published -- the intention was that that would be kept to a minimum and it would be -- what was envisaged was that that would cover personal matters affecting

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"... a paper from the Chief Executive setting out details of serious failings which she had uncovered in ... the way [in which] staff had been dealing with regular payments to beneficiaries, in particular in relation to widows."

And then those failings are set out: failure to implement -- this is first bullet point -- the autumn 2011 census; a failure to implement uplift to the benchmark; some calculations done incorrectly; no written procedure for how to make the calculations; and so on.

Why was an issue such as that revealing serious failings in the way in which the Trust had been operated part of the private section of the minutes, which would not, therefore, be published and available to beneficiaries?

A. I can't recall the discussion which would have taken place at that stage. It may well have had something to do with criticisms of the staff and the way in which they'd not been fulfilling their roles properly. But looking at the minute now, I think there would have been a case perhaps to have had a short minute in the private part of the meeting saying to that effect and some of this information which you put in front of me now could well have gone into the public part of

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1 the minute. I can't recall the rationale at the time.
 2 Q. If we go next to the annual review for 2011-2012, so
 3 this is the annual review meeting with the Department
 4 of Health. Again, I'm going to have more questions
 5 about relationships generally with the Department of
 6 Health.

7 But this is MACF0000061_081.

8 We will see "Macfarlane Trust Annual Review
 9 2011/12", held on 26 November 2012. "Attendees", we
 10 can see a number of people from the Department of
 11 Health. Then you are there representing the
 12 Macfarlane Trust, along with two members of staff of
 13 the Macfarlane Trust, this being at that point in time
 14 when there's no chief executive.

15 Would this have been your first annual review
 16 meeting with the Department of Health?

17 A. It would have been my first in my role as chair.
 18 I certainly, whilst I was a trustee, attended several
 19 meetings with the Department of Health with the chief
 20 executive, and I think with Chris FitzGerald on at
 21 least one occasion, maybe more. Whether those were
 22 the annual review meetings or just liaison meetings
 23 during the year, I couldn't remember.

24 Q. What was your understanding of the purpose of the
 25 annual review meetings with the Department of Health?

29

1 unsecured. RE assured DH that loans would not now be
 2 made on an unsecured basis."

3 What business was it of the Department of
 4 Health as to whether and how the Trust advanced loans
 5 and the terms on which the Trust advanced loans to its
 6 beneficiary communities?

7 A. Well, the loans in the first place would have come
 8 from well before I was a trustee, would have come from
 9 the very substantial lump sum of money which the
 10 Department of Health made to the Macfarlane Trust at
 11 the time. I could not tell you whether that money was
 12 earmarked as being loans when it came to the Trust.
 13 I don't know. Probably not but I don't know.

14 I imagine that we would raise things with the
 15 Department of Health which we thought would have been
 16 of interest, not for them -- not to expect them to
 17 carry out any particular actions, and I suspect that
 18 that was behind that.

19 Round about that time, there was a particular
 20 issue which became protracted regarding one particular
 21 beneficiary who wanted us to write off a very
 22 substantial sum of money. Whether that was relating
 23 to this at this stage I couldn't be sure.

24 Q. Do you recall the Department saying to you either at
 25 this time or at any other time that you should or

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1 A. The purpose was several-fold. One was to appraise the
 2 Department of Health on our activities, in particular
 3 how we were supporting the beneficiary community,
 4 although we did not talk about specific cases. That
 5 never came up. It would be to present our budget for
 6 the coming year and there were issues which came up
 7 not -- sometimes about -- more about the Department's
 8 relationships or attitudes or issues with the
 9 beneficiary community, and there would also be issues
 10 occasionally which were raised by MPs which concerned
 11 the Department.

12 So that's my recollection of the meetings.

13 Q. Then if we can just have a look at this particular
 14 meeting in a little more detail.

15 So we can see at paragraph 3, "Report and
 16 accounts 2011/2012", so you introduced the accounts
 17 and provide some general information to the Department
 18 of Health, and then there's a discussion about
 19 Parliamentary question and answers.

20 If we go over to the next page, top of the
 21 page, it says:

22 "RE [that's you] explained that the Trustees
 23 are currently looking at the issue of loans, and how
 24 to deal with borrowers who struggle to pay. Some
 25 loans date from around 10 years ago, and are

30

1 should not be making loans or saying anything about
 2 whether loans should be secured or unsecured?

3 A. I don't recall any particular discussion about loans.
 4 We did not make any loans as such during the time
 5 I was the chair and I don't recall doing so during the
 6 time I was a trustee board member. A number of loans
 7 were made, according to the records, closer to the
 8 inception of the Macfarlane Trust.

9 Q. Now, the next sub-paragraph refers to Ms Haigh, who
 10 was then the finance manager, explaining that:

11 "... the increase in the amounts paid to
 12 beneficiaries ... was mainly due to the change in the
 13 Trust's disbursement policy to support widows and
 14 dependents."

15 It's explained that this included a number of
 16 backdated payments. That may perhaps be -- I don't
 17 know, it may or may not be related to the issue. No,
 18 I don't think it can be related, in terms of timing,
 19 to the issue raised by Ms Barlow. And "a rise in the
 20 Trust's minimum living income benchmark from £15K to
 21 £18K". Then we see this:

22 "DH questioned whether this schedule is
 23 sustainable, and whether payment should be backdated
 24 given that MFT should be assessing charitable needs at
 25 the time of payment."

32

1 Again, Mr Evans, what business was it, frankly,
2 of the Department of Health as to the amounts the
3 Macfarlane Trust decided to pay widows and dependants
4 or as to whether payment should be backdated?

5 A. Well, I can't recall that being questioned. I suppose
6 they could question anything at a meeting but I don't
7 think it changed our attitude and policy at all.

8 Q. If we then just briefly look down the page, we can see
9 a discussion in the next sub-paragraph, sub-paragraph
10 (f) about service delivery costs, the Department of
11 Health emphasising that service delivery costs should
12 be kept to a minimum. Is that effectively staffing
13 and operational costs?

14 A. Correct.

15 Q. Then there's reference to --

16 A. Could I -- which might be helpful, sorry. Sorry,
17 Ms Richards.

18 The second sentence of this, of course, is
19 germane in that, until not long before this meeting,
20 the Macfarlane Trust had been employing its own staff
21 and, as you will see from the second sentence, with
22 the establishment of the Caxton Foundation no staff
23 were employed by us and we had a service level
24 agreement, and that would have related to the cost,
25 I imagine.

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1 main paragraph, it's 4(b), what we appear to see there
2 is the Department of Health telling you, and possibly
3 also having told the Caxton Foundation, but certainly
4 telling you, what the operating balance should be for
5 the Macfarlane Trust. Again, why was the Department
6 of Health instructing you on what operating balance
7 you should hold?

8 A. I can't -- I don't know -- I don't understand what's
9 meant by an operating balance. I'm sorry, it's not --
10 it might sound a bit evasive but I cannot remember
11 what that would have meant. Obviously, it meant
12 something.

13 Q. It may be we might be able to find some documentation
14 when we look at the Caxton Foundation later?

15 A. Yes, I'm happy to answer if it can be clarified. I'm
16 very happy to come back to it.

17 Q. Top of the next page -- so this appears to be the
18 first reference in the meeting to the question of
19 funding, going forwards, and the issue about what the
20 amount of the annual allocation might be. It records
21 you saying that the 2012/2013 MFT allocation is
22 insufficient to meet scheduled payments, that the
23 Trust was having to use some of its reserves, records
24 you, I think, as saying this would need to be taken
25 into account in future budget-setting by the

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1 Q. I'm going to ask you a little later about the
2 arrangement whereby the staffing was, as it were,
3 channelled through the Caxton Foundation. It would
4 appear here that a review had resulted in an increase
5 in staff costs in circumstances where you have got the
6 Department of Health emphasising that service delivery
7 costs should be kept to a minimum.

8 What role do you recall the Department having
9 in either directing, or advising, or steering the
10 Alliance House organisations about staffing
11 arrangements?

12 A. I don't think they had any role at all.

13 Q. Ms Barlow's evidence over the last couple of days
14 seemed to suggest that she thought that there was some
15 form of cap on staffing, as a result of a constraint
16 placed by the Department of Health.

17 A. I think there was a -- I think there was a percentage
18 figure of what we could spend on staff costs. It
19 might have been 8 per cent but -- sorry, perhaps
20 I shouldn't guess but I think there was. My statement
21 just now was that the Department did not get involved
22 in any way, as far as I recall, in how the money was
23 spent. So they had no involvement in what the format
24 of the establishment was or what we paid individuals.

25 Q. Then if we go further down the page towards the last

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1 Department of Health and referring to the potential
2 for a future funding shortfall.

3 Then we see this:

4 "RE to provide details of the rationale
5 underpinning the Trust's disbursement policy, because
6 it is helpful to have evidence as to the needs of the
7 Trust and the beneficiaries, in the bidding process
8 for allocations."

9 Now, can you recall whether you did provide
10 details of the rationale underpinning the Trust's
11 disbursement policy to the Department of Health?

12 A. No, I can't. If it were, it would have been --
13 although I may well have submitted it, it would have
14 been prepared by Jan Barlow. She would have had the
15 details of it. If the Department asked us to provide
16 it I think it's quite likely we did.

17 Q. Can you recall any further discussion about this issue
18 and why the Department wanted to see this?

19 A. No, I can't.

20 Q. Then what's your understanding of the phrasing --
21 these are, as we understand it, not Macfarlane Trust
22 minutes but Department of Health minutes, but what's
23 your understanding of the phrase "in the bidding
24 process for allocations"?

25 A. Where is that?

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- 1 Q. It's bold print "Action 6: RE to provide details", and
2 the reference to the bidding process for allocations.
- 3 A. Well, the minutes were written by the Department of
4 Health. What I think that would have meant is that we
5 submitted our budget and our -- the allocation we
6 wanted each year and then the Department dealt with
7 that within the overall allocation policy for other --
8 for the NHS and for other applicants. So I think
9 they're referring to how they would have addressed --
10 why they needed the information internally.
- 11 Q. Was it your understanding of the Department of
12 Health's approach to its decision on your funding bids
13 that you, as it were, went into a pot along with many
14 other potential calls on resources and the Department,
15 including the general NHS budget, and the Department
16 made its choice from amongst those various competing
17 bids?
- 18 A. Yes. I don't quite know how it worked internally
19 within the Department of Health but that, basically,
20 was it. I mean the Department of Health would
21 presumably have received a budget for all their
22 responsibilities from the Treasury and then they would
23 decide how to allot that. The Macfarlane -- a couple
24 of things you might find helpful. The Macfarlane
25 Trust -- of course when -- our bid was for something

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- 1 a culture and suddenly doing something different from
2 one which the Department had been used to with MfT was
3 not something which could be achieved very quickly.
- 4 Q. I should say, Mr Evans, that the Inquiry has heard
5 oral evidence from Mr Stevens and from Mr FitzGerald,
6 which is why, although some of my questions will cover
7 your whole period in the Macfarlane Trust, in terms of
8 issues of funding I'm going to be concentrating on the
9 period of time when you were chair.
- 10 A. I understand. I just wanted to open the context for
11 you.
- 12 Q. Thank you. Then if we look at subparagraph (d) it
13 says:
- 14 "RJ [so that's Rowena Jecock] repeated from
15 previous meetings that there's an ongoing downward
16 pressure on budgets across DH, and the Trust would
17 have to live within its means. RJ pointed out that
18 the amounts paid to individual beneficiaries in the
19 past two financial years have increased far above CPI
20 or RPI. MfT are already discussing payments/grant
21 plans for 2013/14 but they will not make a decision
22 until the allocation is known."
- 23 Can you recall now or do you understand now
24 what Ms Jecock meant by saying the Trust would have to
25 live within its means?

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- 1 like £3 million within the whole context of the NHS,
2 it was not big sums of money.
- 3 What was a frustration, I don't know if it was
4 this meeting, I can't recall who -- where we are on
5 this page, who was at that meeting from the Department
6 but Ailsa Wight and Rowena Jecock, who were the ones
7 we dealt with -- the civil servants we dealt with
8 generally, were very sympathetic and supportive of
9 what we were trying to do. I know I was extremely
10 frustrated at at least one meeting when one or two
11 individuals came along from the finance directorate
12 within the Department who just did not really
13 understand what the Macfarlane Trust was meant to be
14 doing, and we had some discussions where they were
15 really just wanting to talk about bottom lines and
16 things.
- 17 So it was -- so I'm not saying I particularly
18 liked the way it was allocated.
- 19 The other thing, Ms Richards, which is helpful,
20 we concentrated on what happened when I took over as
21 chair but I took over a culture of relationships
22 between the MfT, which probably went back to close to
23 its inception, however many years before that was.
24 I think with some of the other documents you will see
25 I probably railed against certain things, but changing

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- 1 A. Well, this is a nub of several things. At the time,
2 it was the time of the Coalition Government where it
3 was a period of austerity, which was across public
4 services generally, and the Department of Health's
5 budget had been reduced, as far as I recall, and at
6 the same time we still had very substantial reserves.
7 So our case in arguing for money when the Department's
8 budget was -- allocation was being reduced from the
9 Treasury to get an increase was very difficult and we
10 actually, I think, achieved a reasonable result,
11 possibly that year, where our budget was not reduced,
12 which might sound a bit perverse but that was it.
- 13 So I think she was probably referring to the
14 Trust having to live within its means, being a budget
15 we already were used to.
- 16 Q. So it was a warning or forewarning, as it were, that
17 the Trust should not expect significant increases in
18 funding?
- 19 A. Correct.
- 20 Q. Now, these are obviously only minutes but what they
21 don't record is any detailed discussion of the MfT's
22 business case or funding bids. Can you recall whether
23 there was any such detailed discussion, whether at
24 this meeting or more generally at the meetings that
25 you attended about the nature of the business case?

40

1 A. Well, there was some sort of high-level discussion of
2 business cases at the meetings which I attended and
3 the annual bids. Prior to these meetings Martin
4 Harvey and subsequently Jan Barlow would have had
5 a more detailed examination or discussion with the
6 Department of Health than we did at the review
7 meeting.

8 Q. So in terms of your involvement as chair, I understand
9 your evidence that you have, from time to time,
10 attended meetings as trustee, there was the annual
11 review meeting which, we understand was from
12 Ms Barlow's evidence, was only minuted by Department
13 of Health. Is that correct, the Macfarlane Trust
14 didn't keep their own record?

15 A. We didn't keep our own minutes, no.

16 Q. Why was that?

17 A. I think it would be difficult if there were two sets
18 of minutes of one meeting.

19 Q. Then there were -- Ms Barlow told us, from time to
20 time, it didn't seem as though it was particularly
21 frequent but she couldn't recall the details, *ad hoc*
22 meetings with the Department of Health. Can you --
23 again, I'm just talking more generally here rather
24 than any one specific meeting -- can you recall
25 having, from time to time, *ad hoc* meetings with the

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1 take that down Soumik, thank you.

2 I wanted to ask about something you said
3 a little while ago, when you referred to the
4 Department's status, effectively, as sole funder of
5 the Macfarlane Trust. You said this -- it may not be
6 verbatim what you said, but you said that the
7 Macfarlane Trust wasn't able to or didn't want
8 to fund-raise, or words to that effect. First of all,
9 was it your understanding that the Macfarlane Trust
10 could not, as a matter of its powers, fund-raise?

11 A. I can't remember what the legal position -- I was not
12 referring to that. It may well have been the case.
13 It depends on the legalities when the Macfarlane Trust
14 was set up in 1988. I don't know if it changed since
15 then. But I cannot recall whether there was a legal
16 reason for not doing it.

17 **SIR BRIAN LANGSTAFF:** I think it's perfectly clear, if
18 it's any help, to me, from the original trust deed,
19 the 1988 one, that the trustees had the power to
20 collect and receive funds, donations and legacies for
21 the promotion of the above objects. They weren't to
22 undertake any permanent trading activities in raising
23 funds.

24 That, to me, is a power to collect if it wants
25 to.

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1 Department of Health?

2 A. Yes, and certainly Ailsa Wight and Rowena Jecock and
3 their predecessors were very, very approachable. We
4 would have -- we couldn't just pop in and see them
5 but, I mean, if there were specific issues to talk
6 about then we were able to do so. I know I spent
7 a certain amount of time even before I became the
8 chair with Martin Harvey, meeting them and talking
9 about the long-term funding, for instance.

10 So that would be the type of thing, and
11 I cannot offhand think of other specifics but, yes,
12 that would have been a sensible thing to do.

13 Q. Ms Barlow's evidence was that the *ad hoc* meetings were
14 not minuted. Is that your recollection as well?

15 A. I can't recall but I think *ad hoc* meetings would have
16 not been a formal meeting such as the annual review,
17 they would have been two or three people meeting in
18 an office or committee room, just exchanging
19 information and views. I mean, I wasn't used to
20 keeping minutes of absolutely every discussion I had
21 with everybody and that's what I imagine would have
22 been the types of meeting to which she was alluding.
23 It wouldn't be formal meetings.

24 Q. We'll look at a handful more documents in a little
25 while but, before we do so, I wanted to ask -- we can

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1 A. I think it's worth just adding, Ms Richards, that
2 I can recall two occasions when we were given money,
3 once from a NHS clinical commissioning group and the
4 other was a firm of lawyers which we used for specific
5 purposes, including our conference, and I've forgotten
6 what the other thing was offhand. But we didn't
7 campaign to get that money.

8 **MS RICHARDS:** I'll come on to the question of campaigning
9 in a moment but in terms of fund-raising activities,
10 is the position then the Trust did not as a matter of
11 fact fund-raise? Can you recall during your tenure as
12 trustee or chair any particular discussions about
13 whether the Trust should now make attempts to raise
14 funds?

15 A. I can't remember anything specifically, no. No,
16 I can't. I mean, I'm sure there was -- probably not
17 at board meetings but just the -- on two or three
18 occasions where people would have talked about, "Well,
19 can we raise funds or not", and I probably -- or
20 someone gave the answer which Sir Brian's just done.
21 But there was never a formal discussion at a board
22 meeting, for instance, so we didn't formally agree in
23 that way that we wouldn't and could not fund-raise.
24 I don't recall that.

25 Q. It may be then that you are not able to answer the

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1 next question, but can you help us with why the
2 possibility of fund-raising doesn't appear to have
3 been more actively under consideration by the Board?
4 **A.** Well, I think all I can do is give you my personal
5 opinion on why fund-raising would not have been
6 appropriate but I don't know if I ever really gave
7 that when I was in office -- I might have -- is that
8 I think it would have been extremely insensitive in
9 many ways, that here was a group of men and boys who
10 had been -- had the problems which were not of their
11 own making and they should be -- their needs should be
12 dealt with through Central Government, which is
13 clearly what -- one of the things you're exploring.
14 And I think to go out and try and fund-raise, perhaps
15 to substitute for what they should have been providing
16 centrally, actually would have been insulting. That's
17 my personal view.

18 And I suspect if we had gone out and raised
19 large sums of money, even if we were allowed to, then
20 I think there would have been a possibility that
21 Department of Health would then have cut our annual
22 allocation. But that is a personal view. It is not
23 something which we, the Trust, ever ventured into,
24 I don't think.

25 **Q.** What, then, about the slightly different issue of

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1 the forefront.
2 It was our view, which I very much felt -- in
3 that I was running these as chief executive of The
4 Haemophilia Society for a while, that it was really
5 for The Haemophilia Society to be at the front of
6 that, which they were at one time, and that led to,
7 amongst other things, the Archer Inquiry and my view
8 is that the appropriate way to have pursued the
9 campaigning in that way would have been for The
10 Haemophilia Society as an independent body to have
11 done so. We would have been very happy to have done
12 it with them and I think an appropriate way would have
13 been -- I'm not sure what the right noun is, but
14 a sort of a union of The Haemophilia Society,
15 politicians and ourselves but not for us to be at the
16 forefront. The other two were much more appropriately
17 placed to do so.

18 **MS RICHARDS:** Sir, I've got a number of questions arising
19 out of Mr Evans' answer but, noting the time, it might
20 be sensible to pick those up after the break.

21 **SIR BRIAN LANGSTAFF:** Yes, it probably would be. So we'll
22 take a break now until 11.45 to allow you to get some
23 refreshment if you want to, and those who are watching
24 remotely to do the same. Now, it's a rule that during
25 any break, that includes the overnight break which

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1 campaigning or lobbying? I'll come back to the
2 question of whether more could or should have been
3 done directly in your interactions with the Department
4 of Health to attempt to persuade them to increase
5 funding, but in terms of broader campaigning
6 activities, using the media, trying to raise the
7 profile of the plight of the beneficiaries of the
8 Macfarlane Trust, trying to draw public attention to
9 the deficiencies of funding and the impact that was
10 having in practical terms on both infected
11 beneficiaries and widows and dependants and the
12 bereaved, there doesn't appear to have been any real
13 attempt by the Trust to engage in any of those kind of
14 activities. Do you accept, first of all --

15 **A.** I think -- well, it's a big issue, as you rightly say,
16 which I'm very happy to go -- give a lot of detail on
17 if you so wish. But we briefed MPs and the APPG. We
18 took the view that we were receiving money in order to
19 give financial support to the beneficiary community,
20 and a limited amount of other support as well, and it
21 would not have -- it was not our role, and probably
22 would have been unhelpful to the Trust, to carry out
23 high profile campaigning in a broader way. It was, in
24 our view -- we would have been very happy to have
25 helped in it being undertaken but not for us to be in

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1 will come, you must not discuss the evidence you have
2 given or any evidence you think you might yet be asked
3 to give, with anyone, whoever that anyone is, but you
4 can talk about anything else you like.

5 So I look forward to seeing you back at 11.45.

6 **MS RICHARDS:** Thank you, sir.

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

8 (11.18 am)

9 (A short break)

10 (11.45 am)

11 **SIR BRIAN LANGSTAFF:** Yes.

12 **MS RICHARDS:** Mr Evans, just returning, first of all, to
13 the issue of fund-raising activities, you explained in
14 your evidence before the break you thought it would
15 have been extremely insensitive to undertake such an
16 exercise. Can you assist us with this: were the views
17 of beneficiaries of the Trust sought on that issue,
18 either directly or through the Partnership Group or
19 through user trustees?

20 **A.** Well, I can't recall there ever being a conscious
21 discussion about whether we should or not. It doesn't
22 mean there weren't but I can't recall.

23 **Q.** Can you recall if the Trust ever approached The
24 Haemophilia Society, specifically on the issue of
25 fund-raising still, to ask for its view or input on

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1 that issue?

2 A. I can't recall, no.

3 Q. Then returning next to the question of campaigning, do

4 you accept that as a matter of the Trust's powers it

5 was permissible for the Trust to involve itself in

6 campaigning for more funding and campaigning against

7 Government policy?

8 A. Well, I don't know that it wasn't. I can't recall

9 that I ever knew it wasn't.

10 Q. Can I ask you to have a look at WITN3372002.

11 This is the statement of Kate Rendle, who was

12 for a period of time a trustee on the Macfarlane Trust

13 and from whom the Inquiry will be hearing next week.

14 If we go to page 3, please, Soumik, I just want to

15 read one paragraph and then ask you about it. It's

16 the paragraph at the bottom of the page, paragraph 17.

17 It says:

18 "Additionally, there were discussions at board

19 meetings about the purpose of the MFT when it came to

20 campaigning or seeking to influence government. I and

21 the other Haemophilia Society-appointed trustees felt

22 that the trust would be serving its beneficiaries by

23 taking on a campaigning or influencing role, but

24 Roger Evans and others disagreed. I provided guidance

25 from the Charity Commission to board members which

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1 campaigning or public awareness-raising?

2 A. Well, I think I partly answered that question just

3 before the break when I thought it was for

4 The Haemophilia Society to be in the forefront, which

5 they had been in the past, and we would have been very

6 helpful in supporting them to do it.

7 But, I mean, there's some other issues

8 about: what would we have been campaigning for? Who

9 would we have been campaigning with? And what form

10 would that campaigning have been taken? That was

11 never clarified by anybody.

12 Q. Was it ever -- were those questions ever asked and

13 addressed by the Board of Trustees?

14 A. I'm sure we talked about them, not necessarily in the

15 rather formal way I put them to you, yes.

16 Q. You said before the break that spearheading a campaign

17 or being at the forefront of it was "not our role".

18 Why was it not a perfectly proper discharge of the

19 Macfarlane Trust's role?

20 A. Well, our role was regarded as negotiating in

21 obtaining the best financial arrangement we could with

22 the Government.

23 Let me just emphasise that I wanted to get as

24 much money as I possibly could for the MFT and any

25 differences were over how we went about it. So myself

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1 made clear that campaigning against government was

2 a legitimate approach even for charities set up and

3 funded directly by government, but this was

4 disregarded by the majority of trustees."

5 Can I ask you, first of all, for your

6 recollection of any discussions about this issue

7 between trustees?

8 A. I can't recollect. I mean, clearly it was said in

9 that paper, which I'd forgotten.

10 Q. We can take that down, thank you, Soumik.

11 Do you -- well, let me put it a different way.

12 Leaving aside possible lobbying of MPs or

13 responding to the APPG, which -- the latter I'll come

14 back to, is this correct as a matter of fact, that the

15 Trust did not during your tenure either as trustee or

16 as chair engage in anything that could be said to be

17 campaigning about funding?

18 A. I think it -- I'm not quite sure what you mean by

19 that. I think probably the answer's no. I mean,

20 there was a lot of engagement with ministers and MPs.

21 That engagement was not about campaigning -- and to

22 try and get more money from the Government -- but the

23 campaigning was not about public raising of money.

24 Q. Why did the Trust, to the best of your recollection

25 and knowledge, not undertake anything more by way of

50

1 and most of the Board regarded our role as -- sorry,

2 can you repeat your question? I might be taking --

3 going down the wrong alley. Do you mind doing that?

4 I'm sorry about that.

5 Q. Forgive me, I can try to repeat it verbatim -- my

6 transcript has frozen, so I can't.

7 **SIR BRIAN LANGSTAFF:** "You said before the break that

8 spearheading a campaign or being at the forefront of

9 it was 'not our role'. Why was it not a perfectly

10 proper discharge of the Macfarlane Trust's role?"

11 Then you began saying "our role was regarded",

12 et cetera.

13 A. Well, that was a role, as I've already said, of The

14 Haemophilia Society and for us to support them and it

15 to be done in a concerted way. I don't think it's --

16 it would not be helpful if there were several

17 different bodies campaigning at the same time. This

18 might be going on beyond your question but it might be

19 helpful to hear my view on it.

20 I mean, with my experience of engaging and

21 trying to get money from Central Government,

22 particularly the Department of Health, what the civil

23 servants do not like is some public demands and maybe

24 some comments which are less than complimentary about

25 them. And I think the way we should have gone about

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1 this would be for us, as we did -- more rigorously
2 than maybe it's being suggested, but it's in the
3 papers which you've seen -- pushing the DHSC civil
4 servants to get us the best possible deal, and to
5 lobby with MPs, which we did more of than might have
6 been obvious, but anything public, in terms of trying
7 to get public sympathy, which may or may not have
8 brought more money forthcoming, was not really our
9 role.

10 Certainly, what I've just said was explained or
11 said -- expressed by me at at least one meeting of the
12 Partnership Group.

13 **MS RICHARDS:** Doesn't the history of the funding of the
14 Alliance House organisations, including the
15 Macfarlane Trust, not suggest that it's precisely
16 public awareness and criticism -- and I'm thinking
17 here of the Archer Inquiry Report and the APPG
18 report -- that led to concrete changes in funding
19 allocations?

20 **A.** The Archer Report -- and I was involved with the
21 running of the Inquiry -- was simulated by
22 The Haemophilia Society not by the Macfarlane Trust.

23 **Q.** That obviously may be right as a matter of fact,
24 but --

25 **A.** But -- sorry.

53

1 be taking such a leading role?

2 **A.** Well, I didn't think it was our role to do so, and we
3 didn't actually have the resources -- and I'm talking
4 about skills as much as numbers -- in order to do
5 that. And also -- which I don't know if I ever
6 expressed at the time, but I will now, is that I was
7 somewhat nervous, if we were to be public in that sort
8 of way, quite what the ongoing reaction would be from
9 some of the beneficiaries, and it might be one which
10 would actually be unhelpful to them as well as to the
11 Macfarlane Trust.

12 **Q.** Can I just ascertain what you mean by that last
13 answer. Do you mean that some beneficiaries would not
14 want the Macfarlane Trust to be involved in public
15 awareness-raising or campaigning?

16 **A.** That is partly what I meant. The other point I meant
17 was that if we -- any such campaign would need to be
18 carried out in an emotional, considered way, and
19 I think because of -- which I am fully sympathetic
20 with them, but because there are a number of
21 beneficiaries who were still sort of very angry about
22 what had happened in the past, I think it might have
23 been quite difficult to do that.

24 But that was not the main reason we didn't take
25 that stance, and that is the view I'm expressing to

55

1 **Q.** No, if there was an answer you wanted to complete,
2 please do so.

3 **A.** I was going to say the Macfarlane Trust was -- worked
4 closely with The Haemophilia Society during the whole
5 of the Archer Inquiry and we were very supportive of
6 what they were doing. Indeed, I think we seconded at
7 least one member of staff to work with the conduct of
8 the Inquiry.

9 **Q.** You said a few moments ago that it was your experience
10 or your view that Department of Health officials would
11 not respond well -- and I'm paraphrasing here rather
12 than reading your precise answer, Mr Evans -- to
13 public criticism. The point I put to you, which I'm
14 not sure whether you have completely answered yet,
15 is: doesn't the history of the funding of the
16 organisation show that the big changes only came in
17 response to public criticism?

18 **A.** Yes, but they weren't ones which were forefronted by
19 the Macfarlane Trust.

20 **Q.** What I'm trying to understand a little more, Mr Evans,
21 is why. Why was it -- I understand absolutely you've
22 told us you didn't think it was Macfarlane Trust's
23 role at least to be at the forefront of that or take
24 a lead, but why was that? What was it about the
25 Macfarlane Trust that you thought meant it shouldn't

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1 you now rather than one which I've done in the past.

2 **Q.** Then you also in your evidence before the break said
3 that what there could have been was a union between
4 the Macfarlane Trust, The Haemophilia Society and
5 others, with The Haemophilia Society perhaps taking
6 the leading role. As far as you can recall, was that
7 something that you or the Board of the
8 Macfarlane Trust ever proposed to The Haemophilia
9 Society?

10 **A.** It was what we essentially -- what essentially
11 happened with Archer, but no, not by the time of 2012,
12 because relationships had changed with The Haemophilia
13 Society.

14 **Q.** I'm going to come back to relationships with The
15 Haemophilia Society, so I'll leave that point for now
16 and come back to it when we deal in more detail with
17 the events of early 2015.

18 Can I then pick up the documents again in
19 early 2013.

20 Soumik, could we have MACF0000024_002, please.
21 If we go, please, Soumik, to page 6, you'll see,
22 Mr Evans, these are the minutes of a meeting of the
23 Board of Trustees 21 January 2013. I'm going to come
24 back to these minutes on a different issue later, but
25 for present purposes, if we go, Soumik, three

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pages further on.

So you'll see the bottom of the page, Mr Evans, is a heading "Use of reserves and budget for 2013/14". There's reference to awaiting a decision from the Department of Health regarding reserves and, as I say, we'll come on to reserves shortly in more detail.

There's then a reference to recommendations from the NSSC being considered in relation to winter fuel payments.

Bottom of the page, we can see that a decision on discretionary top-ups has been deferred because you're also awaiting the 2013/14 allocation.

Then if we go over the page we can see the next paragraph refers to consideration of a draft illustrative budget, and we see JB (Ms Barlow) explaining:

"... it would be impossible to set a meaningful budget until the allocation ... had been confirmed ..."

Then there's reference to:

"RM [so that's Mr Mishcon] tabled a draft, proposed letter to the Minister; this item had not been advised to the Chair or Chief Executive in advance."

And the minutes record as follows:

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we have from Mr Mishcon:

"Dear Minister,

"We, the undersigned, being all the trustees of the Macfarlane Trust [and then there's a bit covered by a Post-It note, I'm afraid] to express our concern and dismay at the prospect of having our annual allocation of funds further reduced."

The next paragraph refers to a reduction in the allocation for the current year of 2012/13.

The next paragraph says that:

"Notwithstanding ... annual payments ... many of our beneficiaries, including widows and dependants, remain in financial need and, in the current year, those needs have demanded that we will exceed the current year's allocation, even though we have declined more than half in value of requests for assistance."

There's then a reference in the next paragraph to the utilisation of reserves and reference to a business case being required by that. Halfway down that paragraph, the letter records:

"We were told that a Business Case would be required and, although we saw this as a fetter on our discretion as trustees, we complied."

Next paragraph says:

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"There was considerable discussion regarding the draft letter and the pros and cons of sending it at this stage. JB expressed the view that to send a letter of the nature of the one tabled to the Minister in advance of any decision being made would not be constructive, and would also remove any room for further negotiation if an unfavourable answer was received. Whilst several trustees were still in favour of sending the letter, others were either unsure or against, and two trustees were also not present. RE [so that's you, Mr Evans] was not prepared to sign the letter. AB asked it to be recorded that he was unhappy with RE's decision not to sign. RE therefore proposed that the letter be forwarded to JB, together with any amendments proposed, for her and RE to develop further with a view to sending to the Minister should we receive an unfavourable response."

Now that's the minuted discussion about a proposal put forward by Mr Mishcon that a letter be sent to the Minister. Having set the background, can we then look at the draft letter or a version of the draft letter, in any event. WITN447404, please, Soumik.

So you will see there this is the version that

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"... the capital needs of our community of care far exceed the amount of our reserves and yet it appears our annual funding is likely to be further reduced ..."

Then:

"We would wish to draw our attention to the Charity Commission's [go to the next page] Publication ... and remind you and your Department that we are solely funded by the Department. Our duties as Trustees are, therefore, being compromised."

There's then reference to beneficiaries of the Caxton Foundation and various matters raised about the complications of co-infection and the health position of MFT primary beneficiaries. Then we see in the next paragraph reference being made to the Thalidomide Trust and a question at the end of that:

"What justification is there for such a commitment, when your Department is seeking to reduce our relatively small allocation, pleading Treasury constraints on the Department and spending generally?"

Just go further down. It concludes:

"We invite you, as a matter of urgency, to reconsider the commitment made by the Government and to take account of the matters raised in this letter."

What can you recall about the debate

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1 surrounding this letter and what were your reasons for
 2 your disinclination, as recorded in the minutes, to
 3 sign it?
 4 **A.** My first thought, the version you've been sent was not
 5 the letter which was tabled at the meeting.
 6 **Q.** So what's your recollection of any difference between
 7 this version and the version --
 8 **A.** Well, my clear recollection is that at the end of the
 9 letter, or towards the end, there was a very clear
 10 statement in there that if the Department -- I can't
 11 remember whether it said gave us more money or didn't
 12 reduce it, but something to that effect -- then as
 13 a Board we would resign *en bloc*.
 14 **Q.** So --
 15 **A.** That was one of the three reasons, the main one, why
 16 I would not be prepared to sign it.
 17 **Q.** So the threat of are Board resignation, one reason.
 18 What were the other two reasons why you did not want
 19 to sign the letter?
 20 **A.** The other is that we had steered clear, as a Board, of
 21 comparing our situation with that of the Caxton
 22 Foundation because that would take us into some very
 23 difficult waters, trying to compare the needs of the
 24 two types of beneficiaries.
 25 Thirdly, the Thalidomide Trust, that's the

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1 from the Department of Health. Is that a correct
 2 understanding?
 3 **A.** If that's what the minute said, yes. But my
 4 recollection is that Mr Mishcon did not send the
 5 letter to us to work on. He took it back from me,
 6 certainly at the end of that meeting, which was rather
 7 an ill-tempered discussion, as you can imagine, and it
 8 wasn't pursued from there. That's my recollection.
 9 But I may have that slightly wrong because time has
 10 gone past. But I think that's it.
 11 **SIR BRIAN LANGSTAFF:** May I just ask a question about this
 12 minute? What it doesn't say but may be taken to
 13 imply, and I want your views on this, is that when the
 14 discussion began, your view plainly was this shouldn't
 15 be sent. That was also the view, though she wasn't
 16 a voting member, of Ms Barlow.
 17 But the sense of the paragraph that is conveyed
 18 to me is that, although there was disagreement amongst
 19 the trustees, the majority were in favour of sending
 20 the letter and that's why you weren't prepared to sign
 21 and suggested "Let's put it off, and two trustees
 22 aren't here, they may take a different view", so it
 23 was a knife-edge decision, or appears to be, with more
 24 trustees in favour of sending than against, and you
 25 put it off by saying "We'll have look at this letter

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1 first time that had ever been raised, as far as I can
 2 remember, and we knew nothing about the Trust or any
 3 agreement with the Government, and it would not have
 4 been appropriate to have brought them into our case.
 5 There was a fourth one, really, and that is that if
 6 Mr Mishcon was serious about sending this letter
 7 primarily to get extra money, then I would have
 8 expected him to have shared a draft with myself and
 9 with Jan Barlow in advance of the meeting, in which
 10 case it's possible we could have agreed something to
 11 go to the Department. But it was thrust in front of
 12 me at the end of a meeting, under any other business,
 13 essentially saying sign it now.
 14 **Q.** If we just go back to the minutes, so back, Soumik, to
 15 MACF0000024_002, please?

16 **SIR BRIAN LANGSTAFF:** At page 9.

17 **MS RICHARDS:** Thank you. If we go to the next page, you
 18 see there in the second paragraph the minutes
 19 recording that had not been advance notification to
 20 the chair or chief executive. In terms of the
 21 discussion, it ends with you proposing that the letter
 22 be forwarded to Ms Barlow, that trustees, I think, are
 23 invited to propose amendments, and you and Ms Barlow
 24 would develop it further with a view to sending it to
 25 the Minister, should there be an unfavourable response

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1 and think about it more carefully".
 2 **A.** Well, I think two things about that --
 3 **SIR BRIAN LANGSTAFF:** Have I got it right?
 4 **A.** Two things on that, Sir Brian. My recollection is
 5 that only three trustees wished to sign the letter,
 6 and a letter which was threatening resignation of all
 7 the Board members could really only be signed by all
 8 those who were prepared to resign.
 9 **SIR BRIAN LANGSTAFF:** Well, if that's so, if only
 10 a minority wanted to sign it, the majority were
 11 against, why was it necessary to say you weren't
 12 prepared to sign it and to discuss it further later
 13 on, and what's the origin of the phrase:
 14 "Whilst several trustees were still in favour
 15 of sending the letter [several trustees], others were
 16 either unsure or against, and two trustees were also
 17 not present."
 18 I would have thought that being the Chairman of
 19 a committee or Board of Trustees where the majority
 20 are against something you as Chairman don't want, you
 21 say "Okay, well it's plain the sense of the meeting is
 22 we don't send it".
 23 **A.** I did say that, yes, but I think I also said to --
 24 I think I also said to the three trustees who were in
 25 support, particularly to Mr Mishcon, who presumably

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1 was the drafter of the letter, that if they wished to
 2 send the letter in their own right then they could do
 3 so. That was a matter for them, not as a Board
 4 decision.

5 **SIR BRIAN LANGSTAFF:** Yes. The minutes were compiled by
 6 whom, by Ms Barlow or?

7 **A.** By Jan Barlow, yes, but they would be agreed at the
 8 next meeting, so they were the Board's minutes.

9 **SIR BRIAN LANGSTAFF:** Yes, thank you.

10 **MS RICHARDS:** It's correct, I think, as a matter of fact
 11 that the MfT did receive an unfavourable response from
 12 the Minister, that there was not an increased annual
 13 allocation, was there?

14 **A.** No, but you will recall in the draft letter it was
 15 talking, I'm pretty sure, about reducing the
 16 allocation.

17 **Q.** Did --

18 **A.** I think I'm right there. But the allocation was not
 19 reduced because of the way we negotiated with the
 20 Department of Health, although healthcare budgets were
 21 being split. This was time of austerity, sadly. We
 22 actually did maintain our existing level of budget.

23 **Q.** You told us that Mr Mishcon didn't forward the letter
 24 to Ms Barlow, as far as you're aware, for a further
 25 drafting exercise.

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1 arm of Government/act on its behalf and be a charity.
 2 Our concerns are not the government's concerns, we do
 3 not exist to carry out their policies or to consider
 4 their overall financial position. I feel that we need
 5 clarification from the department on how they intend
 6 us to operate independently while restricting our
 7 financial position. I also feel that trustees will be
 8 at risk of not being able to carry out their duties if
 9 funding is restricted, and that we need the department
 10 to comment on that.

11 "I think you should give further explanation on
 12 why you believe the timing of Russell's letter is
 13 wrong. You agreed with the other trustees that any
 14 protestations we make after the DH deliver their
 15 decision will be useless. As you vetoed sending the
 16 letter, I feel you have a duty to explain to trustees
 17 your vision for how we can turn around the
 18 department's decision after they have delivered it.

19 "Beneficiaries are pushing for a tougher
 20 stance, even if it risks the future of the trust.
 21 Trustees' unwilling acceptance of any financial
 22 restrictions will not satisfy them.

23 "I do not like to raise this point, but I feel
 24 I must draw your attention to the 'conflicts of
 25 interest' section in the aforementioned guidance from

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1 Did you or Ms Barlow, as far as you can recall,
 2 take any proactive steps to formulate what might have
 3 been to you a more acceptable response, once the
 4 Department came back to you and said you're not
 5 getting what you have asked for in your business case?

6 **A.** I don't recall that we did, no.

7 **Q.** I just want to ask you about some email communications
 8 that followed the meeting. I'll try and do them in
 9 chronological order. So if we start with WITN1122028,
 10 I'm going to pick it up first of all at the bottom of
 11 the page because I think that's probably, in
 12 chronological order, the first email. This is from
 13 Kate Evans, so Kate Rendle, whose statement we looked
 14 at a few minutes ago, and she says at the bottom of
 15 the page:

16 "Roger,
 17 "I have some concerns after yesterday's
 18 meeting, which I would like you to address."

19 If we go over the page, she refers at the top
 20 of it to the issue we saw in her statement about
 21 Charity Commission guidance, or it may or may not be
 22 the same issue, and then this:

23 "You said yesterday that MfT is an arm of
 24 government 'whether we like it or not'. As Charity
 25 Commission guidance clearly states, we cannot be an

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1 Charity Commission. I do not doubt that you have
 2 acted in the best interests of beneficiaries in all
 3 your discussions with the department. However,
 4 I would like you to consider whether you feel you are
 5 able to 'rock the boat' to the extent that the other
 6 trustees feel is now necessary, given your position."

7 Now, I want to ask you about a number of
 8 matters set out there. First of all, the second
 9 paragraph on the screen. Is it right that you said
 10 that the "MfT is an arm of Government 'whether we like
 11 it or not'"?

12 **A.** I cannot recall saying it but I may well have said it.

13 **Q.** Does that, whether or not -- I appreciate you may not
 14 be able to recall exactly what you said in a meeting
 15 a number of years ago, but --

16 **A.** I don't think it's terribly -- sorry.

17 **Q.** Was it essentially your view at the time that the MfT
 18 was, in practice, an arm of Government?

19 **A.** Well, I think two or three things on that. First of
 20 all, what I was saying before the break, about -- you
 21 were asking me questions about negotiations with the
 22 Department and you were showing me some notes of
 23 meetings and so forth which showed they wanted
 24 something of a hands-on approach, which is something
 25 they had been used to. My view is that the way the --

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certainly by the time I was a chair and possibly a lot earlier, the way in which the -- what's the right -- the constitution -- or the legal way in which the Department were expecting the Macfarlane Trust to administer and disburse the monies was one -- well, one's a conflict, really, because on the one hand we were getting the funds, as we've been discussing, from the Department; on the other -- I'm not a lawyer, so I -- you are, obviously -- but I don't know exactly what the background was, but I don't think the Macfarlane Trust was a charity in the sense of which I understood it to be one.

When we're giving money out to our beneficiaries, for whom I had a great deal of sympathy, and still do, it wasn't, in their eyes, charitable money we were giving them.

Does that answer your question?

Q. Well, it may do, yes.

The next bit of Ms Evans' email I wanted to ask you about is in that same paragraph. Do you agree with what she there says:

"Our concerns are not the Government's concerns, we do not exist to carry out their policies or to consider their overall financial position."

A. Well, the reality was we may not like it but if our

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starting with Mr Mishcon's letter, at the time we were looking to run down the reserves. So it may be this year, but I stand to be corrected, we had an allocation from the Department of something like 2.2 million, and we did subsidise that by using some of the reserve money.

Q. As I understand Ms Evans' email here, and no doubt I can ask her what she had in mind when she gives evidence next week, but what she's suggesting is that trustees are in a very difficult position -- I'm paraphrasing, clearly -- because of the Department's stance, and she is suggesting that those difficulties be ventilated with the Department. Can you recall whether, after this issue developed, there was any attempt to ask the Department how it thought you could properly discharge your duties, as the trustees of an independent charity, with the Department conducting its funding decisions in the way that it was?

A. I can't recall whether we had raised it specifically after this particular incident. We may have. I cannot recall. But the Department were very clear on the conflict position we were in between the needs and the stance which the beneficiary community wanted us to take compared with what they were -- how they were behaving towards -- adopting towards us.

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allocation is coming from the Department, we were in a position where they had some influence over us.

Q. But would you agree that it was not the

Macfarlane Trust's purpose to carry out the Government's policies or consider the Government's overall financial position?

A. Our purpose was to disburse monies at our availability and for us to get the best possible monies to the beneficiary community.

Q. She then raises the possible of seeking clarification from the Department about the tension that she's identifying there. Was there any attempt, as far as you can recall, to raise this particular issue with the Department?

A. Well, I think in -- with at least one of the other documents which you kindly sent me there are a number of exchanges of emails which make it very clear that we were challenging the Department and the position they were taking. But we were not doing it in a public way and weren't threatening to resign.

Q. Are you referring there to the communications about the reserves?

A. I think -- I stand to be corrected, but I think there may be some emails about our regular -- our annual allocation as well. But this was taking place,

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Q. Can you recall --

A. Whether that was at the time of this -- these documents, I cannot recall. I do think that we told them about the -- let me call it the Mishcon letter, but I think we might have.

Q. Do you recall whether you had sought any advice or input from the Charity Commission about the difficulty here being identified by Ms Evans?

A. No, I didn't think we did. I mean, maybe we should have but I don't recall we did, no.

Q. Then if we look at the next paragraph, she says, in relation to the board meeting itself, that:

"You [that's you, Mr Evans] agreed with the other trustees that any protestations we make after the [Department of Health] deliver their decision will be useless."

Again, I infer because it would have been a *fait accompli* by then. Is that right? Is that your recollection?

A. I cannot recall, but what I was probably implying was that once the Department had made a decision on the allocation for the year, then they wouldn't go back on it.

Q. And then --

A. Probably what it was alluding to.

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1 Q. Then it suggests that you vetoed sending the letter.
2 Would you accept that?

3 A. I wasn't prepared to sign it and neither were a number
4 of other trustees, for the reasons which I explained
5 to you five or ten minutes ago.

6 Q. If we just go to the first page, if we look at the
7 email about halfway down the page, so this is from
8 Mr Gregory, another trustee, to Ms Evans saying:
9 "You make a number of excellent points. I was
10 thinking on my (hideously convoluted) journey home
11 that we had been forced to abandon a course of action
12 that it was obvious that the vast majority of those
13 present favoured."

14 So, pausing there, that would appear to suggest
15 that a majority of those present were in support of
16 sending the Mishcon letter or a version of the Mishcon
17 letter to the Department?

18 A. That's not quite, with respect, how I interpret that.
19 The course of action was one which I think may well
20 have been one which the three beneficiaries were --
21 raised unexpectedly at the meeting. It wasn't
22 a course of action by the Board as a whole.
23 And three had, I suspect, been working on this
24 without the knowledge of myself or the chief executive
25 until the letter was produced at the meeting.

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1 have wanted to remove the paragraphs about the
2 Caxton Foundation beneficiaries, and also the
3 Thalidomide Trust, because as far as the Caxton is
4 concerned, once we start making any comparison between
5 the Macfarlane beneficiaries and Caxton, it's going to
6 open another whole problem. And as far as thalidomide
7 is concerned, I wouldn't have wanted to sign a letter
8 about monies which the Thalidomide Trust got when
9 I had no knowledge of any money or anything at all
10 about that particular trust. If those two paragraphs
11 had come out then I might well have signed it, as well
12 as the threat of resignation.

13 Q. If we just look at your response to Ms Evans' email.
14 It is at WITN1122027. You say this:
15 Hi Kate, regarding arm of government DH
16 established MFT to administer its funds. It allocates
17 our funds in points 3 (1/3) of the Trustees. I agree
18 with your interpretation and we need to open
19 a dialogue. They won't readily do so if Trustees are
20 sending hostile letters. It was a point I was trying
21 to make yesterday. It's an excellent example of why
22 we need to work with them. We must look beyond
23 a decision on 2013/14 financial allocation and the
24 consequences of any action Trustee(s) take now."
25 When you say "I agree with your

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1 Q. Then it continues about:
2 "... I am beginning to lose faith in Roger ..."
3 And I'm not asking you about someone else's
4 subjective views but about the next bit:
5 "... as he appears to lack the will to consider
6 difficult courses of action."
7 Do you have any observation to make about that?
8 Do you consider you lack the will to consider
9 difficult courses of action?

10 A. Not at all but, I mean, the way I was tackling it and
11 addressing them was not the course they were
12 advocating because I didn't think that one would have
13 been fruitful.

14 Q. Then can we look --

15 A. I mean, if a letter went from the Macfarlane Trust to
16 the Department saying, "Unless you agree with what
17 we've done we're all going to resign", they would have
18 said, "Well, you all resign, we'll put somebody else
19 in to do it."

20 Q. Two things arising out of that, Mr Evans. First of
21 all, did you at the meeting say, "Okay, well, I'll
22 sign it", or "I'm willing to go along with" -- what
23 appears to be a majority view, of -- "sending
24 a letter, provided we remove the threat to resign"?
25 A. I don't know if I said that or not but I would also

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1 interpretation", what part of Ms Evans' email were you
2 agreeing with? Are you able to assist us on that?
3 The email appears again at the bottom of this page.

4 A. Can you show me it again, please.

5 Q. Absolutely. If we go down the page, Soumik, that's
6 the first part of it and then it continues over the
7 page but I will just let you read that first.

8 (Pause)

9 A. I -- what I was probably referring to was the
10 sentence:
11 "As Charity Commission guidance clearly states,
12 we cannot be an arm of government/act on its behalf
13 and be a charity."

14 Q. Then if we go up to the top of the same page, Soumik,
15 and then, just referring back to your response, you
16 say that "we need to open a dialogue". Other than
17 through the business case submission and the annual
18 review meetings, are you able to assist with what, if
19 any, steps were taken to open a dialogue in light of
20 the concerns that were being raised by at least some
21 of the trustees?

22 A. No, I can't. I ought to be able to but I cannot
23 remember how that was followed through.

24 Q. Then you say:
25 "They [as in the Department of Health I take

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1 it] won't readily do so if Trustees are sending
2 hostile letters."
3 What was it about the letter that you regarded
4 as hostile?
5 A. Well, threatening to resign.
6 Q. Was there any -- again, leaving that aside -- apart
7 from the threat to resign, was there anything else
8 about the letter that you thought was hostile?
9 A. Not as such but there would have been hostility caused
10 by the reference to the Caxton Foundation.
11 Q. Then you said --
12 A. I think there would have been grounds if -- if
13 Mr Mishcon had approached me and Jan Barlow saying
14 that he and two of his colleagues were wanting the
15 board to agree a letter to go to the Department of
16 Health on this issue, then I would have been fairly
17 optimistic that we could have agreed a letter to go to
18 the Department, we could have put it to the Board,
19 which had the support of myself and the chief
20 executive, and we could have got a letter through
21 which we would have sent to the Department of Health.
22 But I don't think it could have been expected
23 that to suddenly to raise a letter under any other
24 business, without any notification it was coming up,
25 which included a threat that the whole Board would

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1 final email on this issue. It's your email to
2 trustees a few days later, 26 January 2013. Soumik,
3 it's WITN1122029, please. If we go to the second page
4 and go to the bottom of the second page we can see
5 there the date, 26 January, and it's an email from
6 you, "Dear Trustee", and then we need to go to the
7 next page, please, Soumik.
8 You say this:
9 "In case you are still considering whether to
10 send an individual trustee letter to DH I want to
11 clarify a few factual points with you before you
12 decide.
13 "I note that several Trustees are not prepared
14 to sign such a letter. I agree with their rationale
15 for not being prepared to do so.
16 "Several of you have asked me what influence DH
17 has over the Macfarlane Trust. The answer is a lot.
18 The Government (through DH) set up MFT in the first
19 place and could close us down at any time if they so
20 wished. DH appoints three of our nine Trustees and
21 they are our sole source of funding. The relationship
22 is bound up in a Trust Deed and an amended version was
23 agreed unanimously by our Board a year ago. A DH
24 appointed Trustee challenging DH in the proposed way
25 would raise a number of questions within DH about

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1 resign was the right way of going about it to get the
2 answer.
3 Q. You said in your evidence a few minutes ago that if
4 the Department of Health had received the letter with
5 a threat from the entire Board to resign, your view,
6 and again I'm paraphrasing, was that they would have
7 said, well, go ahead then. Is that really how you
8 think the Department would have responded, because
9 that would have left them, would it not, with
10 an enormous problem that they would have to sort out?
11 A. Well, I think they would have been prepared to have
12 that problem rather than the one of giving in to
13 threats of resigning and giving more money, because
14 once they've done it once we could do it again or the
15 Caxton Foundation or somebody else could. I mean, my
16 experience of Government is that if you threaten to
17 resign they would take your resignation.
18 But I mean I'm hypothesising because it was
19 never discussed in that way with the Department.
20 Knowing the way Government thinks, from my experience
21 in other areas, it certainly wasn't something to just
22 do on a whim, which we would have been doing if we
23 signed Mr Mishcon's letter which was unexpectedly
24 tabled in a meeting, the end of a meeting.
25 Q. I'm going to ask you to look now at one third and

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1 loyalty, for instance."
2 Before we look at the rest of the letter
3 I wanted to ask you about the paragraph I've just
4 read. What was the basis for your view that the
5 Government could close the Macfarlane Trust down at
6 any time if they so wished?
7 A. Well, I think my basis is what I said just now,
8 really, that Government Departments don't like being
9 threatened and if they are threatened they will take
10 whatever action they think necessary. I'm not sure,
11 reading this now, that they would have closed down the
12 Macfarlane Trust but they probably would have put some
13 of their other trustees or they would have found out
14 some other way of disbursing the monies.
15 I think it needs to be borne in mind that this
16 was at a time when the future of the Alliance House
17 bodies was beginning to be discussed and considered,
18 so there could have been change on the horizon anyway.
19 Q. You refer in the next line to DH being the sole source
20 of funding and so, in principle, it might have been
21 possible for the Department of Health to cease
22 providing any funding to the Macfarlane Trust, which
23 might have had practical consequences for its future
24 operation, but did you understand the Government to
25 have powers actually to close the Macfarlane Trust

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1 down other than through the practical consequence of
 2 a cessation of funding?
 3 **A.** Well, my opinion, which is not a legal opinion, I can
 4 look into it, but my opinion was that if they set up
 5 the Macfarlane Trust, which they did, then they could
 6 close it down.
 7 **SIR BRIAN LANGSTAFF:** I think you will find that that
 8 doesn't accord with the general understanding of the
 9 setting up of any trust, unless there is an express
 10 reservation to that point and it's highly rare.
 11 I suppose the person who might have known might have
 12 been Mr Mishcon, who was the solicitor, was he not?
 13 **A.** It wasn't an area of law he specialised in.
 14 **SIR BRIAN LANGSTAFF:** No.
 15 **A.** I think -- I mean, given this was a fast-moving
 16 situation, certainly the view I expressed was very
 17 much a layman's one. So I do back what you said,
 18 Sir Brian.
 19 **SIR BRIAN LANGSTAFF:** It is plainly your view, and I'm
 20 just giving you, I think, some information about it.
 21 **A.** Yes. I mean, there are all sorts of things the
 22 Department of Health could have done if they so choose
 23 to make the situation more difficult for us than it
 24 was. That's probably the most extreme one.
 25 **MS RICHARDS:** Then if we just look at the last sentence of

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1 **Q.** Can you recall whether any of the three DH-appointed
 2 trustees, and I'm not asking for names, but any of the
 3 three DH-appointed trustees responded to your email,
 4 which, as I understand it, was being sent to all
 5 trustees, to say "That's not what we understand our
 6 role to be"?
 7 **A.** I don't recall that, no.
 8 **Q.** If we pick this up then in the next paragraph, you
 9 refer to a decision not having yet been made or
 10 announced by DH. You say that you are chasing them
 11 vigorously, drawing their attention to the
 12 repercussions of the long delay, and we will look at
 13 some of the communications with the DH later.
 14 You then say this:
 15 "As I said at the Board meeting on Monday
 16 I know the way Central Government works ..."
 17 You suspect DH has already made
 18 a recommendation to ministers and then you talk about
 19 this being, essentially, a part of a much bigger
 20 decision about the entire healthcare spending
 21 programme. Then you set out your view that, this is
 22 the end of that paragraph, to send a letter will:
 23 "... antagonise them and badly damage our
 24 future working with civil servants who are supportive
 25 of MFT."

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1 that paragraph, you say:
 2 "A DH appointed Trustee challenging DH in the
 3 proposed way would raise a number of questions within
 4 DH about loyalty, for instance."
 5 What did you mean by that?
 6 **A.** What I probably meant was that if a trustee was being
 7 appointed by the Department of Health, then the
 8 Department of Health would have seen that that person
 9 should have some loyalty to them as they appointed
 10 that person.
 11 **Q.** Was that your understanding of the role of a trustee,
 12 that they had an obligation to be loyal to the body
 13 that appointed them, so The Haemophilia
 14 Society-appointed trustees had to be loyal to The
 15 Haemophilia Society and the Department of
 16 Health-appointed trustees loyal to the Department of
 17 Health?
 18 **A.** Well, I think there are, sort of, fine margins in
 19 a way. Certainly they weren't representative of the
 20 Department of Health, I wasn't trying to say that all.
 21 But I think what I was probably trying to say that
 22 if -- as they were appointed by that body it would be
 23 very difficult for them then to be seen to be
 24 outspokenly critical of their appointing body, ie the
 25 DH.

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1 Is this a fair inference to draw from that
 2 paragraph, Mr Evans, that your experience of dealing
 3 with civil servants and Central Government was that
 4 they would react adversely to the receipt of
 5 criticism?
 6 **A.** Yes.
 7 **Q.** Does that, on a broader level, not give you any cause
 8 for concern that civil servants, or indeed elected
 9 ministers, your understanding was that they would be
 10 hostile or antagonistic if they were criticised?
 11 **A.** Well, with respect, what you've just said is slightly
 12 different. I have no problem and never have in
 13 criticising elected ministers but civil servants
 14 regard themselves as not having a right of response.
 15 I would have been much more content if lobbying, and
 16 perhaps more than that, had taken place with ministers
 17 either directly by beneficiaries or through their
 18 Members of Parliament, rather than the Macfarlane
 19 Trust criticising the civil servants, both of whom, in
 20 one context, we were implementing Government policy.
 21 **Q.** If we just go back to the letter, the draft letter.
 22 I appreciate that your recollection is you saw
 23 a version that was slightly different because it had
 24 the threat to resign in but if we go back to
 25 WITN4474004, it was expressed, was it not, as a letter

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to the Minister, so not a criticism of individual civil servants and, if we look over the page, we can see that it concludes with an invitation to "you", ie the minister:

"... to reconsider the commitment made by the Government and to take account of the matters raised in this letter."

So it wasn't here seeking to pick a fight with Dr Wight or Ms Jecock, or any of other individual officials that you were dealing with, it was very squarely addressed, was it not, to Government and to ministerial responsibility?

A. Yes, I think that's fair comment, looking at it now.

Q. Can we then go back to WITN1122029, the email. Third page. I'm not going to go through every paragraph, Mr Evans. The next paragraph refers to the future need to work with the Department of Health and the risks of antagonism.

Then if we go to the -- sorry, actually still on that paragraph, if you look at the penultimate sentence, so it's the paragraph beginning "In the future, MFT will have to work with DH", it says, picking it up four lines from the bottom:

"... the charitable relationship between DH and MFT, and the meaning of charitable need have been

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Why was it your view that you shouldn't bite the hand that feeds you, you shouldn't criticise robustly DH or Central Government?

A. Well, I think I would have been calling on my long experience in engaging with the DH from my time in the NHS, and there were ways of getting what you wanted from the Department of Health, or getting some of it, and the ministers and there were ways in which they would not respond. I thought the approach which Mr Mishcon was suddenly come up with was not the way which was going to be most successful.

I suspect in -- two other things. I suspect "bite the hand that feeds you", I was -- the "food" we got was the -- sorry, it's not a very good analogy, but was the funding we got from the Department of Health to disburse to the beneficiary community. That's what I think I was referring to there.

You mentioned in passing about the phrase "rock the boat", which I think Mr Mishcon used, I didn't. I mean, I had no problem rocking boats. It was a question of how you did it with the DH, whether you did it in what they would see as a sort of non-threatening way, and once ministers and civil servants feel they are being threatened, then their attitude changes, in my experience.

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raised by you recently."

That may be a reference, I don't know, to Ms Evans' communications:

"I agree that we should open a dialogue with DH on these when funding is known."

Can you recall whether there were, following this, attempts to establish a dialogue about the issue of charitable need with the Department of Health?

A. No, I can't recall.

Q. We can see whether we can pick anything up in the documents?

A. I may have. I just can't recall.

Q. If we go back to the text, in the next paragraph you say this, in response to an email from Russell, that's Mr Mishcon, advocating "taking the battle to DH". You say:

"I don't recognise a battle in this context.

DH have not started a fight with MFT and it would be very unwise for a group of individual Trustees to pick a fight with DH and Central Government. You don't bite the hand that feeds you."

Can I just ask you about that last sentence.

I think we've seen in some other communications a phrase used of not rocking the boat, I think a phrase used about you rather than by you, perhaps.

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Q. Final question from me on this email, if we look towards the bottom of the page, you say:

"The message that will be received by DH, and will reach others, is not one of the need for more funding but of a fractious and dysfunctional Board."

Can I ask you about that last phrase. I'm not asking you about individual trustees or individual interactions between different trustees but, overall, was it your sense, either at this time or more generally, that the board of the Macfarlane Trust was fractious and dysfunctional?

A. Well, we were going through a difficult time, largely because two of the three proponents of this letter, and Kate Evans was not one of them, were making the functioning of the Macfarlane Trust board very difficult. I'm very happy in other ways to elaborate on that but it's quite a big issue and I wasn't sure whether that might have been the incentive between suddenly producing this letter for signing and threatening resignation, rather than anything entirely to do with funding.

Q. Sorry --

A. Can I just -- before we leave this letter, may I just say pointing out that at the end of the letter I say to Kate "Give me a call", so I was clearly very

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1 content to have an exchange of views and a chat with
2 her about this. I cannot remember whether we did that
3 or not.

4 **Q.** Can we look at two further documents in relation to
5 not this specific issue but more generally funding
6 issues and interactions with the Department.

7 So the next document, Soumik, is
8 MACF0000061_069, and this is the next annual review
9 meeting record, Mr Evans.

10 So you will see the date is 16 January 2014.
11 It's a year on from the events that we've just been
12 talking about and just a little over a year since the
13 previous annual review meeting. We can see you're in
14 attendance with Ms Barlow and then there are five
15 officials from Department of Health there.

16 Actions from the last meeting, if we could just
17 go down the page a little, please, Soumik, so you will
18 see there at (b), it says:

19 "RE clarified why MFT backdated various widow
20 payments. RE confirmed that the Trust are not in
21 a financial position to make similar decisions again
22 and confirmed that decisions regarding disbursements
23 for the Trust are to be made within their allocation."

24 What, as far as you can recall, was the
25 particular point that you were seeking to make to the

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1 clarified as past tense, but it's also a minute,
2 whether that was given at the meeting or whether this
3 is a record of the fact that since the last meeting
4 you had clarified? It's not entirely clear.

5 **A.** Unfortunately, Sir Brian, I can't help. I cannot
6 remember anything about an issue with widow payments.
7 There clearly was one but my mind -- it's not there,
8 I'm afraid. Sorry, I cannot help on that.

9 **MS RICHARDS:** If we then look under the heading 3, "Annual
10 reports and accounts", we can see you saying a lot had
11 happened, there's reference to the appointment of
12 trustees, there's reference then to the financial
13 assistance survey used to prioritise needs for
14 spending the reserves. I know I keep saying it but we
15 will come back to the reserves issue.

16 Over the page -- thank you, Soumik, you're
17 ahead of me -- this is at d:

18 "MFT considered the ageing profile of
19 beneficiaries ... and how they are going to need to
20 take a strategic look at the changing profile."

21 Then this:

22 "Action: MFT to provide to DH the age profile
23 of primary beneficiaries and widows, with age bands
24 and the number of individuals in each pay band."

25 Why was that material that the Trust was going

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1 Department on this issue?

2 **A.** I regret to say I cannot recall this issue with widow
3 payments at all.

4 **Q.** Then if we --

5 **A.** I can't help, I'm afraid.

6 **Q.** If we go down to 2f, it would appear -- we looked at
7 the last review meeting minutes and there was
8 a reference that you were going to send or the Trust
9 was going to send the rationale underpinning the
10 Trust's disbursement policy. It would appear from 2f
11 that, over a year later, the Department hadn't
12 received the rationale underpinning the disbursement
13 policy. Was that because you didn't think the
14 Department was entitled to it or do you not know why
15 they hadn't been sent it?

16 **A.** Most probably your former, yes, most probably. It is
17 associated with the questions you were asking me
18 earlier about the level of control in the Department
19 and I think we could be railing against that.

20 **Q.** Then we see, under the heading "Annual reports and
21 accounts 2012/13" --

22 **SIR BRIAN LANGSTAFF:** May I just ask one question. This
23 is headed "Actions from [the] last meeting". So at
24 2b, can you help at all as to whether the
25 clarification which it is said you had given,

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1 to provide to the Department? Do you know? Do you
2 know why the Department wanted it?

3 **A.** Well, most probably that -- you will have picked up
4 that we've been doing work on the longer term needs of
5 our beneficiary community and we've got an actuarial
6 company in to help us do that, which provided
7 a profile which -- I don't know how far you want me to
8 go into this at this moment, but which would have
9 shown that there would have been primary beneficiaries
10 most likely still to be reliant on funding until
11 the 2050s and secondary beneficiaries until the 2080s.
12 And I do recall we had a discussion, presumably at
13 this meeting, with the Department saying: look, the
14 Macfarlane Trust is not the way that we suggest that
15 this should be dealt with. Do you really want to keep
16 the Macfarlane Trust going that long, or you should be
17 looking at another way of addressing the issue.

18 **Q.** Can you recall anything about what the Department's
19 response was to that suggestion?

20 **A.** I think it was a fairly neutral one, of, "Very
21 interesting give us the information". At this stage.

22 **Q.** We then see --

23 **A.** I think -- I don't know how far you want to go into
24 this at the moment, but I think the -- there were
25 three options which were in the first actuarial paper

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1 which were viable ones, and one which we supported was
2 the one about significant compensation being paid to
3 the beneficiaries rather than continuing with the
4 existing financial relationship with them. And it
5 frightened the Department, I think, and it got buried
6 really, sadly.

7 Q. I may come back to you in relation to that, Mr Evans,
8 but is this right: that was a project that you were
9 involved with I think a little while before this. It
10 was while you were trustee, before you were appointed
11 chair, and there was a working party --

12 A. I was a driving force, if I might say so, behind this
13 being done, because it -- I was -- again, you will
14 probably want to come back to this -- I was very
15 unhappy with the way in which we were financially
16 supporting the community in the shorter term and also
17 the longer term prospects. So it was I who pushed
18 this, and the Board set up a long-term working party
19 of I think three of us which I think I chaired. But
20 certainly I was very much involved in it.

21 Q. I will come back to that, Mr Evans. I will probably
22 do that either this afternoon or tomorrow morning
23 because there are a handful of documents we need to
24 look at, I think.

25 A. Okay.

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1 there was a robust or vigorous pushing of the position
2 or robust presentation of the position to the
3 Department.

4 Can you --

5 A. It was very much -- sorry.

6 Q. No, no.

7 A. I'm sorry, Ms Richards.

8 Q. Not at all. I was going to ask, can you assist us
9 with understanding what might lie behind the minutes
10 or what other interactions there might have been that
11 might show a more vigorous or robust presentation?

12 A. Well, it was probably this meeting there was a very
13 vigorous exchange, and I think it got reasonably
14 heated. These minutes, of course, as we talked about
15 earlier, were written by the Department of Health.

16 I think -- I've not done a paper chase to it
17 but I think if you look at some of the emails which
18 were exchanged involving me outside the meetings,
19 either before or after, you will see that
20 it's explained -- again, it was very vigorous in the
21 exchange.

22 I mean, what -- partly what this, of course, is
23 was a tactic to essentially -- I regret I can't think
24 of a better word to use, I'm sure there is one, but to
25 sort of frighten the Department of Health into

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1 Q. "Current year (2013/14)", we can see then it records
2 making of winter payments, needing to do more work
3 engaging with beneficiary community, no weekends away.
4 Then on funding, 4d records you as highlighting
5 there's a funding gap, being funded from the reserves
6 currently; trust trying not to use reserves for
7 ongoing expenditure; and you give an estimate of what
8 might be left by the end of the relevant financial
9 year.

10 Then we see at 5a you say trustees don't want
11 to make cuts in regular payments. If they had to,
12 they'd be looking first to:

13 "... cutting winter payments, CPI increases for
14 discretionary payments and one-off grants."

15 If there was a need to cut payments to benefits
16 significantly, the Board would want to meet with the
17 Minister.

18 Then you talk about potential assumptions going
19 forward if there's no increase, that's paragraph 5b,
20 and then there's a reference to read across.

21 Now, before we get to the specific issue of
22 read across, in 5c, you are here highlighting
23 potential problems for the Macfarlane Trust if funding
24 is not increased. There's not very much in this
25 record that helps us determine the extent to which

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1 realising that this was the reality of the world we
2 were in. But we still had this albatross over our --
3 that's not the right word but we still had this
4 problem of having very high reserves, which is alluded
5 to further up in the minutes.

6 Q. Can you assist us then in paragraph 5c with the
7 reference to read across. Its says:

8 "RE pointed out that there was read across if
9 only one of the business cases for increased funding
10 from the Caxton Foundation and the Macfarlane Trust
11 was approved."

12 A. I don't quite know what they mean by read across.
13 What I think that meant was that the -- the Caxton
14 Foundation and Macfarlane Trusts, contrary to some
15 perceptions, did operate very separately, in silos,
16 and what this most probably means is that if the
17 Department were to agree one of the business cases and
18 give funding, say, to the Caxton Foundation and not
19 give funding or what was perceived as a similarly
20 equitable deal to the Macfarlane Trust, then there
21 would be a lot of discontent between the beneficiary
22 communities and the two boards.

23 Q. One final document, I think, before we break for
24 lunch, and that is MACF0000045_004.

25 So this is the annual report for the year

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1 ending 31 March 2013. So I think it would probably
 2 have been your first annual report as chair?
 3 **A.** If it were my year, it would be, yes.
 4 **Q.** If we go just to the third page and see if we can pick
 5 it up at the fourth paragraph, beginning "The country
 6 is experiencing", so:
 7 "The country is experiencing a prolonged period
 8 of economic recession, which we are acutely aware has
 9 an impact on our beneficiaries, as well as the funding
 10 of the Macfarlane Trust. During the year we engaged
 11 in robust negotiations with the DH and Ministers
 12 regarding our financial allocation for 2013/14. The
 13 result was that we received an allocation of
 14 £2.2 million which is, effectively, the same as for
 15 2012/13. On the face of it this may not seem
 16 a progressive outcome but, given the cuts in public
 17 spending, it was the best we could expect."
 18 Then it goes on to talk about:
 19 "... currently only able ..."
 20 This is three lines further down:
 21 "... to allocate a small grants budget, which
 22 is inadequate for the level of demand from our
 23 beneficiaries."
 24 You refer to the introduction of the MFET
 25 payments and the reduction of the Macfarlane Trust's

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1 defeatist in not getting it. Because we were not
 2 being defeatist, we were working as hard as we could.
 3 The comparisons which we did, in our somewhat
 4 superficial way, did show that many other bodies such
 5 as parts of the NHS were actually having their budgets
 6 cut, and although it might seem a bit odd the way it
 7 is worded here now, we did avoid a cut, because --
 8 I can't remember the chronology but I think if you go
 9 back, possibly, to what we were looking at before,
 10 when we were telling the DH what would happen if we
 11 got our budget cut, then I think that was a factor in
 12 our having the same level of funding.
 13 Incidentally, if we had been sending a letter
 14 in saying we were all going to resign or if we had
 15 made a lot of moderate noises publicly, I don't think
 16 we would necessarily have had that result.
 17 **Q.** If we go two paragraphs further down, final question
 18 on this document, there's a paragraph -- penultimate
 19 paragraph on the page -- with regard to "the financial
 20 pressures being experienced by beneficiaries now", and
 21 then there's a reference to the winter fuel payment
 22 and to a cost of living increase to regular payments
 23 to primary beneficiaries. Then the last sentence says
 24 this:
 25 "Whilst we are not in a position to make

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1 overall allocation, impacting on ability to make
 2 financial grants.
 3 Two questions arising out of that paragraph,
 4 Mr Evans. The first is, do we correctly understand
 5 that the financial constraints that the Trust was
 6 operating under meant that it was unable to be as
 7 forthcoming with grants as it might otherwise have
 8 wished to do?
 9 **A.** Yes.
 10 **Q.** Secondly, you're painting there a picture of "This is
 11 the best we could expect", because of the period of
 12 economic recession that you refer to I think in the
 13 first line. Was that your attitude as chair of the
 14 Macfarlane Trust, that whatever representations you
 15 made the best you could expect was not to receive
 16 cuts?
 17 **A.** Well, this does read as defeatist, but I think it
 18 needs to be looked at, I would suggest, in the context
 19 of Government funding generally and the economy at the
 20 time, which I touched on earlier on.
 21 I think one of the difficulties at this stage,
 22 which I was probably trying to deal with in my report,
 23 was not giving false expectations to the --
 24 particularly to the beneficiary community that there
 25 was vast sums of money available and we were being

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1 additional payments to compensate for any reductions
 2 beneficiaries are experiencing, we are doing all we
 3 can to highlight with the appropriate authorities the
 4 particular needs of our beneficiary community."
 5 Who were the appropriate authorities that
 6 you're referring to there and what was the "all we can
 7 do" that you were undertaking to highlight the needs
 8 of the beneficiary community?
 9 **A.** The appropriate authorities would be Department of
 10 Health, that's obvious, with the APPG, and we were
 11 endeavouring to do so with The Haemophilia Society as
 12 well, and there were meetings with ministers. I had
 13 a meeting in 2012 with one Minister of Health, had
 14 another meeting in 2013 with another one, and I --
 15 sorry, I did not have one in 2012, I thought I'd
 16 arrange to have a meeting with a minister who then
 17 stubbed me, so that didn't take place. We had one in
 18 2013 and I think, incidentally, another one in 2014.
 19 So there were eyeball meetings, as it were,
 20 with ministers and a lot of debate -- interaction with
 21 MPs, both through APPG and independently. So I think
 22 that's what I probably would have meant by other
 23 appropriate authorities.
 24 **MS RICHARDS:** Thank you, sir. I note the time.
 25 **SIR BRIAN LANGSTAFF:** There's just one question that

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I have for you. It arises out of your evidence this morning about your earlier career and what you said to the trustees, which was that you knew how Central Government worked. Did you ever actually work in Central Government yourself?

- A. I had two major contracts with the -- well, three, really, with the Department of Health, not on their payroll, I can go through them if you want. Two of them I was working to the Chief Medical Officer and one was establishing Public Health -- what is now Public Health England, it was under a different name, the other was for which I had a budget of £300 million, it was putting in a service for the decontamination and sterilisation of surgical instruments. With the second one, I was meeting fortnightly with the Secretary of State for Health and weekly with a Minister of Health, for two or three years. That was just before I became involved with the Macfarlane Trust, and I was on other things working on waiting lists and working with, not the Permanent Secretary but the next person down.

So I was in and out of the -- literally and figuratively, with the Department of Health a lot of time, yes, and I clearly had -- I also did put in place a service for the people with cleft palate

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to put me in an impossible position, rather than having any realistic expectation of it leading to increased funding."

What was the basis for your suspicion that the prime objective was not about interaction with the Government about funding but to put you personally into an impossible situation?

- A. Well, from the time I was appointed as the chair, Russell and I had a strained relationship. Prior to that we worked well together on a number of things and for some reason the relationship changed. And he -- I had received -- sadly they are not available now with me anyway -- some rather threatening, hostile -- I don't mean threatening in a sort of legal way -- emails from him on my home account over a year or two and -- on various issues, and I thought -- and this was, in a sense, some sort of -- I saw it as possibly a sequel to that. And I think at best he was probably trying to embarrass me.

So it may -- I'm not questioning his commitment to wanting us to get more money but I thought that was why the suggestion was of making sure everybody signed the letter. We could have sent a letter without everybody signing it in a slightly different mode. But I don't know, I'm not sure, but that was my -- as

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problems, and I also did a job on waiting lists.

Also, of course, I had a lot of experience in dealing with the Department of Health as a chief executive in terms of negotiating annual budgets, and such like, for my two NHS Trusts. So yes, I had a lot of experience.

SIR BRIAN LANGSTAFF: Thank you very much. We will take a break then until 2.05.

A. Thank you very much. Thank you.

(1.07 pm)

(Luncheon Adjournment)

(2.05 pm)

SIR BRIAN LANGSTAFF: Yes.

MS RICHARDS: Mr Evans, I want to return briefly to the question of the Mishcon letter and the January 2013 board meeting issue and ask you about something you said in one of your statements.

Soumik, could we have WITN3859001, please.

If we go to the second page, we go to the bottom of the page, paragraph 9, you refer there to the draft letter being tabled, and then if we pick it up in the last line you say:

"There was no way [and if we go to the top of the next page, please] DH would have agreed to the content and I still suspect that the prime motive was

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I think I said, at the time my suspicion.

- Q. We can no doubt ask Mr Mishcon about that as well next week.

The other matter arising from the material -- we can take the statement down, thank you. The other matter arising from some of the material we looked at this morning, Mr Evans, is this: it would appear from some of the documents that we've looked at that your understanding, in terms of the bids that were being put into the Department of Health for funding, was that your bid was in competition with the entire NHS budget. Is that correct? Is that what you thought at the time?

- A. Yes. I mean, my understanding which -- you know, in a sense relates to what Sir Brian was asking me before lunch. The way the Department of Health deals with funding is they get an allocation from the Treasury, they have a multitude of demands, needs, et cetera, and then they decide how to allocate the money.

Crudely, they will -- if their budget's, say -- I'm making up some numbers, I don't hope you don't mind me doing this -- if, say, their budget is being reduced from by 3 per cent from the Treasury then their first instinct is to reduce all the budgets of those who they are allocating money to by 3 per cent.

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(26) Pages 101 - 104

1 So, as I was saying earlier, in this particular
2 time of austerity, the Department got a budget
3 allocation which was something like 2 or 3 per cent
4 less than previously, and that was what was happening
5 with public service. So their first instinct was to
6 pass that hit on to us, as far as our allocation was
7 concerned.

8 So what we were striving to do, which -- one
9 might call it damage limitation, is to make sure that
10 our budget did not get reduced and we would get the
11 same as we did before. That didn't mean I liked it,
12 because I wanted to get as much money as possible, but
13 it would have been unrealistic to start arguing for
14 huge increases when it wasn't possible.

15 At one of the meetings in the Department -- and
16 I'm afraid, Ms Richards, I can't remember which one,
17 quite when it was -- when we had some hint of sympathy
18 from Ailsa Wight and Rowena Jecock, someone came along
19 from the finance directorate of the Department, who
20 clearly knew nothing about our particular area of
21 work, and was very unhelpful in their approach. So it
22 was a bit ominous at that stage and I think that, you
23 know, we did reasonably well, as well as we could have
24 in the circumstances.

25 I mean, just to finish on that, I mean,

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1 Health?

2 A. Well, I think it's partly because of what I've been
3 describing now and before lunch, and that is that my
4 way of doing things and not -- which I've -- you know,
5 I still think was the right one, was to have tough,
6 quiet arguments with the Department of Health in their
7 offices or our offices, not ones to be talking loudly
8 in public gatherings.

9 Now, I think the latter is what the beneficiary
10 community would have been looking for us to do and,
11 you know, I still don't think it would have been the
12 best -- a fruitful way of behaving.

13 So I think that was part of it, and I think
14 also some of the questions you were asking me this
15 morning, about relationship with trustees to the DH if
16 they were appointed by them and so forth, may have
17 been another aspect of it. But I think they were
18 expecting us to behave in a way where we very
19 strident.

20 Q. Going back to your first statement, on the issue of
21 interactions with Government -- Soumik, can we have
22 WITN3859001 again, and go to page 5 this time.

23 Just took at paragraph 21. The first sentence
24 reflects the evidence that you have given today.

25 Then you refer to meetings with two Ministers

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1 £2 million or £3 million was a lot of money for us and
2 the beneficiaries but within the Department of
3 Health's overall budget it was peanuts, really. And
4 in a way that could have been helpful to us but on the
5 other hand it could have been unhelpful.

6 Q. Mr FitzGerald, when he gave evidence to the Inquiry
7 last week, told us that he had been led to understand
8 that there were essentially two Department of Health
9 pots of money: an NHS pot and a non-NHS pot. He had
10 been led to understand that the Macfarlane Trust's
11 funding came out of the non-NHS pot and wasn't in
12 direct competition with hospitals, health bodies and
13 so on. Was your understanding different from that?

14 A. No, I didn't know of that, I have no doubt, because
15 it's -- I wouldn't question Mr FitzGerald's correct on
16 that one, but I don't think it, at least on the
17 surface, changes from the position that, however many
18 pots there were, the pots would have been reduced, if
19 I can put it that way.

20 So no, he may well be right but he clearly knew
21 something which either I didn't know or I've
22 forgotten.

23 Q. Do you understand why some at least, amongst the
24 beneficiary community, thought that the
25 Macfarlane Trust was too close to the Department of

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1 of Health. So this suggests that one meeting you had
2 and another you tried to get a meeting and didn't.

3 Can you just help us with, in terms of the
4 meeting that you had, which Minister of Health that
5 was with and roughly when in terms of calendar year
6 you think that was?

7 A. Well, in total I had more than two. It might be
8 helpful to you, unless you don't want me
9 to -- (overspeaking) --

10 Q. No, no, please do tell us.

11 A. -- what I didn't have as well.

12 I had a meeting in 2011 with Anne Milton, who
13 was then the Minister. I had a meeting in I think it
14 was 2013 with Mike Penning, who was a Minister for the
15 Disabled at the time, and I had a meeting, probably
16 2015, with Jane Ellison, who was the Minister of
17 Health.

18 In 2012, through a mutual contact, I'd been
19 trying to meet up with Anna Soubry, who was a Health
20 Minister, and through a mutual contact, I -- she and
21 I thought we would arrange for Anna Soubry and I to
22 meet, and then at the last minute she rebuffed me and
23 passed me back to the civil servants who we'd been
24 dealing with anyway.

25 So there was quite a lot of interaction in that

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1 way.

2 **Q.** Leaving aside the meeting with Anna Soubry which

3 didn't take place, as you've explained, can you just

4 help us with, very broadly, what the subject areas

5 were for discussion with the three meetings that did

6 take place.

7 So would the first meeting in 2011 with

8 Ms Milton, what -- can you recall -- this is before

9 you're a chair of the Macfarlane Trust, you're then at

10 that point a trustee of the Macfarlane Trust and

11 a founding trustee of the Caxton Foundation. Can you

12 recall anything about what the subject matter of the

13 meeting was or its purpose?

14 **A.** Yes, I can. I mean, Peter Stevens and I met with her

15 and it was partly to talk about the Caxton Foundation

16 and its inception and what it was going to do and such

17 like. I can't remember the detail more than that.

18 But at the same time I took the opportunity to lobby

19 her on various issues with the Macfarlane Trust, the

20 predominant one being funding. Incidentally, she did

21 send me a very complimentary letter after that.

22 With Mike Penning --

23 **Q.** Sorry, just before we go on to Mike Penning, with that

24 2011 meeting, did it result as far as you can recall

25 or as far as you know in any change of position or

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1 **Q.** The Alistair Burt meeting that Ms Barlow also

2 participated in, was that part of the APPG process?

3 The review of funding that was being --

4 **A.** No, I don't think so. One of the beneficiaries who's

5 also given a witness statement was a constituent of

6 Alistair Burt's and, very much to the beneficiary's

7 credit, he'd got a working relationship with, amongst

8 others, Alistair Burt, and I think as a result of that

9 Alistair Burt arranged to meet with us. Partly

10 because, as the witness statements have said, there

11 was dissatisfaction over the funding issues and the

12 way -- the stance which we were taking, which you and

13 I have just been talking about, and therefore

14 Alistair Burt wanted to -- or, suggested we had

15 a meeting, which was, again, in the Commons, I think.

16 **Q.** Then the meeting with Jane Ellison that you described,

17 in 2015, is there anything in particular you can

18 recall, either about what was said by the Minister in

19 that meeting or anything you can recall about the

20 impact of that meeting, if any?

21 **A.** No, I can't. I mean, what -- if I give a bit of

22 a general response but the meetings with the ministers

23 were -- at the time appeared to be very productive and

24 there was optimism about the future, but it didn't

25 always work out that way in practice.

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1 development in terms of funding or anything else?

2 **A.** I can't remember but the financial position was not so

3 critical at that stage as it was later on. I cannot

4 remember.

5 **Q.** Then you were about to tell us about the 2013 meeting

6 with Mike Penning?

7 **A.** Yes, Mike Penning was the Minister for the Disabled at

8 the time, and previously I think he'd been the chair

9 of the Partnership Group but I'm not sure on that.

10 Again, it was to lobby him about funding issues

11 and also about the general situation with the needs of

12 the Macfarlane beneficiaries looking ahead. We had an

13 informal meeting in the -- Portcullis House, the café

14 area there.

15 **Q.** Then the 2015 meeting with Jane Ellison, what was the

16 purpose and nature of that meeting?

17 **A.** Again, it was several issues. One was about funding

18 and the other was about the longer-term ways of

19 supporting the beneficiary community.

20 **Q.** And in --

21 **A.** I had another meeting which with Alistair Burt, which

22 I should have mentioned to you -- with -- Jan Barlow

23 was with me, which was really when things were getting

24 controversial over current and future funding

25 arrangements. We met in -- I think in Parliament.

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1 **Q.** Now, I just have a handful of more general questions

2 about funding issues before we look at the reserves

3 issues, specifically.

4 In your statement, in your second statement,

5 you've said that you weren't aware of the Department

6 of Health approach to funding being based upon any

7 calculation relating to beneficiaries and their needs,

8 or any changes over time in the number of

9 beneficiaries or their changing profile, it was

10 a global approach, his X or his X plus or minus; is

11 that right, that was your understanding of the

12 Department's approach?

13 **A.** Yes, and the way in which I think I described it just

14 now, in terms of the way they got an allocation and

15 then, as it were, syphoned it out.

16 **Q.** Given that the Macfarlane Trust's expressed charitable

17 purpose was to meet or attempt to meet the needs of

18 its beneficiaries, do you think that the Department's

19 approach, funding not based upon assessment of need,

20 was effectively setting the Macfarlane Trust up to

21 fail or at least to struggle?

22 **A.** No, I think it was just -- it was just custom and

23 practice for the way they dealt with their allocation

24 arrangements.

25 **Q.** Do you think the Department should have allocated

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1 funds by reference to the needs and characteristics of
 2 the beneficiary group, given the history and the very
 3 reason why these funds were being provided in the
 4 first place?

5 A. Well, I think it would have been difficult for them to
 6 do that. How do you -- I can say -- I'll try to keep
 7 it simple. How do you define the needs of one
 8 beneficiary against another? We had about
 9 370-something primary beneficiaries and more than that
 10 widows and others. To go through in -- almost person
 11 by person in that way would be immensely difficult to
 12 do and actually would be, even if they had the time
 13 and inclination, quite a hazardous thing to do because
 14 it would not be long before individual trustees wanted
 15 to challenge how -- not the trustees, beneficiaries --
 16 how they were going to be regarded. So I don't think
 17 that would have worked.

18 Q. Forgive me, my question --

19 A. There are some other things I want to say on funding,
 20 which I'll see how your questions go.

21 Q. My question was not about assessing the needs of every
 22 individual as an individual, I should have made that
 23 clearer. My question was, rather than just saying,
 24 "Here's a pot, we're going to take of X per cent and
 25 this is what you have got", do you think funding

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1 trying to do anything to -- I can't remember the word
 2 you used, Ms Richards, they weren't trying to destroy
 3 us or anything like that, but I think they were
 4 fearful of what they might get into if they got too
 5 close to what they were doing, and I think they were
 6 much more interested in giving us some money and
 7 letting us take whatever followed after that.

8 Q. You've expressed in your statement a fairly firm view
 9 that the establishment of the Macfarlane Trust was not
 10 the way in which the Government should have been
 11 administering funds to support the infected and
 12 affected. The Government should, you say, have been
 13 administering funds directly and not through arm's
 14 length bodies such as the Macfarlane Trust, and you
 15 say it felt as though the Macfarlane Trust operated as
 16 a punching bag or cushion between beneficiaries and
 17 the Department.

18 Was that your view at the time you were
 19 a trustee and chair?

20 A. It was my view when I was a trustee and chair, and
 21 maybe I was somewhat outspoken in one context, and
 22 that is that the impression I got was that when the
 23 Macfarlane Trust was set up in 1988 it was a way of
 24 the Government of the day not having to have direct
 25 contact with the beneficiary community, which clearly

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1 should have been on the basis of at least some attempt
 2 by the Department to understand and assess the needs
 3 and characteristics of the cohort, not on a one-by-one
 4 basis, but the cohort, who, after all, were a defined
 5 cohort of infected and bereaved and carers and
 6 dependants?

7 A. Well, certainly I tried -- and I'm sure I'm not the
 8 only one, I'm not suggesting that for a second --
 9 tried very hard to get the Department to understand
 10 that. For instance, when the Macfarlane Trust was set
 11 up -- do stop me if I'm going down the wrong route for
 12 you -- when the Macfarlane Trust was set up in 1988,
 13 it had -- its beneficiary community, which, sadly, the
 14 primary has reduced, I think the eldest was about 42
 15 and about the youngest was aged about 6. So if you
 16 then fast forward that to 2012, the community was
 17 a very different one, much more mature one in age and
 18 less in primary beneficiaries, than was the situation
 19 when the Macfarlane Trust was set up.

20 Furthermore, there were a large number of
 21 widows, infected widows and children, who were now
 22 looking for the Macfarlane Trust to give them support.

23 I don't think the Department of Health ever
 24 really got to a grip with that one. I mean, I think
 25 that was part of the problem. I don't think they were

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1 was where we were. We were, in a sense, the first
 2 line -- we were the line between the Government and
 3 the beneficiary community, and a lot of the emotions
 4 which arose over the years were because of the
 5 feelings of the community towards how they've been
 6 dealt with, and also how badly they were being
 7 funded -- supported.

8 Q. Do you recall whether you ever expressed to the
 9 Department of Health the view that the Government
 10 should be providing funding directly rather than
 11 expecting another body to do so?

12 A. I think I expressed that view to Ailsa Wight but it
 13 was in an informal way. I never raised any papers or
 14 anything like that about it.

15 I think -- do stop me if I'm going in the wrong
 16 direction, but I think that, as well as what I've just
 17 said, sort of going back -- two things I would like to
 18 say which might be helpful. Going back to the answer
 19 to your question just now, and I was explaining about
 20 the age and maturity, and so forth, the other thing
 21 which was difficult, which was never really addressed
 22 and I don't think it could have been -- very
 23 difficult -- is that, happily, HIV no longer is
 24 a morbidity or mortality -- mortality issue, and it
 25 was thought it would be in 1988, that's my

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understanding, and a lot -- as these poor men aged many of their problems were ones which arose from haemophilia, not because of HIV.

Now, we quite deliberately did not try and differentiate between the two. So to some extent, and I think it was absolutely the right thing to do, we were giving people support for wider medical problems.

Q. You've also said in your statement and referred already in the course of your evidence today to the way in which you negotiated with the Department of Health. You say you adopted, this is your statement, a very tough attitude and there were meetings which were not comfortable for the Department of Health.

Is there anything further you can tell us, either about the ways in which you were tough with the Department or the ways in which you sensed the meetings were not comfortable for the Department?

A. Well, information was given to them, as far as we could, which showed impacts of funding decisions but my approach, and I think it's fair to say with Jan Barlow, was very challenging with them. I'm not sure whether I'm meant to say this but I do have a very challenging way of going about things and I would put them on the spot and make them understand what the wider repercussions would be for the

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and there were a number of beneficiary representatives but that's not something you can recall happening during your tenure?

A. I'm sure we didn't do it.

Q. Did there ever come a point in time at which you thought that your approach of, as it were, negotiating from the inside, not confronting publicly, not taking up a more campaigning approach, when it became apparent to you that that wasn't working and you thought it might be time to try a different tack?

A. Well, I think to some extent it did work, as I was saying earlier with the austerity situation, and I think it was before I had or -- I was the chair but I liked to think I had quite an involvement in it. My view had always been that any -- most additional funds ought to go into increasing regular payments for beneficiaries, so that they can make their own lifestyle decisions, and I was expressing that view, which I think you might find in minutes prior to the Archer Inquiry, and one thing which came out of the Archer Inquiry was additional funding, which -- increase in the regular payments.

So I think it did -- it did work in that sense. I wasn't against campaigning *per se* but I did not see that it would be very helpful if it were the

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beneficiary -- for us with the beneficiary community if they were not -- if they were more generous towards us.

Sorry, I didn't put that very well but --

I mean, I do know there were occasions when there were some shouting matches, either in person or down the phone.

So, yes, it was not -- it was not a nice cup of tea and biscuit-type discussion with them at all.

But, on the other hand, it was important to make sure we kept a working relationship together.

Q. Did you ever consider inviting beneficiaries to meetings with the Department or trying to organise meetings with civil servants and beneficiaries in attendance?

A. Well, I invited one of the other trustees to one of the meetings and it didn't go very well, so I didn't do it after that. But, as far as the beneficiaries are concerned, I don't know whether we ever suggested that, I can't remember it but I would be very surprised if the Department were prepared to agree to that.

Q. We've heard some evidence, at least, of a meeting in I think it was around 2006, in which Mr Stevens attended a meeting with a minister and civil servants

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Macfarlane Trust doing it and I thought that if -- I think I described this this morning -- if there was campaigning taking place under the auspices of The Haemophilia Society, if MPs were lobbying and ministers, and so forth, more than they were, and we were having challenging exchanges with the Department of Health, that was probably the most effective approach of the three.

The problem was, instead of that happening, the various bodies were arguing or not getting on particularly well together.

Q. I think I asked you this morning about the extent to which the Department engaged with the business case. Just want you to look at one letter with me from the Department and then I will ask you a further question.

MACF0000062_001, please, Soumik. You will see, Mr Evans, it's a letter addressed to you 19 February 2014, and it's in relation to the business case that was submitted by the Macfarlane Trust to the Department for the year 2014/15. You will see from the second paragraph it says:

"Ministers have decided this is not the right time for an uplift in allocation ..."

Then reference is made to issues, some of which had been highlighted during the Westminster Hall

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debate.

She, this is Dr Wight, goes then to say that she's not yet able to confirm what the actual 2014/15 allocation will be and then:

"I recognise the decision not to increase funding will be disappointing news for the Trust ... your Board will have to make some difficult decisions ... I hope that it does not come as a surprise to you, given our discussion on a number of occasions of the continuing downward pressure on Government spending, and the need to carefully manage your beneficiaries' expectations."

Then she says she would be happy to meet with you.

This obviously doesn't engage with the actual business case at all. Was this, as far as you can recall, fairly typical of the Department's response to requests for increased funding?

A. Yes, but may I just elaborate on the letter which might be helpful to the Inquiry.

We were asked to put in a business case by the Department when we were pressurising them, in the way that I described, for additional funding to go to the Minister, and this is during the austerity period. We submitted one, the deadline was something like

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with hepatitis C, which otherwise might have come to Macfarlane beneficiaries, and the Department was -- tried to be adamant that it was not -- it was new funds but, I mean, that took some believing, in a way, and all the time some of the Macfarlane Trust beneficiaries were, as it were, looking across the road -- I don't mean that deliberately -- to see whether the hepatitis C Caxton Foundation beneficiaries were doing better than they were.

So, that was another strand to the problem.

Q. We can take the letter down, thank you. I'm going to ask you now about the situation in relation to the Macfarlane Trust's reserves, and I'm going to pick the picture up in 2012, because the Inquiry's already heard evidence about the position prior to that, not least from Mr FitzGerald. If we pick it up in 2012, you were asked to join the reserves working party in about February 2012, I think.

Then if we just look at a paper from July 2012, Soumik, it's MACF0000025_092. I don't want to ask you any detailed questions about this but it is just to put what we look at next into context. This is a paper from Martin Harvey, 4 July 2012:

"The paring down of the reserves -- progress in respect of the Department of Health and their

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25 October, thereabouts, the previous year, 2013. We got it in and -- got it in and then there was a great deal of procrastination in the Department before we got any response to it, and ministers were still looking at it, we were told, and so on.

So tempers were quite frayed and you will find in the email -- in the evidence some emails from Jan and/or myself, which made it pretty clear how unhappy we were with all this.

So there was a lot with this particular one. Sorry -- but being more specific with your question, this was not unusual. It was quite a common way of almost saying in a pleasant way "Sorry, there's no money", basically.

Can I say something else though, Ms Richards, in case you are going to go there a bit later, is that the funding issue was one which went back a long way, as you probably gathered from previous interviews. I think that the economy in the country exacerbated that problem around about 2012 or so, but the other new pressure for the Macfarlane Trust was the establishment of the Caxton Foundation because there was a lot of feeling, much of it misplaced -- I think it was misplaced -- that funds were going to set up the Caxton Foundation and support the beneficiaries

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preferred timetable for future disbursements".

We can see referred to in paragraph 1.1 reference to:

"... The Department of Health's requirement that [the Macfarlane Trust] develops a Business Case for paring down the Reserves by 30 September 2012."

Then there are a number of matters of background set out. If we just go further down the page to the heading "The current situation", we can see there it's said that the Department of Health, and Mr Harvey's put this in quotation marks:

"... 'asked' MFT through the then Chairman and Chief Executive, to take steps to reduce the level of Reserves very significantly. They intimated that if the Trust was not able to do so the DH will, most probably, reduce the level of our annual allocation over the next few years and expect the Board to supplement the level from the Reserves."

Then we see the reference to the Reserves Working Party and to you joining it in February 2012. Then if we just look at the bottom of the page, we can see it says:

"The DH Infectious Diseases and Blood Policy Team ... Deputy Director made it clear in January 2012 that the [Department of Health] would need to approve

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the Business Case before the MfT could commit funds from the Reserves. It is worth noting that the 'mood music' from the [Department of Health] surrounding the business case has, over time, significantly hardened."

Then it goes on to talk about the different options for utilising reserves.

Now, I'll come back to that. But is that, broadly speaking, a correct summary of the position as at spring/summer 2012 when you became chair?

A. Yes, I think so. Would you just permit me very briefly to cast back to 2007?

Q. Yes.

A. Because if one were to trace through the minutes from virtually the time I became a trustee, I was very outspoken from the beginning about having these high-level reserves because I made the point at a number of meetings it was not right not to be meeting the needs of the beneficiary community because -- when we were sitting on reserves of 5 or 6 million and looking at the investments at the Board meetings, that we would be allocating that money and I think I predicted -- I'm sure I predicted -- that sooner or later the Department of Health will be looking to take advantage of that in terms of our regular income.

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Q. If we then pick up the picture with a paper from you and Mr Harvey in July 2012, MACF0000060_038. You'll see it's a document headed "Proposal to spend the retained reserves", and if we go -- well, I'm not going to go through all of it. We just go to page 5, please, Soumik. If we look down the bottom of the page, you have a heading addressing the pre-Archer deficit, and there's reference at 3.1 to the need to conduct a detailed review of individual capital needs and then reference is made to the trustees having engaged:

"... a specialist firm to contact (sometimes visit) every living infected beneficiary and bereaved family, to ascertain the appropriate level of capital relief required."

Then you say:

"Initial enquiries suggest that a detailed review along the lines proposed will not cost more than £100,000 which will be fully funded by the Trust."

"It is estimated that the surplus level of reserves will be fully utilised by the end of 2013/14."

We see there this is a document authored by you and Mr Harvey.

Without going through the document paragraph by

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So I was very much on song and probably one of the pushers -- I was probably the prime one -- to actually carry out this review and, therefore, for it to lead to the business case. Christopher FitzGerald agreed to carry out the -- agreed with the NSSC that they would carry out this review work, which led to hiring =MC and I don't think it was going terribly well, so then I was asked if I'd join the working party.

Q. Having said --

A. I was quite keen for you to know my view on the reserves going back a long way.

Q. Arising out of that, Mr Evans, and having said I wasn't going to ask you about the pre-2012 position, let me --

A. Yes --

Q. Let me do exactly what I said I wasn't going to do. We've obviously heard from Mr FitzGerald on this issue but what's your understanding or recollection of why the reserves were not substantially reduced between 2007 and 2012?

A. There just seemed -- well, my recollection, it's a long time ago so was, to a certain extent, one of apathy. There seemed to be other things which most other members of the Board seem preoccupied with.

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paragraph can you just tell us in a nutshell what it was you and Mr Harvey were proposing and why?

A. Well, the proposal came from the working party, about which we've just been talking. But we were -- in running down the reserves, we were keen, as was the working party, that the money went to be used in the ways which were the most beneficial to the community and not just in allocating everybody, say, a few thousand pounds or whatever, but actually to target what their particular needs were.

So the purpose of the survey, which was carried out by =MC, after a competitive tendering exercise, was to find out from individual beneficiaries what they saw as their particular needs and we then, as far as we could, responded to them. If you want to know what they were, I'm very happy to tell you.

Q. I think we can probably glean that sufficient from the documents, Mr Evans, but thank you.

Just a couple of further short documents to look at before we then go to some email exchanges that you had with the Department.

First of all, MACF0000074_004.

You'll see this was a letter written

12 April 2012, so it's to Mr Harvey but it's, I think,

around the time that you are taking over as chair, and

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there's a particular issue about a letter sent to beneficiaries that, unless you want to comment, I'm proposing to ask Mr Mishcon about rather than spend time with you on it.

But if we look at the fifth paragraph I just wanted to -- sorry, can we go up again. It's the bottom paragraph as now on screen, Mr Evans. The beneficiary who is writing this letter says this:

"The fact that the reserves have been allowed to accumulate over the years is an egregious breach of duty, especially when so many of us have made genuine requests for financial help."

In light of what you said earlier about what your stance had been since 2007, Mr Evans, is that an observation with which you have some sympathy or level of agreement?

A. I have a great deal of sympathy for it, yes.

Q. Then if we move to May 2012, I just want to ask you about a letter from the Department.

It's MACF0000025_093.

We can see, again, it is a letter of 18 May 2012, it's from Rowena Jecock at the Department of Health. It refers to a meeting that had taken place between, I think, Mr Harvey, you and the Department of Health in January of 2012.

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A. It would appear so. Yes, I can't remember what we agreed in January.

I think it's worth just -- it may be helpful to you to just add one thing on funding, is that although -- a financial allocation was agreed every year and we had these reserves sitting invested but, in order to spend money, we had to call on the actual monies from the Department of Health. So we might have approval of an allocation of something but they wouldn't actually give us the money and it wouldn't all go into our bank account. So in order to run down the reserves, for instance -- and I think we spent over a million pounds -- we would have had to have been calling from -- to get that actual money from the Department in order to do it.

So they had a grip on us in that respect. Not one which I enjoyed, but they did. Does that make sense?

Q. Yes. Again, that may be an issue I want to come back to you on later. But if we just carry on chronologically looking at the reserves issue, the next document is MACF0000060_047, please.

It's a series of emails, if we can go to the last page, please, Soumik.

So we can see here it's an email from you,

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It refers to the Trust working up:

"... a more detailed proposal for drawing down the reserve over a period of several years, which we would be put to Ministers later in the year."

That's the first paragraph. Go to the third paragraph, you will see it refers to then a recent meeting, 4 May, in which Mr Harvey had indicated that some trustees were keen to begin funding a programme of capital payments from the reserve. Then it says this:

"While we appreciate their wish to press ahead, it is not what we agreed with you and Roger when we met in January. I would therefore be grateful if you will abide by that agreement not to begin any new programme of capital payments from the reserve. We would like to understand how the Trust's proposals for spending down the reserve now stand, and will arrange a meeting to discuss this with you and Roger as soon as practicable."

Can we just go back to the previous page.

Is it right to understand this letter as the Department telling the Macfarlane Trust not to proceed with the trustees' wish to start funding capital payments but to wait until effectively that's been approved by the Department of Health?

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26 July 2012, to the Department of Health, attaching what's described as the interim business case for the spending of reserves and then saying that there's a proposal to agree a final business case at the board meeting in September.

If we go to the next page back, please, Soumik -- or, previous page, I should have said -- we then see, the bottom half of the page, the response from Ben Cole at the Department of Health, asserting or stating in the first paragraph:

"... unfortunately we think that it needs strengthening even further in order to present to Ministers."

He says he's taken the liberty of making some changes and inserting some questions into the attached version. Then he says there's two fundamental issues regarding the reserves paper, needs more detail on the level of need, refers to about 15 people having been interviewed so far.

Then, bottom of the page:

"Assessment of chart responsible need. There is no statement in the proposal of how MfT proposes to judge charitable need. Can you confirm whether MfT intends to assess an applicant's charitable need in and judging whether they should receive money from the

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reserve, and if so how will it be judged?"

Then there's some assertions which I think I'm right in understanding from subsequent correspondence were incorrect, about household income, but leave that aside.

This appears to be the Department not just wanting to consider your business case, or have sight of it, but actually putting changes into it, proposing changes, and saying: We want more information about this, that and the other, how Trust's going to go about matters.

The first of all, was that your understanding of the letter of the email?

A. Yes, and I remember this vividly, and I remember getting very, very annoyed with Mr Cole down the phone. I thought it was quite wrong of the Department to do this.

Q. If we then go two pages back, please, Soumik.

I think the next chronological email we have in this chain, bottom half of the page, is you to Ailsa Wight at the Department of Health, 25 August. And you ask for an update on progress in reaching a decision of the commitment by the MFT of its reserves. It appears from the second paragraph that the further information requested by Mr Cole has been

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Ms Wight responds on 30 August to you, says:

"... this is a significant issue, and we have been giving it careful thought.

"After further consideration with DH Finance we have decided not to put the issue to Ministers until the Trust has agreed its final business case, in October. We believe that Ministers are extremely unlikely to support the current draft proposal because it does not make the case that there is £4 [million] worth of charitable need among the beneficiaries.

"As you know the MFT was set up to meet the charitable needs of its beneficiaries. You therefore need to convince Ministers that the beneficiaries have current charitable needs in respect of the items identified in the proposal, and explain why these have not been met from the reserve in previous years. So in order to give the final business case the best chance of receiving Ministerial support in whole or in part, we strongly advise that it contains the following information ..."

Then we've got three bullet points:

"Why the reserve has not been used to date for charitable purposes, and what has changed to merit its distribution now.

"An analysis of the data that has been obtained

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provided. You say you have:

"... already asked for confirmation that our Case has been submitted to the Minister in the amended form we sent it to DH and have not yet received a reply."

Can you assist us with this: do you know how detailed or what the nature was of the amendments proposed by Mr Cole?

A. Is this different from the amendments we have just been looking at?

Q. No, it's -- well, what has happened is Mr Cole has made amendments and asked for some further information. This tells us you sent some further information and submitted an amended case, but what we can't tell from this is what the Department of Health proposed amendments actually were. Do you have any recollection of that?

A. Well, I don't know, but surmising I would think we would have complied with the two points which he made in his earlier email, one of which I think was extraordinary, about having another 15 beneficiaries. But I do not know. I mean, whether I should speculate, I don't know. But it would have been something like that anyway.

Q. Then if we go to the page prior to this we can see

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from the survey of beneficiaries that MFT has commissioned. This should include an assessment of each beneficiary's current ability to pay for any items that they are identified as needing (in suitably anonymised form, of course)."

Third bullet point:

"A statement on what standard of charitable need the Trust intends to apply to applications for grants from the reserve, and how the Trust plans to make an assessment of need."

Then there's a repetition of a suggestion that MFT data shows that the average infected beneficiary has a net income between £31,000 and £39,000.

What business was it of the Department's as to how the trustees of the Macfarlane Trust expended their reserves?

A. Well, it shouldn't have been and I'll elaborate on that in a second. But if I can cast you back to something which I said this morning, the second paragraph starts off "After [first] consideration with DH Finance". So I suspect that -- strongly suspect that all these points came up from the finance directorate in the DH, who would not have understood what we were all about, rather than from Ailsa Wight and Rowena Jecock and their colleagues.

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The answer is no, I don't -- in my opinion, it was nothing to do with them at all. When documents like business cases, in my experience, which I was explaining to Sir Brian just before lunch, are going round the Department of Health, all sorts of people ask for certain things. And I suspect this has happened -- there's no idea whether the Ministers would have wanted it, but because we needed to call on funds from -- because we -- there's a cash flow from the Department, in the way I was describing to you a few minutes ago, it's very difficult not to play ball with that game.

But I agree and this was another matter where, shall we say, temperatures were heated.

Q. We'll look at an email you sent in response.

So if we go back to the page before this, please, Soumik.

You emailed Ailsa Wight on 5 September 2012.

You say:

"We will submit a Business Case by 31 October."

So I think that's the final business case.

What you had sent was an interim one.

You say that:

"... the change of tack by DH causes us problems."

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income as a criterion for initial assessment of our case. We did not include any information in the Briefing Note on income, which should, in our opinion, have been the only source for your consideration. As you may know I have discussed this with Ben Cole over the phone and he says it is based on a guesstimate made by Martin during a recent ... meeting. Martin does not recall proffering these figures but even if he did we would have expected you to confirm them with MFT before their figuring in your internal discussions. We believe the figures (which cover a wide income band) are exaggerated."

The next paragraph:

"[More] Importantly, average income is not an appropriate figure for assessing need. There are many beneficiaries and widows with incomes much less than the average - some as low as £6,000 per annum. It is these we will be looking for address primarily, not Mr and Mrs Average. A comparison with national average income levels is also misleading and inequitable as it takes no account of the financial commitments falling on the co-infected arising from their clinical conditions. It also disregards their inability to borrow money for such issues as home improvements (which we are looking to fund). MFT

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You express -- sorry, we're not looking at the same document.

Sorry, Soumik, could we go to the page before this. Fourth page electronically of this collection of material it should be. There.

I'll start again now that we've got the correct document on screen. My apologies. So bottom half of the page.

Sorry, Soumik, my fault.

5 September 2012. So this is your response.

You say that you'll submit the business case. You say:

"... the change of tack by DH causes us problems."

Next paragraph you express disappointment:

"My Board is also disappointed that you do not feel able to progress on the basis of the Briefing Note."

Is the briefing note the same as the interim business case?

A. I can't remember.

Q. Okay. Then you expressed dismay, in the next paragraph, over DH using --

A. I -- sorry, go on. Sorry.

Q. "... dismay over ... using beneficiaries' average net

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income, for instance, is disregarded by financial institutions when assessing creditworthiness."

If we go to the next page, top of the next page:

"Irrespective of the figures using income as a criterion also takes DH down a controversial path. As you know, going back to the 1980s and the inception of MFT the whole ethos of providing an income to the co-infected was not based on means testing - which you now appear to be considering."

Then you say:

"All this will be considered in the Business Case.

You don't say in this response that the Department of Health is not entitled to the categories of information that were sought in Ms Wight's email. If we go further down this same page we can see what those are again.

So you are certainly expressing dismay and picking up on the income position but you don't say that it's none of the Department of Health's business and you are not willing to provide the three bullet points sought. Was there any reason for that as far as you can recall?

A. If I can make two observations. I mean, there's

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1 a reference earlier on to my telephone conversation
2 with Ben Cole, which I -- pretty sure it's the one
3 I was alluding to -- I didn't know you were going to
4 come to this -- two or three minutes ago, where we had
5 a kind of shouting match down the phone, to put it
6 bluntly. And secondly, during that call, and possibly
7 talking to his more -- his colleagues in the
8 Department, it was made very clear it wasn't their
9 business.

10 Now, it wasn't my style, or isn't my style to
11 put immoderate words into a letter and email. So it
12 was said but I didn't put it in those terms in that
13 letter because I didn't think that would be fruitful
14 in terms of our getting a good outcome from it.

15 So I think -- incidentally, that's a good
16 illustration of where it might appear on the surface
17 to some that we were being friendly and easy-going
18 with the Department when, in fact, we weren't.
19 I think you can read quite a lot between the lines in
20 some of that email which I sent.

21 Q. Then just to complete this email chain, if we go to
22 page 2 of the document, please, Soumik, we can see
23 Ms Wight responding on 7 September, so bottom half of
24 the page. If I pick it up in the second paragraph of
25 your email, which is in bold print:

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1 of time, was any business cases such as this which we
2 put to the Department was dealt with in exactly the
3 same way as ones which might come from, say, within
4 the NHS, which it shouldn't have been and that was not
5 the way of doing it. Once it gets into that mill,
6 it's extremely difficult to stop it and say "We won't
7 do this, can you please release the money for us",
8 because they are going to say no.

9 So to some extent, we had to go along with
10 their requirements. But there was a lot of anger and
11 feelings about all this, as I've said at least twice
12 in the last few minutes.

13 Q. If we go to the next page, so page 3 electronically,
14 Soumik, Ms Wight's email continues, and if we just
15 look at the third paragraph, which is what I want to
16 ask you about:

17 "The objects of the Trust are quite clear, in
18 stating that its purpose is to meet the charitable
19 needs of its beneficiaries. Because of this, we and
20 Ministers need to understand what standard of
21 charitable need the Trust is applying, and what the
22 level of charitable need among the beneficiary
23 community actually is, when considering funding issues
24 affecting the Trust. The income of the beneficiaries
25 is clearly central to that issue, albeit not

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1 "From the outset of this process at the start
2 of the year, we have sought to work with the Trust to
3 help develop the proposals for paying down the
4 reserve, and secure Ministerial support for the
5 proposal. It was in that spirit that we decided not
6 to present the Trust's current draft proposal to
7 Ministers, as we felt that Ministers were unlikely to
8 support it in current form."

9 Then there's reference to giving further time
10 to develop the proposal. Next paragraph:

11 "While we have a responsibility to the Trust to
12 help it present its proposal to Ministers, we also
13 have a duty to provide Ministers with comprehensive
14 and impartial advice. Therefore, we are required to
15 subject the proposal to an appropriate level of
16 scrutiny, and provide Ministers with all of the
17 relevant information they might require to make
18 a decision on the future of the reserve. In the
19 current fiscal climate we expect Ministers to look
20 very closely at this issue."

21 Now, that appears to suggest that the
22 Department's position was that, ultimately, it was for
23 ministers to make a decision on the future of the
24 reserve. Was that the Trust's view?

25 A. No, I think what had happened, evolved over a period

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1 necessarily the only relevant factor. We recognise
2 that the income of the beneficiaries varies, as indeed
3 does need."

4 Do you recall whether you understood or read
5 this to be casting some doubt on whether there was
6 a genuine need for this kind of assistance amongst the
7 beneficiary community?

8 A. I can't remember but reflecting now, it seems
9 a typical way of processing any business case for
10 money.

11 Can I add, if you don't mind, which might -- if
12 it's helpful to you, two or three things. One is this
13 frustration over the business case and the various
14 emails was the time at which I tried very hard to get
15 a meeting with Anna Soubry because she was a relevant
16 minister and I couldn't do it through the Department
17 so I did it through someone who was a political
18 associate of hers, not an MP, and as I said earlier,
19 I got snubbed at the last minute. That was partly
20 because of this reaction. I think probably the, let
21 me call it the Mishcon letter, if you don't mind me
22 using shorthand, was drafted, I think it was around
23 about this time.

24 The other thing is I think this is a classic
25 example of where MPs, with possibly some help from The

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Haemophilia Society, but I wouldn't push that one too hard, are the ones who ought to get to the Minister because there is no way, through conventional means, I would have been able to make the points about this directly to a minister because the civil servants would have made sure I didn't have the opportunity to do it.

This is why I thought I'd broken through that by getting a meeting with Anna Soubry in another way. I suspect she asked for a briefing and then the door was closed on me.

Q. Can we next look at MACF0000060_065, so this isn't the business case, I think, as sent to the Department -- no, I think it is. It's a paper authored, I think, by you or by the Working Party. Are you able to assist with who authored it?

A. Can I see the next page?

Q. So it is the business case, I think, probably in final form, if we look at the top of the next page, very top of the page:

"Business case from the Macfarlane Trust to commit reserve funding and reduce its reserves to £500,000."

So would this have been authored by the Reserves Working Party and approved by the board?

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will be storing up serious problems for the future ..."

I'm not going to go through the detail of the paper. If we just go to page -- I think it's probably electronic 16, Soumik. We see the heading:

"What criteria will the MfT use to decide on the distribution of the reserves?"

Is that the standard that was going to be taken to assessing charitable need, to put it in the terms of Ailsa Wight's request?

A. I think that the reserves were used to deal with one-off needs, which beneficiaries had and the predominant one was housing improvements and I think that the basis on which we -- the criteria, and I don't know what's further down -- the criteria was really that sort of need not about people's financial position.

Q. Well, I'll come to that --

A. Does that answer your question?

Q. It probably does. I think it might become clear if we look at the bottom of the page. Before we do that can I just draw your attention to paragraph 7.2. It says:

"The detailed criteria will depend on the level of reserves the DH sanctions MfT to allocate."

So it would appear that the Macfarlane Trust

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A. If I am looking pensive, either this paper was prepared through the -- directly by the Reserves Working Party, which I would have had some involvement, which it probably is actually, but it would have been on the back of the report which we got from =MC. So I would have had a role in this paper but I cannot remember any more than that.

Q. It's dated 9 November 2012 and if we look at the "Executive summary", we can see it refers to the current reserves of approximately £4 million and, in the last sentence of the paragraph, that:

"... the MfT does not need to hold a level of reserve of £4 million as contingency for meeting regular income needs.

"This business case, therefore, proposes that the reserve level be reduced to £500,000 and that remaining reserves be deployed to meet the serious financial needs, in particular for capital expenditure, facing primary and secondary beneficiaries and which become apparent over the years. The MfT has never had recurring funds from the [Department] at the level necessary to address these needs."

Then reference is made to:

"If funds are not now committed, DH and the MfT

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was proceeding on the basis that it required the Department of Health's permission or approval. Is that a fair reading of this?

A. Well, we had no alternative for the reasons we've been talking about because unless we -- unless they sanctioned our spending reserves in this way they wouldn't have given us the cash, in the vernacular, to be able to pay the bills of the beneficiaries who had workmen on their properties.

Q. If we look --

A. Colloquially, but that was it basically.

Q. If we look towards the bottom of the page, we can see what there is meant by the criteria. It says:

"The ... Board is not in a position ... to finalise criteria until the sum is known ... The board would be open to agree these criteria with [the Department of Health] after then."

Did you think it was necessary to have the Department's agreement to the criteria or was that just attempting to, as it were, be co-operative and give the Department what it had sought?

A. No, we had to do it. It goes back to the documents about the business case and the ministers having to agree.

Q. Then we can see --

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1 A. I can see no reason why that should be necessary but
 2 I think it's an example of Central Government being
 3 very central.
 4 Q. Then we can see the priority criteria there being
 5 identified: income level, whether the home adaptations
 6 are necessary -- sorry:
 7 "... home adaptations necessary to ensure the
 8 beneficiary can continue to live in the community and
 9 their properties are in a reasonable state
 10 "needs to support aids to daily living ...
 11 "carer support ..."
 12 Then the top of the next page refers to
 13 education and training needs.
 14 If we just go to the next page and see the
 15 concluding statement, top of the page:
 16 "What will be the consequences of not spending
 17 the reserves?
 18 "If the MFT, DH and the Government do not now
 19 take the opportunity to commit nearly all of the
 20 reserves funds to meet the needs described above, they
 21 will be storing up problems for the future."
 22 Is it fair to read this business case as
 23 representing your view, the Board's view, that it
 24 really was very important, in the interests of
 25 beneficiaries, for the reserves to be expended in the

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1 indeed were subject to the Trust investment policy?
 2 A. No, no, no. We knew that we had -- there was
 3 £6 million, as it were, allocated to us historically,
 4 and we'd held that figure for a long time, but what we
 5 didn't hold was the cash. It's the difference between
 6 knowing -- it was the difference between knowing we
 7 had that budget given to us but, in order to spend the
 8 budget, the Department of Health had to give us the
 9 cash to pay out against that allocation. Does that
 10 make sense?
 11 Q. When we see, for example, in various annual reports
 12 over the years information about the level of reserves
 13 and about the Trust's investment policy in relation to
 14 the reserves, and there are reports from investment
 15 fund managers and the like that are considered by the
 16 Board from time to time, that doesn't sound as though
 17 that's consistent with this being money that's in fact
 18 in the Department of Health's bank account, as it
 19 were.
 20 A. Well, I think it is. Sorry, I'm not being very
 21 articulate in explaining this to you. I mean, if
 22 you -- I can't remember who we banked with but if you
 23 had looked at our bank statements, there wouldn't have
 24 been £6,000 (*sic*) in there in the safe deposit account
 25 because we had been given that money by the Department

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1 way described in this document?
 2 A. Yes, and I think paragraph 8.1 expands on that
 3 somewhat and was also something I was talking about
 4 half-an-hour or so ago.
 5 MS RICHARDS: Sir, I note the time. I've still got a few
 6 further questions on reserves so it might be that this
 7 is a convenient point at which to take a break.
 8 SIR BRIAN LANGSTAFF: We'll take a break now then, shall
 9 we, and come back at 3.45. 3.45, if you please.
 10 (3.18 pm)
 11 (A short break)
 12 (3.45 pm)
 13 SIR BRIAN LANGSTAFF: Yes.
 14 MS RICHARDS: Mr Evans, before we pick up the chronology
 15 of events in relation to the reserves, can I just
 16 double-check one thing with you. I think there may
 17 have been -- there was a suggestion in your evidence
 18 before the break that one of the reasons why you had
 19 to go along with the Department in its requests or the
 20 demands for information and some form of right of
 21 approval or sanction over the reserves was because you
 22 needed to actually get your money from the Department.
 23 That might be the position in relation to the
 24 annual allocation, but the reserves themselves were
 25 monies that the Trust already held, were they not, and

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1 of Health -- sorry, 6 million.
 2 That £6 million would have still been in -- I'm
 3 trying to make this as simple as I can -- in the bank
 4 account of the Department of Health and the
 5 Government. In order for us to spend it, we needed
 6 them to transfer the money from that account to our
 7 account. Do you see what I'm trying to say? I'm
 8 finding it quite difficult to explain.
 9 Q. Yes, and I understand that I think insofar as the
 10 annual allocation is concerned but your evidence is
 11 that is also the position in relation to what is being
 12 referred to the reserves, is it?
 13 A. That's my understanding. And that's the reason why we
 14 had to get the Department of Health to approve
 15 a business case to spend the reserves, otherwise we
 16 could, at least in theory, have said to them, "Well,
 17 we don't agree with this, we're going to spend
 18 the money anyway". But we couldn't do that because we
 19 didn't have it at our disposal.
 20 SIR BRIAN LANGSTAFF: Can you help me then with the
 21 various references to interest arising on the
 22 investment of the reserves. I can understand that it
 23 may not have been in the bank account, because if it
 24 was invested it wouldn't be, but it would be invested.
 25 So who was investing it and where was it invested?

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1 What was the interest --

2 **A.** The investments took place before I was a trustee but

3 my understanding -- maybe I've got this wrong,

4 Sir Brian, but my understanding on -- reflecting back

5 over some years now, is it would have effectively have

6 been a -- what's the -- a sort of a --

7 **SIR BRIAN LANGSTAFF:** You are describing it as

8 a drawdown --

9 **A.** -- a figure -- a sum of money paid in without -- I'm

10 making a bit of a mess of this, I'm very sorry.

11 We weren't in a position where we could just

12 have gone to the building society, if I can put it

13 that way, and just paid in the cash. We didn't have

14 that cash. I don't think I'm making myself very clear

15 but ...

16 **SIR BRIAN LANGSTAFF:** Well, I'm not sure I'm following.

17 Perhaps we can come back to it later, perhaps

18 overnight, after you have clarified your thoughts on

19 it, and perhaps you can --

20 **A.** Very happy to do that, sorry, yes.

21 **MS RICHARDS:** Sir, I will have a look and see if there's

22 any documentation --

23 **SIR BRIAN LANGSTAFF:** Please.

24 **MS RICHARDS:** -- which may make it easier to address.

25 **A.** I'm sorry, I'm not trying to confuse you.

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1 to the principles the Department applies to budget

2 spending, and downward pressure on central budget

3 allocations. And you are told it is important that

4 your trustees understand this is the overall direction

5 of travel.

6 Then the next paragraph says:

7 "This, together with the changing policy on

8 reserves, will require MFT (together with the other

9 Alliance House discretionary bodies) to continue to

10 make sure they live within their annual allocations.

11 This means that there is a requirement to clearly

12 define the basis on which the Board assesses the

13 charitable need of its beneficiaries in a consistent

14 and transparent way, and payments adjusted

15 accordingly."

16 So you still haven't got an answer on the

17 reserves business case, I think. You haven't

18 got a response as to what the next financial year's

19 allocation's going to be.

20 Then in that paragraph about the changing

21 policy on reserves and living within annual

22 allocations, how did you understand what was being

23 said to you by the Department there?

24 **A.** Well, I think what was being said -- this is, as you

25 know, some years ago -- was the changing policy was

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1 **SIR BRIAN LANGSTAFF:** No, no, I don't accuse you of that

2 for one moment. It's just I'm trying to understand

3 where we are.

4 **A.** Yes, absolutely.

5 **MS RICHARDS:** Just returning to the chronology of events

6 in terms of the reserves.

7 If we go to MACF0000024_146, please, and if we

8 go to page 7, we'll see there, Mr Evans an email from

9 you dated 7 January 2013 chasing Ailsa Wight for

10 a response in relation to the business case:

11 "My Board and I are very anxious to receive

12 from DH information on our financial allocation for

13 2013/14 as well as a ministerial response regarding

14 the Business Case which we submitted to you in early

15 November."

16 If we go to the page before this, Soumik, so

17 page 6, I, think, electronically -- we'll see

18 Ailsa Wight's response 14 January 2013 it says second

19 paragraph:

20 "I appreciate that you want to know what the

21 MFT allocation for 2012/13 will be, as well as the

22 outcome of the reserves business case. However, we

23 are still waiting to hear final responses from

24 Ministers on both issues."

25 Then there's a reference in the next paragraph

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1 that we wanted to spend reserves in the way in which

2 was described in the business case which we looked at

3 just before the break. That's what I think they would

4 have meant.

5 **Q.** Then the sentence:

6 "This means that there is a requirement to

7 clearly define the basis on which the Board assesses

8 the charitable need of its beneficiaries in

9 a consistent and transparent way, and payments

10 adjusted accordingly."

11 Did you then or do you now read that as

12 a veiled threat or intimation that if the Board

13 doesn't assess charitable need in a way which the

14 Department is happy with, that it may impact upon

15 allocations from the Department?

16 **A.** Well, I do reading it now, yes. Whether I did at the

17 time, obviously I can't remember. But I probably did,

18 yes. But certainly now I read it that way.

19 **Q.** Can you recall, because we haven't yet traced

20 a document that gives a clear answer to this, or

21 I haven't got it available to give to you in any

22 event, Mr Evans, can you recall what the Department's

23 ultimate response to you on the reserved business case

24 was?

25 **A.** Well, I know that we spent a considerable sum of money

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1 from the reserves predominantly on home improvements
 2 for the beneficiaries, so they must have approved it.
 3 **Q.** Before we look at what was spent over or from the
 4 reserves over the following years, if we could look at
 5 WITN1791025, please. If we go to the next page.
 6 This is an email to you from a beneficiary --
 7 it's the bottom half of the page -- 21 January, and
 8 picking it up in the second paragraph:
 9 "To keep this short, I am of the opinion that
 10 the trust is very aware that it is grossly
 11 underfunded, and in the unwanted position of having to
 12 juggle funds to get by."
 13 Then he or she goes on:
 14 "... I would like to suggest as a primary
 15 beneficiary that the reserve funds are used in such
 16 a way that the board of trustees can rest assured that
 17 they have done their best to fulfil the needs of the
 18 registrants of the trust. At present, I feel that the
 19 funds available are a 'sitting duck' and that by NOT
 20 using them for their intended purpose, as given by
 21 previous DoH allocation, WILL set an extremely false
 22 economy and benchmark for future funding.
 23 "Knowing that the reserves allocation should
 24 have been used before now is one thing, but to
 25 continue to hold on to the money is quite another.

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1 have some sympathy for or understanding of the
 2 position being articulated in this email?
 3 **A.** In a qualified way, I do, yes. Insofar as the --
 4 I can't remember exactly what the date was --
 5 **Q.** 21 January.
 6 **A.** Well, I mean we had already taken action to spend some
 7 of the reserves in the way in which the beneficiaries
 8 felt they were most benefit. What we didn't have
 9 enough to do was just to give all that money on
 10 a recurring basis. So we'd done that.
 11 The Department was taking more of a hands-on
 12 interest in the spending of the money. I'm not sure
 13 that made us redundant because there were other things
 14 we had to do to spend that money. I may be wrong but
 15 this was -- I know I keep saying it but I can't avoid
 16 it, but this was at a time when there was austerity in
 17 the country, and I think the Government of the day,
 18 because they were trying to keep control of spending,
 19 had become much more centralised in the way in which
 20 they approached spending habits, if I can put it that
 21 way, and that may well be the reason why a business
 22 case was going up to the minister on our reserves,
 23 which may not have -- well have been the case a few
 24 years before.
 25 So -- and because of the way the systems were

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1 I can only hope that the trustees feel that they are
 2 having their hands tied and are being bullied into
 3 doing the will of Gov't, as I feel they are.

4 "In my opinion, this is the beginning of the
 5 DOH cutting the funding year on year to the trust,
 6 because as it stands, nobody is making the case that
 7 the trust is actually falling short of the needs of
 8 its registrants.

9 "As I understand it, the trust is awaiting a
 10 decision from the minister as to if it can use or
 11 distribute ANY of the current funds it holds, or
 12 a penalty could follow. This I feel is a blackmail
 13 situation and as so, should be met with robust
 14 defiance by the trust.

15 "I believed it was the trust who set the
 16 criteria for the use of funding. Have the DoH now
 17 changed the trust deeds and mad the trustees
 18 redundant?"

19 I'm not going to ask you to go back to the
 20 issues I've asked you about already, about whether you
 21 were sufficiently robustly making a case that the
 22 funding was insufficient. But in terms of the broad
 23 point being made by this registrant about the
 24 reserves, and a concern that the DOH is tying the
 25 hands of trustees, making trustees redundant, do you

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1 in place, the Department was not differentiating
 2 between us and, I suspect -- I mean, I'm not
 3 absolutely sure -- than, say, some other public bodies
 4 they were funding.

5 **Q.** I just want to look now, finally on this topic, with
 6 the reserves position over the years that followed as
 7 revealed by the annual reports.

8 So if we start with MACF0000045_004 and we go
 9 to -- sorry, before we go to page 9, you will see this
 10 is the annual financial report for the year ending
 11 31 March 2013. So it is your first, pretty much,
 12 almost full year as chair.

13 If we go to page 9, please, Soumik.

14 "Reserves Policy", top of the page, we can see
 15 in paragraph 3:

16 "At 31 March 2013 MfT's investment portfolio
 17 was valued at £4,267,701."

18 And then there is a commitment to, over the
 19 next two years, reducing the level of reserves to in
 20 the region of £750,000, representing between
 21 3-6 months of expenditure. And it says that that will
 22 include an exercise in 2013/14 to allocate grants to
 23 fund health and mobility-related repairs and
 24 improvements to property for its beneficiaries.

25 So that's the picture as at March 2013. If we

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then please -- one set of minutes before we look at the next annual report.

It's MACF0000024_047.

So these are the minutes of a meeting of the board on 29 April 2013.

If we go to page 3, please, Soumik, the bottom half of the page. Under the heading "MFT Reserves", we'll see there what the Board agreed:

"... make provision for deficits in 2013/14 and 2014/15 and liabilities which have been identified but to lobby the Department of Health for increased funding in 2014/15 ...

"make provision for 3 months' worth of spend in the form of a general reserve;

"to allocate the remaining £0.98 million to fund health and mobility related repairs and improvements to property for beneficiaries."

Then this:

"It was noted that the amount available was considerably less than that which had been identified as needed by the survey which had been carried out in 2012. However, property issues have been identified as the top priority in the survey."

Then there's a discussion about what the process is going to be for the allocation of that

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that right? That's how the reserves were used, apart from this one-off programme?

A. Well, we had -- yes, is the short answer.

Q. The larger scale, more ambitious programme that we saw set out in your business case to the Department of Health in November 2012 of using, really, most of the reserves to get down to a figure of £500,000, that effectively had to be abandoned because of the need to use the reserves, in part, to make up the shortfall?

A. Yes, with the exception of the 0.98 million.

Q. We can see the figures themselves from the annual reports. I will only take you to one of the annual reports, Mr Evans, just so that we can get a sense of the figures. MACF0000045_001. This is the annual financial report for the year ending 31 March 2016. I've taken this because you would have still been chair for most of this financial year, I think, although by the time the report's written Mr Murray had taken over as chair.

If we go to page 11, please, Soumik, bottom of the page, we can see "Reserves policy", and then if we go over the page and we look at the third paragraph from the top of the page, we can see:

"As at 31 March 2016 MFT's investment portfolio was valued at [£1.6 million]. With regular

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0.98 million.

Are you able to assist us with why what we now see is something rather less than the reserve expenditure programme that had been trailed in earlier documents -- this is expenditure of 0.98 million that's contemplated in, as it were, a one-off programme -- why the change?

A. I can't recall. It may well be because of the interface which we've been discussing with Department of Health and what they wanted us to do with the reserves and what -- and that may have pared down the amount of money we had available. But I cannot remember.

Q. Can you recall whether the reduced figure reflects a request or instruction from the Department of Health?

A. No, I can't.

Q. Then what we see to see over the following years, and I'm only going to take you to, I think, one of the further annual reports but what we see in the annual reports for year ending 2014, year ending 2015, year ending 2016, is there is a reduction in the reserves but the reserves are being used in part to make up shortfall in funding from the Department of Health because there hadn't been an increased allocation. Is

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allocations now being received ... the need to hold such a large reserve is no longer necessary. However, as discussed above, the annual allocation from the DH is no longer adequate to meet the level of financial support the Trust believes it should provide to its beneficiaries. During 2015/16 it has used funds from the reserves to bridge the gap between the DH allocation and its desired provision to beneficiaries. It will also need to do so in 2016/17, as additional DH funding has again not been forthcoming. The Trust has continued to lobby the DH for additional funding ..."

Then there's reference to the proposed changes to the system of support:

"The Trust ultimately aims to retain £750,000 as a general reserve, representing 3-6 months of expenditure."

If we looked back at the preceding two years' annual reports, we will see a paragraph in similar terms, slightly different figures, but with still the ultimate aim of retaining £750,000.

Is this right, Mr Evans, that during your tenure as chair, the Trust did not reduce the reserves, for the reasons that perhaps we see set out in the annual reports, to the level of £750,000, which

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1 was what the annual reports tell us was the desired
2 end objective?
3 A. No. The position was more or less as you have on the
4 screen now because, as you rightly said, I stood down
5 as chair around about that time.
6 Q. We can take that down, thank you. If we could go to
7 your witness statement at WITN3859002, please, if we
8 go to page 16, I think, I want to show you two
9 paragraphs, Mr Evans, and then ask you a question.
10 Sorry, no my pagination is wrong. Page 10,
11 sorry.
12 If we look at paragraph 38 at the top of the
13 page:
14 "Beneficiaries were understandably and rightly
15 aggrieved that the MfT was not funded at a level which
16 allowed us to provide the funding which they wanted.
17 All we could do was discuss with Government, lobby,
18 and submit a written business case for greater
19 funding."
20 Then this:
21 "Until latterly, our negotiating with DH was
22 weakened by the inordinate level of reserves held."
23 Then the second paragraph is paragraph 159,
24 I think, so page 36, please, Soumik. I'll pick it up
25 at the very bottom of the page, last few words -- I'll

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1 one Board meeting.
2 Q. Again, I'm looking at the Board as a whole, rather
3 than you or any one individual on the Board. Looking
4 at that position as a whole, over a number of years,
5 would you agree that that was ultimately a failure on
6 the part of the Macfarlane Trust?
7 A. Yes.
8 Q. Thank you. I am going to move on to another topic.
9 There may be a handful of questions I come back to
10 tomorrow morning, Mr Evans, about the relationship
11 with the Department of Health and the reserves and
12 funding issues, but I want to move on to some
13 questions about the Trust's decision-making in
14 relation to grants.
15 You were a member of the NSSC, as you told us
16 this morning. As we understand the decision-making
17 process in relation to grant applications over the
18 years, there were, if I put it this way, three levels
19 of decision-making: there were decisions taken by the
20 office staff, applying something called office
21 guidelines, which changed from time to time; there was
22 then decision-making by the NSSC for certain
23 categories of decision or for applications referred to
24 it by the office staff; and then there were, from time
25 to time, decisions that came before the Board,

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1 wait until we get there. So the last line, last few
2 words, Mr Evans:
3 "During the most of my [and then we go to the
4 top of the next page] time on the MfT board we had
5 substantial reserves, which we did not call on to meet
6 discretionary requests. My view was that we should
7 have simply run down our reserves. We would then have
8 been in a stronger position to negotiate more funds."
9 Then you say:
10 "If we had had more funding, we could have used
11 it to give further support to beneficiaries."
12 So looking at those two paragraphs, Mr Evans,
13 I want to understand if it is right to understand your
14 evidence as follows. This is looking at the whole
15 period of time that you were on the Board, not simply
16 the period of time that you were a chair. There were
17 two disadvantages, were there, to the Board having
18 held on to substantial reserves? The first was those
19 reserves were not used for the ultimate, intended
20 purpose, which was to meet the needs of the
21 beneficiaries and, secondly, the existence of those
22 substantial reserves weakened the Trust's bargaining
23 position with the Department. Is that a fair and
24 accurate understanding of your evidence?
25 A. Yes, it is and I did express that view at more than

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1 sometimes by way of appeal but sometimes because they
2 were effectively referred on the Board because perhaps
3 they raised broader issues or involved larger amounts.
4 Is that a broadly accurate account of how it
5 was undertaken?
6 A. Yes, it is. There was an appeal process within that
7 as well.
8 Q. Can you just help us with some understanding of how
9 the NSSC approached its decision-making. So in those
10 couple of years when you were sitting on the NSSC or
11 in those periods of time when you as chair would sit
12 in on meetings of the NSSC, how did the committee go
13 about deciding applications?
14 A. Well, let's talk about when I was on the NSSC first,
15 if I may.
16 Q. Of course.
17 A. There were guidelines, as you've alluded to,
18 Ms Richards, which were, I think, pretty well known by
19 the beneficiary community at the time, and they were
20 required to put in applications against those, and
21 there was, I think, a *pro forma*, which they had to
22 fill in which included, amongst other things, what the
23 family income was. They provided information on why
24 they needed certain things, and they had to provide
25 an estimated cost, and I can't remember if it was in

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all cases, but certainly in very many then they were expected to provide an estimate for anything which was to be purchased. That was the application system.

At the meetings, we used to -- well, if they were approved by the -- let me call them the officers for simplicity, by the staff, I think it was reported to us what had been approved. I can't remember if we were told of specific cases or were just a conglomeration of them. Otherwise, at the Board we would have a discussion on the applications which came before us. Some of them were quite straightforward to agree. Others necessitated some discussion and debate, such as if we were being asked to pay off some debts for one of our beneficiaries.

Q. In terms of the process, I just want to ask you something arising out of the description in one of your statements, WITN3859001. If we go to the bottom of page 6, please, Soumik, you say this:

"I was a member of the National Support Services Committee ... for several years. This was the committee which considered fund applications for beneficiaries. The process troubled me and I expressed my concerns. The beneficiaries were, essentially, subjected to a means test, in order to obtain even small amounts of money applicants were

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A. I could not categorically say it never happened. I cannot recall it was ever reported to the Board by us that it had -- the NSSC that it had and I cannot recall any application coming before us which included a photograph of someone's home.

MS RICHARDS: The concerns you have expressed in this paragraph about the process are similar to a number of the concerns that have been expressed in evidence to the Inquiry from beneficiaries. Were any steps taken, as far as you can recall, in light of your concerns to change the process or did this remain, as far as you know, effectively the process for the whole time you were involved?

A. During the time I was on the NSSC, it wouldn't have changed significantly. I mean, when we were discussing individual cases -- I think there were four of us on the committee -- then we would -- then I tried to get us to rubber stamp some decisions but there were one or two of my colleagues on there who wanted to discuss seeing a lot of detailed applications which came in, and there was some bureaucracy in that beneficiaries might be asked for more information and, of course, that put back a decision being made for a month.

Also -- I'm not sure if this is what you are

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required to complete a template in which they listed detailed family information, notably family income, spending habits and circumstances. The system was humiliating and intrusive. For instance, an applicant might apply for money to buy a new pair of glasses. They would have to go through this procedure; it was not unusual for NSSC to ask for more information, delaying a decision for at least a month. Sometimes they were visited at home. Even a suggestion was made that photographs of their homes should be taken. Happily, this never happened, to my knowledge."

SIR BRIAN LANGSTAFF: Can I just be clear what you mean by that last sentence. The trouble is that sometimes people say that they know it never happened, and that's what they mean by using that phrase "this never happened, to my knowledge", or sometimes they say they didn't know that it ever happened. Which is it?

A. I would be surprised, Sir Brian, if it happened during the time I was on the NSSC. I think I would have known about it. But part of the intimation of what I said, I think it could have happened when I ceased to be on the NSSC, not because I wasn't on there but -- not that entirely anyway, but because approaches changed.

SIR BRIAN LANGSTAFF: Thank you.

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really asking -- also some of the decisions we were making were very intrusive things on people's families and I didn't like it.

Now, I don't know if you want to go on to what happened when I was a chair or do you want to come back to that?

Q. I think perhaps we'll come back to that. I just want to understand, first of all, the position when you were on the NSSC.

So what you're describing here, as far as you can recall, was effectively the system whilst you were on the NSSC. You have described here the process concerns about the process. What was the criterion that the NSSC was applying?

A. The criterion or criteria were the ones which were in the guidelines.

Q. Okay --

A. Sometimes there would be cases where it required some -- maybe pragmatism or perhaps common sense. For instance, we would get some beneficiaries -- I'm not suggesting there were lots of them but there were a few -- who would be having problems managing their financial affairs, so they were building up debts and taking out loans from loan sharks, if I can use that phrase, and they had -- they wanted us to pay off

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their bills. Now, with cases like that, we would not just pay off a bill, which might be -- not just any bill, we would not pay off their debts, might be even things like council tax and so forth, but we would find a way of help -- trying to help them to manage their financial affairs in a more responsible way in the future and we may get our loan advisers to go and talk to them.

So, cases like that, they'd need some discussion.

Q. Now, can --

A. Otherwise, we had our -- I think -- the grants guidelines were very detailed -- in some ways too detailed -- and we used to look for adherence to those.

Q. I might ask you to look at one set of guidelines in a little while but was the ultimate question the NSSC was asking itself: was there a need? Had the beneficiary established a charitable need?

Can you recall? Because the guidelines don't necessarily answer that question, you see, Mr Evans. They will tell us funding is available for white goods up to a maximum of X, but --

A. Yes, by and large it was on the basis of need.

Q. Can you recall whether there was any guidance at this

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to go about it.

Q. Then before we move on from your time on the NSSC, can you assist us with what the committee's stance was towards repeat applications. We've seen reference in the office guidelines to if an applicant had received a certain amount of money in a financial year or had made a certain number of applications in a period of time, that the matter would be referred to the committee rather than a decision being taken by the office staff. Did the committee turn down applications on the basis that the applicant had made too many or -- how did it use that information?

A. I don't recall we did unless a beneficiary were asking for something which was not in compliance -- that's too strong a word really -- didn't go along with the guidelines. So, for instance, beneficiaries were allowed new mattresses and computers and lots of other things every specific number of years. If they came back wanting something -- a repeat inside that period of time, then we would examine it and not just routinely agree it.

Q. There came, subsequently, a point in time at which it appears the principal criterion for assessing grant applications became one of exceptional circumstances, and I want to show you a document in relation to that

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point in time, when you were on the NSSC, as to how the committee, or indeed office staff, should approach the question of need?

A. Well, I think we would have done it on the basis of the information which they gave us on what their income were and what their personal commitments were. So what we asked them to provide, which was -- was what their income was as a household and what their regular commitments were on things like -- things like, as I said earlier, the council tax, but also what expenses they had with running a car and so on and so on.

Q. Certainly the Inquiry's understanding is that the assessment of income did indeed look at household income as you have described, so it would include taking into account, or at least could include taking into account, the earnings of a partner or of adult children or others living in the household. Was that your understanding as well?

A. It certainly took into account partners. It probably took into account adult children but I can't remember.

Q. Do you remember having any concerns about whether that was a fair and appropriate matter to be taking into account?

A. Yes, I thought the whole thing was not the right way

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and then ask you about it.

So it's MACF0000024_145. This is a meeting of the NSSC, 10 September 2013, and we can see that you were in attendance as chair not as a member of the committee.

Then if we go to the second page, we see at the top of the page, this:

"The Committee considered email correspondence from a primary beneficiary regarding grant application criteria. Following discussion it was agreed that a reply should be sent to the primary beneficiary on the NSSC's behalf stating the following: that there are no stipulated grant criteria except exceptional circumstances in relation to grants for primary beneficiaries. A definition of 'exceptional circumstances' should be given again, that the NSSC has to be satisfied that exceptional circumstances are met. Normal household expenditure can include items such as white goods, computers/laptops, although if exceptional circumstances could be shown, the request could still be considered."

Now, I think exceptional circumstances comes in as the grant criterion at some point in the post Archer era. It's certainly referred to in an annual report for the year ending March 2011. But I don't

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1 want to take you through the whole history, Mr Evans.
 2 Can you recall either why exceptional
 3 circumstances became the criterion or how it was
 4 supposed to be understood and applied?
 5 **A.** Well, the approach of the NSSC members post Archer --
 6 and not because of post Archer, but around that
 7 time -- they did, without initially the Board knowing,
 8 decide to take a slightly different approach.
 9 So I think these exceptional circumstances were
 10 ones which were agreed by the NSSC. I don't recall
 11 them actually coming to the Board to be agreed. Now,
 12 I know I was at that meeting until I think it was the
 13 next item in the minutes, but I don't recall that
 14 discussion and as it was something fairly specific
 15 about their work, I might well have left before it was
 16 discussed.
 17 **SIR BRIAN LANGSTAFF:** I think you are minuted as leaving,
 18 at 592.13, which is --
 19 **A.** Yes, I know, that's what I was alluding to --
 20 **SIR BRIAN LANGSTAFF:** -- after this was discussed.
 21 **A.** Yes, I was alluding to that. But I don't know.
 22 I might have been there when italicised (iii) was
 23 discussed but I don't know that I was. I cannot
 24 remember the genesis and what the reasons were for
 25 exceptional circumstances.

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1 **A.** No, they were given more information by the office
 2 staff.
 3 **Q.** Was there any kind of standard format to the
 4 information that was given or guidance as to what kind
 5 of information should be given?
 6 **A.** My recollection is either they were given that
 7 information over the phone or, if they weren't, then
 8 they could ask for it subsequently. I think in most
 9 cases at least it was given over the phone because
 10 most of the applicants were well aware of when the
 11 meeting was taking place and the office staff would
 12 try and contact them very soon, within a day or so, of
 13 the meeting taking place, and quite often the
 14 applicants would ring up the office on the afternoon
 15 of the meeting or the next day and ask what the
 16 outcome was. And at that stage Ros Riley, who used to
 17 deal with these, with the applications, would have
 18 given them the reasons. But it certainly wasn't
 19 a terse, "No, you have been unsuccessful". It
 20 certainly wasn't that.
 21 **Q.** If we just go back to a set of minutes we have looked
 22 at before, but a different bit of them.
 23 It's MACF0000024_002. And if we go to page 6,
 24 please, Soumik.
 25 So we're back in the minutes of the meeting of

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1 **MS RICHARDS:** If we look down the bottom half of the page
 2 to the applications -- now, I am entirely conscious
 3 you weren't participating in the decision-making in
 4 relation to this, but mine is a general question. We
 5 can see newspaper of cases being given here, some
 6 applications being agreed, some being declined, and if
 7 we look at Case 2 we see:
 8 "Declined a grant for a sofa, TV and removal
 9 cost for a primary beneficiary as exceptional
 10 circumstances were not shown."
 11 Case 4 is:
 12 "Declined a grant for a laptop for a primary
 13 beneficiary as exceptional circumstances were not
 14 shown."
 15 Then we'll see Case 6:
 16 "Agreed a contribution of £1,000 towards
 17 university equipment for the dependant of a deceased
 18 primary beneficiary."
 19 I'm not expecting you to be able to comment on
 20 any individual case, Mr Evans, but do you know what
 21 information was given to unsuccessful applicants?
 22 Were they simply told, "You haven't shown exceptional
 23 circumstances", as reflecting the decisions recorded
 24 in the minutes, or was something more by way of
 25 explanation given?

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1 21 January 2013, and we looked at them earlier because
 2 it's the Mishcon letter minutes, if I too can refer to
 3 it that way.
 4 If we can go to the next page, please, Soumik.
 5 I want to ask you about a different part of the
 6 minutes.
 7 If we look under the heading "Partnership
 8 Group", bottom half of the page, I'm not asking you
 9 specifically about the Partnership Group, I will come
 10 on to that in the morning, and to relations with
 11 beneficiaries more generally, but you can see here
 12 reference to:
 13 "... perceived breakdown of communications
 14 between the beneficiary community and the Trust Board,
 15 including confusion surrounding what financial
 16 assistance could now be asked for and what kind of
 17 things people could receive grants for, both through
 18 the office and the NSSC."
 19 Then if we skip a sentence within, picking it
 20 up:
 21 "Overall, beneficiaries felt there was a lack
 22 of transparency and clarity from MFT ..."
 23 Then there's a reference to the tone of some of
 24 the communications with beneficiaries being unhelpful.
 25 Before I ask a question, if we go on two pages,

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second paragraph on this page, it's in the context of a discussion under the heading "National Support Services Committee", you will see in that second paragraph:

"There followed a discussion regarding the need for increased clarity both in process and communication regarding what can be applied for through the NSSC and what the definition of 'exceptional circumstances' was relating to these."

Then there's a suggestion that there will be some draft guidance produced.

It would appear from those minutes that it was being brought to the attention of the Board that there was a lack of transparency and clarity about the grant process and what could be sought and how decisions would be taken. Was that your understanding of the concerns that were being raised --

- A. Well, from about 2012 or 2013 for about two years there was a lot of unhappiness amongst the beneficiary community about the way the NSSC was operating and when I found out more about it, which could well have been through that Partnership Group which you alluded to earlier on, I very much agreed with them on it, because the NSSC had become -- their approach had become quite a bureaucratic one and there were delays

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in decisions being made and they'd introduced some of their own, shall we call them "criteria", not many but -- also the office was taking a long time to process applications which came in and sometimes there were complaints from beneficiaries that it had taken three months to get an answer and I was very unhappy about that and so was Jan Barlow when she was on board with us and we took some early action to deal with the office issues and endeavoured to do so with the NSSC, as it then stood, but it was not easy to convince certain members of that that the approach was a wrong one.

I'm confident that it became a lot better once we made changes in membership and worked towards a Grants Committee.

- Q. Last topic, given the time, for now, just building on that. We understand from Ms Barlow's evidence and from documents that we looked at with Ms Barlow -- and I can take you to them if necessary, but I'm going to see if I can do it by way of shortcut -- that, at this point in time, the office guidelines were not published it and available to beneficiaries, and there was no other form of grant guidelines that were published and available to beneficiaries. First of all, is that also your understanding?

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- A. Until I looked at the papers for my interview I cannot recall that being the situation. I'm not saying it wasn't, I just can't recall. But if it were, it was a very unsatisfactory situation.
- Q. Thank you. There's a further issue relating to grants I want to come to but it requires looking at a document and I think it might be better to pick that up tomorrow morning, sir?

SIR BRIAN LANGSTAFF: There is one matter which I want to raise, just arising out of this and the question of the clarity of criteria. Could we go back to document MACF0000024146.

It was I think page 7, I may have missed the reference.

MS RICHARDS: Was it the NSSC set of minutes?

SIR BRIAN LANGSTAFF: Well, it was actually the meeting with the Department of Health or a document from the Department of Health.

MS RICHARDS: There are so many.

SIR BRIAN LANGSTAFF: We'll come back to it tomorrow morning, I think, is the best thing. I'm sorry for taking the time now and not having got my reference at my fingertips but that's sometimes the way of the world. Thank you very much. Tomorrow morning, ten o'clock, if you please.

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- A. I will think about this cash issue in the meantime, Sir Brian.

SIR BRIAN LANGSTAFF: Yes, please.

(4.35 pm)

(Adjourned until 10.00 am the following day)

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I N D E X

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