

Friday, 26 February 2021

(10.00 am)

(Proceedings delayed)

(11.00 am)

SIR BRIAN LANGSTAFF: Good morning, Mr FitzGerald. I'm very sorry to have kept you waiting. There was an equipment malfunction this morning which prevented us from proceeding. It wouldn't have affected you giving us evidence here but there are something like 150/200 people out there listening remotely who can't be here because of current restrictions but who need to be able to see and listen and follow your evidence as it's given.

THE WITNESS: Yes.

SIR BRIAN LANGSTAFF: So we had to make sure that they could do that.

THE WITNESS: Okay.

SIR BRIAN LANGSTAFF: We've had a week where we had the odd bit of equipment malfunction but there we are. So I'm sorry you've been kept.

THE WITNESS: Don't worry.

SIR BRIAN LANGSTAFF: Thank you very much for being here. Now you have to be sworn.

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Macfarlane Trust, had you had any prior experience of being a trustee on a charity?

A. No, I think. I had been a member of my college's finance committee, the college being a charitable organisation, but that was the only other thing that was around the same time, a bit before, and I still am.

Q. How did you find out about the vacancy for the chairman at Macfarlane Trust?

A. It was advertised in the Sunday Times.

Q. What drew you to the Macfarlane Trust?

A. What drew me? Well, when I saw the advertisement it struck a chord. I have no -- unlike others, I have, still have had, no person experience or familial experience of this great tragedy but I am of an age that remembers the AIDS epidemic all too well. I knew of -- didn't know personally -- people who suffered from haemophilia and I remember thinking that -- when I was looking at this -- or noticed this advertisement, that it was somewhere where I might be able to bring my such experience as I have to help and thinking it was such a terrible combination of events that if I could help and if people wanted me to help then I would be very happy to do it.

Q. So you applied. Can you tell us a little bit about

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Christopher Francis FitzGerald, sworn.

Questioned by MS SCOTT

MS SCOTT: You took over from Peter Stevens as chairman of the Board of Trustees for the Macfarlane Trust in April 2007 until you stepped down in April 2012, is that right?

A. That is right.

Q. You tell us in your witness statement that you are a qualified solicitor who was in private practice initially and then undertook several roles at the NatWest Group and, from 2001 onwards, at the Financial Services Authority, in particular the chairman of the Financial Services Authority's independent Regulatory Decisions Committee and you were on the Financial Reporting Review Panel until 2012; is that also correct?

A. That is correct.

Q. Currently you are a non-executive director of various listed and unlisted companies and also a lead independent director of another company; is that correct?

A. Only the last. That is still current. The others were over the period of time since 2001 or thereabouts.

Q. Before you took up your chairmanship of the

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the process, the interview and so on that you went through.

A. Well, I started -- first, I went to see the people at -- it was called Kingston Smith, I think, the people who were conducting the recruiting. And then I -- and I'm not going to be able to remember exactly what the time intervals were, but I then did have certainly one long interview with what appeared to be the whole board of -- the then board of the Macfarlane Trust. I don't remember whether it was complete but it was certainly a lot of people there. I think there was a second round but I don't remember that being particularly long. But that's how the process went. It was a full interview with the members of the Board of Trustees.

Q. There was a period between the announcement of your appointment and you taking up your appointment. Do you recall that?

A. Yes, yes.

Q. What occurred in that period?

A. Well, my appointment as a trustee started I think from 1 January 2007. My appointment as -- the fact that I was going to be, become a trustee, was I think decided upon by the board in October of 2006, and my involvement with the Trust during those three months

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was limited to attending a strategy day, which was very interesting and very informative for me. Once I'd become a trustee, as of 1 January 2007, for the following three or four months -- I think it was 1 January -- I was visiting the office from time to time, obviously talking with Peter Stevens in particular from time to time and sort of prepping, if you like, until I actually took over formally at the end of April.

Q. You say in your statement that you had extensive briefings both from Peter Stevens and from Martin Harvey?

A. Yes.

Q. Martin Harvey being the chief executive.

A. The chief executive.

Q. And he was the only chief executive you worked with?

A. In my time, yes.

Q. Yes. Extensive briefings from Peter Stevens and Martin Harvey at around or before taking up your role as chair. What sort of information did they hand over to you in that period? What did you learn about the Macfarlane Trust?

A. I don't remember being given any -- literally having any written papers handed over to me, but I certainly -- if I was in the office, certainly once

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which was a plea for substantially increased funding. As I recall, there had been virtually no increase in funding since 2003 and the challenges for the board, the demands on the board or the charity were, you know, ever greater.

Q. The funding bid you have just referred to, is that the -- I think it was called the long-term survival report?

A. Yes, I think that's right.

Q. Submitted to the Department of Health by Peter Stevens?

A. Yes, it was, yes.

Q. Around about 2005. Does that --

A. Yes, it was. It had been in their hands for a long time. We hadn't had any -- as I understand it, we hadn't had any response until it was effectively rejected, and that rejection had taken place not long before I first became involved with the charity. So that was all part of the history or the background that Peter, in particular in his case, but also Martin, shared with me.

Q. Just to be clear, because we've heard evidence from Peter Stevens already this week, those that are listening, that was the funding bid in which the Department of Health were asked to significantly

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a week, Martin in particular would have told me what was going on, how they went about what they were doing, obviously what the objects and aims of the Trust were. Peter would have talked to me about that. I didn't see him every week certainly but I saw Martin regularly during that period and so acquired background, if you like, which I put into -- or became -- put into practice when I actually took up the official position as chair.

Q. Can you remember what the key issues were as identified by Peter Stevens and Martin Harvey at that stage?

A. Well, I mean, the key issue, as always, was the one of funding and the inadequacy of it in terms -- that issue and the fact that we were a trust, a charitable trust, and that our objects and aims were defined by reference to need. And the combination of the two, the inadequacy of the funding and the charitable requirement for need to be established in order for funding to be provided to beneficiaries, was a very difficult challenge to manage and that I became familiar with during that period.

It was also -- that period was also against the background of the funding long-term survival paper that had been sent in to the Department of Health,

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increase the funds --

A. It was a doubling.

Q. A doubling -- up to about 7, 7 and a half million --

A. 7 and a half, as I recall.

Q. What did you understand your responsibilities and duties as trustee and particularly chair of the Macfarlane Trust to be?

A. As a trustee, like all of the trustees, our obligations are obviously facing in two directions. One -- it was for the -- do the best we could for all of our beneficiaries. And doing the best we could involved making every effort to obtain more funding from the Department of Health. That was on that side of things. And towards the beneficiaries was to provide with that funding whatever we could to help them. I think I made it clear in my written statement that the policy of the Trust had always been, and remained so throughout my time and still until the response to the Archer Inquiry report changed matters fairly fundamentally, had always been to prioritise the needs of what we came to call primary beneficiaries.

There was just a little -- when I arrived in the scene, people were called -- our beneficiaries were called "registrants" and "infected intimates",

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neither of which expression I personally found particularly appealing, or helpful either. So it was agreed that they would all, together, be primary beneficiaries. But the priority was their needs, which meant that the needs of the broad category of dependants, which includes wives, widows and so on and children -- well, by definition, were secondary. It wouldn't mean they were eliminated -- far from it -- but we were extremely conscious of the fact that we were not -- not only were we not doing as much as we would really want to for primary beneficiaries, we certainly weren't doing as much as we wanted to do for the other beneficiaries.

Q. What can you recall about the reasons why you, prior to Archer, continued with that policy decision to prioritise primary beneficiaries over secondary beneficiaries?

A. I suppose it was because we felt those who were suffering the medical consequences of the conditions, by which we all knew they were then afflicted, meant that we ought to give them more to support them than we could provide to others.

It was also the case, I think, although this was less true, perhaps, by the time I was in the chair, that certainly in the earlier days in the Trust

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then approved, or submitted for approval, often sent back for further consideration by the board. But that was the order in which it occurred.

So far as the decisions were concerned, the response to the application would have been developed in the office first and then presented, I think, with a recommendation but at any rate certainly presented to the committee who would then go through each one and make a decision, which would be communicated to the applicants. The applicants had the opportunity to ask the committee to think again or to reconsider and if, depending on the outcome of that process, it was then possible if there was still -- if the matter was still outstanding, if I can put it that way, then it was referred to the board for decision.

I have to say, I don't remember that actually -- I can remember occasions when it did happen but it wasn't -- it didn't happen at every board meeting. We didn't have appeals, if you can call it that, at every board meeting by any means. But there were certainly occasions when the board had to make a decision, yes.

Q. Just a couple of questions arising from that. First of all, in relation to the NSSC, I understand that you were not a member of that committee?

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the afflicted were dying much earlier and with much younger widows who, in many cases, if not most cases, would have been keen to move on, if I can use that expression, and would not, therefore, want to be dependent or rely on the charity in order to carry on with their lives.

That was, I say, less true, much less true, by the time I became involved because the death rate was very much lower and widows were that much older and so we were all the more keen to do more help for them to the extent that we could.

Q. Just turning then to the way that the Trust operated at board level. It's right, is it, that there was a committee, the NSCC, in place when you were there?

A. Yes, National Support -- NSSC.

Q. NSSC, sorry. That committee was responsible for making decisions on applications for grants, and so on, was it?

A. Yes, yes.

Q. Were they also responsible for drawing up guidance or guidelines or policies for grant giving?

A. Well, yes, I think it's fair to say that they were responsible for developing the policies, not least because they were the ones who were as close as possible facing the applicants. But all policies were

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A. No.

Q. But we see in minutes you attending quite a lot of their meetings.

A. Yes, I saw that. Sorry, I'm interrupting you.

Q. No.

A. When I looked through those it was more than I remembered. But, no, I was in -- either if I did stay on for -- because the consideration of applications was always later in the meeting and the reason why I was there was to the extent that policies were either being developed or reviewed, partly in order to provide guidance, if that's the right word, as to what I thought the board's position either was or had been or would be, and also to take part in their discussions in that regard.

But I took it as a matter of principle that I would not take part, not least because I was the -- not I, but the board led by me -- were the appeal body if it came to it. I did not take any part in the discussions, even if I remained in the meeting and, as often as not, I left before the applications were considered. I didn't take part in the consideration or -- let alone determination of the applications.

Q. The other members of that committee were other fellow trustees?

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1 A. Yes, they were, yes.

2 Q. In relation to the determination of applications as

3 they came in from beneficiaries for grants, and so on,

4 the Inquiry has documentation and heard evidence

5 yesterday that, certainly before your time, that the

6 process was an application would come in, staff would

7 consider it and if it came within what came to be

8 known as the office guidelines --

9 A. That's right, yes.

10 Q. -- ie certain limits, staff could approve it, but if

11 it was beyond those limits, then it would go up to the

12 NSSC. Was that the process at that time?

13 A. Yes, I think that's right. I think with one slight

14 gloss. I believe that, even though the decision will

15 have been made and in the circumstances you describe

16 in the office, the fact that they had been made, the

17 decisions that is, would have been reported to the

18 NSSC. So the NSSC would have known, you know, what

19 grants had been applied for and what grants had been

20 approved.

21 I say that not least because my recollection is

22 that when it came to the board, when the NSSC reported

23 to the board quarterly, we had a list of all the

24 grants that had been made and that, I believe,

25 included office-approved as well as

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1 Q. Did he have a role in advising and guiding the board

2 about policy decisions and strategy, and so on?

3 A. Informing, I would say. I'm not sure advice. I don't

4 think he would have seen it as his role to advise the

5 board but certainly the development of proposed

6 policies would have started with him and in the

7 office, and would have come through, if it was one of

8 those sorts of policies, come through the NSSC, and he

9 was certainly -- took a full part in discussions about

10 policy at the NSSC, less so at the board, other than

11 on a reporting basis.

12 Q. Approximately six weeks after taking up the Chairman

13 role at the Macfarlane Trust you were called to give

14 evidence at the Archer Inquiry.

15 A. Yes. I didn't -- I had forgotten. I mean, I knew

16 I attended.

17 Q. Yes.

18 A. I remember that. When I put in my witness statement

19 that I had attended a day and the reason why I'd

20 forgotten that I'd actually said anything was -- as

21 opposed to Martin Harvey saying a lot -- was that

22 I had indeed only been in office for six weeks. But

23 I've seen the -- I mean, obviously, I was party to the

24 submission that was made but that was not drafted as

25 you would expect, wasn't drafted by me. Hopefully

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1 committee-approved.

2 Q. You have already told us that the chief executive

3 throughout your time with Macfarlane Trust was

4 Martin Harvey. What was the relationship between

5 chief executive and chairman of Macfarlane like during

6 your tenure? How did you see the two interacting?

7 A. He had his job to do and I had mine. I think,

8 I was -- as I have said, I think, already I was in the

9 office at least once a week and he was always there

10 for -- it wasn't if it was a relationship that

11 occurred once a quarter for meetings. I was made

12 aware -- I was going to say constantly, but certainly

13 frequently -- of all the things that were concerning

14 him and others in the office and if I could offer

15 advice or guidance, then I would do that. He would

16 certainly keep -- if he was involved in anything,

17 particularly which involved external affairs, then he

18 would keep me involved as it was developing. He

19 wouldn't necessarily copy me on everything by email

20 that he was involved in but quite a lot of times I did

21 get copied in on things or he would report to me

22 directly.

23 Q. So he was there to -- one of his roles was to

24 implement decisions made by the board?

25 A. Of course, yes, yes.

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1 improved on a drafting basis by me but certainly not

2 developed by me. That was Peter Stevens and

3 Martin Harvey who would have done that.

4 But as chair I remember now, because I've seen

5 the papers, I did make a short statement at the

6 beginning of that day's evidence or that part of the

7 evidence that day.

8 Q. So I was going to turn to the written submission made

9 to the Archer Inquiry but I think, given that you said

10 you didn't play any part in writing that --

11 A. No material part, no.

12 Q. -- probably not very helpful.

13 A. No.

14 Q. So can we look then at your oral evidence to the

15 Archer Inquiry. It's ARCH0000005.

16 A. Yes, I have that. I have a summary and then there's

17 the text.

18 Q. We'll have the -- so this was -- you gave evidence,

19 I believe, on 3 June.

20 A. Yes.

21 Q. Before we turn to the actual transcript, can you

22 recall whether or not there was any discussion at

23 board level about the line to take or what should be

24 said?

25 A. No, is the short answer. The submission itself --

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1 I don't have in front of me the minutes of the end of
2 April meeting, board meeting, but I'm confident the
3 submission itself would have been shared with the
4 trustees and would have been discussed with them at
5 previous meetings but I honestly don't have a picture
6 in my mind of that happening. Certainly, the trustees
7 were very much party to the whole thing.

8 Q. Yes. So your evidence starts at page 34 of the full
9 transcript.

10 A. Yes. 35, I think.

11 Q. Sorry, one page on, electronic 35. At the bottom of
12 the page we can see "Macfarlane Trust" --

13 A. Yes, "May we proceed", yes.

14 Q. Martin Harvey.

15 A. And then I appear at the top of the next page.

16 Q. You do. I'm going to read out some of this
17 transcript. I'm going to start at what you say -- if
18 we go over the page then, please, Soumik.

19 You start off, unsurprisingly, by explaining
20 you have only just recently taken up the chair.

21 A. Mm-hm.

22 Q. And then you say, at line 13:

23 "What I would like to do, if I may, is, without
24 going through the paper itself, just develop the theme
25 of the commitment of the government and to contrast

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1 that with the delivery of the funding which I would
2 say has been committed."

3 You then go through and set out the historic
4 commitments the Government had given to the
5 Macfarlane Trust.

6 A. Yes.

7 Q. Then if we go over the page, Soumik, to page 36, about
8 halfway down that page, at line 14 you then say:

9 "You can contrast [this] with the delivery.

10 The reality is that there has been no effective
11 increase in the funds available to the
12 Macfarlane Trust since 2003, and we are told, as you
13 have heard in the context of the Eileen Trust as
14 well -- we are told not to expect any increase in
15 2008/2009 either."

16 Then you develop that theme over the page at
17 page 37 of the transcript, 38 electronically, and you
18 set out there the latest correspondence that has been
19 received by the Department of Health about the
20 difficulties in funding. You refer to a letter in
21 November 2006 and you quote there the Department of
22 Health:

23 "I explained the financial difficulties facing
24 the department, and I am being asked to reduce all
25 budgets."

18

1 A. Mmm.

2 Q. Then you describe:

3 "And this was the sop to us:

4 "... I am aiming to cure the same level of
5 funding for 2007/2008 as 2006/2007."

6 Which you point out was at least some advance
7 on the previous threats of actual reduction in the
8 budget.

9 Then can we go over to the next page, please,
10 Soumik, and pick up what you say there at lines 7
11 following. You are talking about the paper, and you
12 describe what you say in there. You say:

13 "We said that ..."

14 I think you are there referring to the paper:

15 "... while the establishment of the trust
16 recognised the uniqueness of the situation, at the
17 same time it carried the risk for the trustees that it
18 might be perceived to have moved the plight of the
19 beneficiaries from being a political issue to an
20 administrative problem and we said it would be most
21 unfair, not only to the trustees but, more
22 importantly, for the beneficiaries, but also for the
23 administrators. In order for the trustees to achieve
24 the objective in the trust, which must have been
25 a political intention, a renewal of political

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1 commitment to those objectives is required.

2 "It is wrong for our beneficiaries, we said,
3 whose lives are continuing, and will continue, to be
4 blighted by errors within the NHS, that they should be
5 further disadvantaged by financial stringency within
6 the NHS. This is what we said to them.

7 "I would simply wish to reiterate that it is
8 simply unacceptable on any basis, whether you call it
9 moral, legal or whatever -- it is simply unacceptable
10 that the funding the consequences of the greatest
11 catastrophe in the history of the NHS should be
12 constrained by the current financial difficulties or
13 incompetencies in the NHS."

14 Then you say in the next paragraph:

15 "I concluded in our paper -- and I will
16 repeat -- that what is needed is a renewal of the
17 political commitment. No amount of arguing the
18 toss -- dare I call it that -- with notions about what
19 the cost of living is and what the differences in the
20 cost of living are is going to make any difference.
21 This is a political matter."

22 Then skipping the next paragraph:

23 "When the trust was set up, and repeatedly
24 since then, ministers have accepted the obligation.
25 Whether you call it a legal one or a moral one or you

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1 simply call it responsibility, they have acceptability
2 responsibility.

3 "We, the Macfarlane Trust, are a charitable
4 trust. The trustees are individuals, volunteers, who
5 want to do what they can to help people in these
6 tragic circumstances. We are charged with a duty
7 under our trust deed to relieve the needs of our
8 beneficiaries. We cannot perform that duty unless
9 adequate funding is provided, and to do that the
10 government that got -- the politicians have got to
11 recognise the fundamental change that has taken place
12 in the needs of our beneficiaries, resulting from the
13 fact that they are now expected to survive for a full
14 lifespan, God willing, whereas, when the commitments
15 were originally given, they were all expected to be
16 dead within four to five years. And there are
17 realities here, new realities, that are going to
18 continue and must be recognised."

19 **SIR BRIAN LANGSTAFF:** May I just ask: this was in 2007.
20 My memory may be very inexact, but the credit crunch
21 hadn't yet happened, had it?

22 **A.** No, no.

23 **SIR BRIAN LANGSTAFF:** So this was financial stringency at
24 a time when there was no pressure from the credit
25 crunch.

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1 approach. And I do not know whether the second pot,
2 which we were apparently sharing in, if that's the
3 right word, was competing with the NHS. The NHS, we
4 know, is always underfunded, everybody always says
5 that, and therefore it must have more and more money.
6 But they were actually telling me at that time
7 that: actually you're over here, so don't worry about
8 whether the constraints of the NHS are affecting you
9 because you're in that pot.

10 Very strange, but that is my recollection. And
11 I can't tell you which of those meetings that occurred
12 in but I certainly clearly remember being told that.

13 **MS SCOTT:** Do you recall whether you had any feedback from
14 any of the trustees about what you had said to the
15 Archer Inquiry, a public platform, about the
16 Department of Health?

17 **A.** No. Nothing I said -- I believe nothing that I said
18 was in any way controversial, so far as the trustees
19 were concerned.

20 **Q.** The Inquiry's heard evidence over this week about
21 a certain reticence on the part of the Trust, before
22 your time in the earlier years, about criticising the
23 Department of Health. Is that something that you
24 experienced? Was that still in play when you were
25 with the Macfarlane Trust?

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1 **A.** No, there was no credit crunch. The financial crash
2 occurred certainly not before the end of 2007, and its
3 impact was felt in 2008/9. That's definitely so.

4 The other thing, if I may, Chairman, I'd like
5 to add to this is that -- something that occurred to
6 me as I was preparing all of this but I have not seen
7 in any of the papers, because it probably isn't there,
8 but I would like to share a clear recollection that in
9 at least information one of the meetings that I took
10 part in with the Department of Health over the years,
11 when we were talking about, in exactly these terms,
12 the NHS's difficulties ought not to be our
13 difficulties and so on, I remember being told that
14 actually the Department of Health had effectively two
15 budgets. One was the NHS, and we were not in
16 competition with that, and there was another budget
17 for all the other things they did. And that's
18 where -- that's the pot which we were sharing in.

19 Now, I remember saying at that time that
20 I thought it was unacceptable either way, but it just
21 struck me as odd that we should find ourselves in this
22 sort of differential between two competing pots, if
23 I can call it that. I don't know that it adds
24 anything to the general understanding but it just
25 struck me -- it stuck my mind that they had this

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1 **A.** No. I mean, I think that we -- we had to show
2 an understanding -- I was going to say respect but
3 an understanding -- that the people who were
4 administering affairs at the Department of Health were
5 not, substantially at least, responsible for the
6 funding issues which we were seeking to address. I've
7 always taken the view, whether it's it in
8 negotiations, discussions, arguments or whatever, that
9 it never helps to become overly aggressive with
10 somebody because they will just retreat. What you
11 want is to draw them in and so you may have seen
12 several occasions where papers have referred to trying
13 to develop a discussion with the Department officials
14 in a sense or with a sense of partnership.

15 But that never stopped me, and I certainly
16 don't remember any trustees, suggesting that we hold
17 back when it came to trying to make these political --
18 the points at the political level that I was making in
19 this statement and indeed on several occasions
20 afterwards, when usually there was an opportunity to
21 write to a new Secretary of State or a new, whatever
22 he was called, Minister for Health, or something, that
23 they -- to make the point again and put it as firmly
24 as I could that it was up to the politicians to make
25 the decisions. It's not actually for these people to

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1 do that.

2 Q. We can look at one of those documents. Soumik, can

3 you take that one down.

4 A. If I may just come back, actually the question you

5 asked me: was I aware of what, you know, whether the

6 atmosphere, or attitude rather, was different earlier.

7 I could understand it having been so because of the

8 great uncertainty about continued funding and that

9 goes back to my point about how far you can push

10 people before they actually turn their back on you.

11 But they were -- they had reason to be concerned that

12 not only might they not get any more money on

13 an annual basis but they might not get any money at

14 all. So that might have explained any reticence there

15 was before. Sorry, I interrupted you.

16 Q. No, not at all.

17 So just developing that, somewhat, given that

18 you had criticised -- well, it could be seen as being

19 critical of the Department of Health on such a public

20 platform. Did that, to your knowledge, have any

21 impact on the relationship between the Macfarlane

22 Trust and the Department of Health? Was it visited

23 upon you in the future?

24 A. No, no. No, no, no, no. It certainly wasn't. It was

25 perfectly well -- as I recall, perfectly well

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1 Then you go on to set out the background to the

2 Macfarlane Trust and you make the point that

3 predecessors repeatedly made statements recognising

4 the hardship and great distress of the beneficiaries,

5 and then you mention the Funding Long-Term Survival,

6 that was the funding bid that you spoke about earlier

7 and the rejection of that by Caroline Flint.

8 Then at the bottom of page of the page there,

9 you say:

10 "It appears to the Trustees that the grounds on

11 which the submission was effectively rejected by the

12 Department in July last year amounted in reality to

13 the recent, well publicised financial difficulties of

14 the NHS. The Trustees' position is that it is simply

15 unacceptable that our beneficiaries, whose lives have

16 been shattered, and will continue to be blighted, by

17 what has been described as 'the worst ever treatment

18 disaster in the history of the NHS', should be further

19 disadvantaged by financial stringency within the NHS."

20 So very much making the same point in

21 correspondence with MPs and, indeed, Secretary of

22 State.

23 A. I think you'll find the same -- much the same approach

24 was taken even in -- is it 2010 when there was the new

25 Coalition Government came in and, at that stage, I was

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1 understood. The fact that the words had been said as

2 part of much broader submissions anyway, on many

3 fronts, the Department of Health knew they were under

4 attack, if you like, throughout the whole of the

5 Archer Inquiry process and when they saw the report of

6 the Archer Inquiry they would have seen exactly --

7 Archer said no more than what the Trust was trying to

8 say. Well, I said a lot more but I mean we were all

9 very much on the same page.

10 Q. You mentioned writing to Ministers of State, and so

11 on, on taking up their appointment. We can look at

12 one of those letters. It's MACF0000016_039. If we go

13 over to the second page, we can see it's a letter from

14 you.

15 A. Yes.

16 Q. We go back to the first page, it's a letter from you

17 to the Right Honourable Dawn Primarolo MP,

18 5 July 2007, and you say:

19 "I am writing to welcome you on your appoint as

20 Minister of State for Public Health Protection. [And

21 you have] written in similar terms to the incoming

22 Secretary of State."

23 Then you wish:

24 "... every success in discharging the heavy

25 burden of responsibility ..."

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1 writing about the inadequacy of the response to the

2 Archer Inquiry, but in much similar terms.

3 Q. Can we just look at a couple of documents before I get

4 to my question. So the response from Dawn Primarolo

5 is at DHSC0004109_016. Here we can see that it's date

6 stamped 25 July, to you from Dawn Primarolo, and she

7 sets out her understanding of Peter Stevens' meeting

8 with Caroline Flint in July 2006, and an increase of

9 funding of £400,000 was made, and she says:

10 "I am advised that the Trust is presently

11 provided with Departmental funding of just over

12 £3.7 million per year to meet the needs of its

13 registrants. I am sorry that you consider this level

14 of funding to be insufficient but as I appreciate you

15 are aware, Departmental budgets have to take into

16 account a range of competing pressures."

17 Then she says:

18 "... pleased to consider a revised case from

19 the Trust on behalf of your registrants in due

20 course."

21 So not any movement from her, not giving much

22 away but, effectively, well, yes you can come and try

23 again if you want to in the future. Is that how you

24 read that?

25 A. Absolutely, and she gave no -- nor did her officials

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1 give any indication of what part of our submission
2 could helpfully be revised. So, as far as we were
3 concerned, that was the door being slammed shut in our
4 face.

5 **Q.** We can look then at a meeting with officials. Soumik,
6 it's MACF0000012_131, this is a minute of a "DH",
7 assuming Department of Health, Macfarlane Trust update
8 minute, 28 October 2008. We can see that you have
9 attended with Martin Harvey and Nicholas Fish, and
10 there are Brian Bradley and Glen Clarke from the
11 Department of Health. Were they civil servants?

12 **A.** Yes. Yes, I don't remember Glen but I do remember
13 Brian Bradley, yes.

14 **Q.** Then if we turn to page 3 of this minute, we may well
15 come back to this minute in due course, on different
16 themes later on, but there's a discussion about
17 funding and reserves and he pointed out -- I think
18 that's you at the top of the page there:

19 "He pointed out that if the Trust does increase
20 their regular outgoings then the reserves will need to
21 be at a higher level. Martin mentioned that the Trust
22 were grateful for Brian's efforts on the caveated
23 assurances that he was able to give regarding the
24 Trust's funding and that the Trustees were content
25 with the new funding policy. Christopher said that

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1 beginning of the year and not get paid in quarterly.
2 That's what that was about.

3 **Q.** So that's a meeting in which you are saying in terms
4 to the Department of Health "Unless you give us more
5 money, we can't meet the objectives adequately"?

6 **A.** Adequately, yes, absolutely.

7 **Q.** There was effectively no -- that wasn't sufficient to
8 get any increase in funding either?

9 **A.** No, no. What is recorded there is that it was at
10 least something that they would pay the £3.7 million
11 at the beginning of the year, rather than in quarterly
12 instalments. That was at least something,
13 particularly against the background where whatever --
14 I've forgotten what the date of this was but, I mean,
15 we were into the financial crisis by that point and
16 so, therefore, our investments were looking pretty
17 sick.

18 **Q.** Yes. So it's October 2008.

19 **A.** Yes. We were right in it then, yes.

20 **Q.** Would it be right to characterise this toing and
21 froing between the Macfarlane Trust and the Department
22 of Health at this stage on funding as having reached
23 a bit of an impasse; you are pressing for more, they
24 are continually resisting you?

25 **A.** Mmm, mmm.

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1 the Trust would continue to make the case to the
2 Department for an improvement in their funding ..."

3 **SIR BRIAN LANGSTAFF:** Just pause there. Where exactly are
4 we on the screen?

5 **A.** Do we want to go back a page, I think.

6 **MS SCOTT:** Sorry. I'm sorry, yes. If we look at the
7 first page under 2 "Macfarlane Trust current Funding
8 and Reserves Policy", and there's a discussion there:
9 "Christopher referred to the position that
10 would be no increase in the Trust's funding ... for
11 2009/10 and for the following two ... years."

12 You say:

13 "He reiterated that this amount of funding
14 would not be enough for the Trust to meet its
15 objectives adequately, although he understood the
16 Department's position."

17 Then there's a discussion about reverting to
18 an annual settlement and the Department of Health said
19 they will look at that. Then you say:

20 "Christopher added that if the DH accepted this
21 request this would be seen as a positive demonstration
22 of the DH's support for the Trust and the spirit of
23 partnership."

24 **A.** Yes, yes. The request is for the annual payment,
25 whatever it was going to be, to come in at the

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1 **Q.** Can we then look at MACF0000045_009. This is the
2 annual report from 31 March 2008.

3 **A.** Yes.

4 **Q.** If we go to page 5, we can see that the Chairman's
5 statement is signed by you on 28 November 2008.

6 If we go back to page 3, please, we can see the
7 beginning of the Chairman's statement. You set out
8 that it's been an eventful and challenging year and
9 made more challenging by the Trust seeking to not just
10 maintain but enhance activities despite no level of
11 increase in funding from the Department of Health.

12 Then the next paragraph you say this about the
13 Archer Inquiry:

14 "The insufficiency of the Department's funding
15 relative to the demonstrable needs of the Trust's
16 beneficiaries leads the Trustees to look to the Report
17 of the Archer Inquiry as a vital platform on which
18 both to make renewed representations to the Department
19 and to lobby parliamentarians and others who might be
20 able to cause political influence to be brought to
21 bear. The Archer Inquiry was set up to look into the
22 original causes of the disaster [et cetera] ... the
23 Report will provide a valuable opportunity to draw
24 attention to those needs and the inadequacy of the
25 means available to the Trust to relieve them in the

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way and to the extent that the Trust Deed requires of them."

So would it be fair to characterise your view at this stage that really the Archer Inquiry was really the best chance of being able to improve matters for the Macfarlane Trust?

A. Absolutely. It was -- effectively at that time it was the only chance because, as you have already pointed out, we were getting effectively nowhere with the Department of Health. And certainly as advised by the officials, the politicians who were responsible for the Department were not responsive either, except at a very basic level. But this was the great opportunity for public pressure to be brought on the politicians in order to achieve a transformation in the affairs, financial affairs, and well-being of our beneficiaries. And that was what -- we were looking to it to provide the lever for us to be more particular about how to go about delivering what we hoped and expected Archer would recommend. This was I think before he reported. Yes, I think it was.

Q. Do you think or did you get any sense that the fact that the Macfarlane Trust had significant reserves during this period may have been a contributory factor to the Department of Health not being willing to

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least get funding every year indefinitely. And it was on the back of that that we decided we could safely, in terms of our charitable obligations, or obligations as trustees, we could aim to reduce the reserves to six months' forward cover.

This was never going to be easy to do in truth but that was what we were determined to do. And eventually we did, but ...

Q. That, precisely what you have just outlined, is recorded in the 31 March 2008 annual report under the reserves policy?

A. Right.

Q. Does that accord with your recollection in terms of timing?

A. Yes, I think that's right -- yes, it must be right. That is what I said. If it's there --

Q. What it says is the new policy, the new reserves policy, is that the Trust should move over time to a reserves level roughly equal to six rather than 12 months cover of its total expenditure?

A. Yes.

Q. Just in terms of figures, at that stage the reserves were at 4 million, which was said to be 12 months of grants plus the cost of running the Trust for a year?

A. Yes.

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increase funding?

A. Not at this stage, no, because we had been consistent in our approach to this with the Department that we had -- because they had provided no satisfactory commitment to future funding, we had an obligation as the charitable trustees to keep reserves that would keep our -- continue to provide -- such as to continue to provide our beneficiaries with support and not risk the situation where the tap would simply, if I may put it that way, it would simply be turned off.

The advice, I believe, after discussion, not least after discussion with the Charity Commission, that that actually meant having at least a year's forward cover plus the cost of administering the Trust. And that -- what we would have done heaven alone knows, because if the tap had been turned off, we would no doubt not have simply paid out one more year. We would have found some way of trying to reduce it gradually. But fortunately it never came to that.

But the -- we did obtain, in time, and I'm not going to remember the exact calendar dates now, we did get a commitment, communicated by officials it must be said, that I, initially, and then the board, agreed were sufficient for us to be sure that we would at

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Q. And so presumably that means that you would be moving towards £2 million for the six months?

A. That was thought to be appropriate. It was going to be -- it was always expected to be a gradual reduction. I can remember a figure of 3 million being quoted at some later stage. And I also remember somewhere in a board meeting it being noted that it could take us seven years to reduce the reserves to the level that we felt at a pace with which we felt comfortable.

This became you know an increasing issue, as I'm sure you've seen throughout the papers with Department.

Q. It might be helpful to look at that meeting that you have just referred to, about the 3 million. It's MACF0000018_006, if it's the right meeting.

So this is a July 2008 meeting. If we go down to the bottom of the page, "Matters Arising":

"The Board ... received the Chairman's memorandum and proposed policy statement on the reserves. The Chairman alluded to the reasons why he felt that the assurances from the Department of Health in respect of future funding were sufficient to enable the Trustees to consider a less conservative approach to the maintenance of the reserves ..."

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1 A. Yes.
 2 Q. And:
 3 "... maintain them at a level which would meet
 4 a forward expenditure need of 6 months for
 5 disbursement and operating costs, plus a buffer of 10
 6 per cent in the first instance to make some allowance
 7 for market variations, in place of the current policy
 8 of 12 months cover."
 9 That's what we see then finding its way into
 10 the annual report, is it?
 11 A. Mm-hm.
 12 Q. Then it goes on:
 13 "... future reserves policy that would be
 14 incorporated into the annual report ... appropriate to
 15 calibrate the reduction in the level of the retained
 16 reserves and according the proposal stated a target
 17 reserve figure of £3 [million] at the end of 08/09
 18 with a formal review prior to any further diminution
 19 of the value of the portfolio."
 20 A. Yes.
 21 Q. Is it right to understand that this was very much
 22 driven by you?
 23 A. I don't -- I didn't think -- driven, I think I'm not
 24 sure I would accept no doubt because I was in the
 25 chair and the discussions -- I had had the discussions

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1 Department of Health on or was it something the board
 2 was acting independently --
 3 A. No, no --
 4 Q. -- or just informing --
 5 A. -- the board in all matters acted independently of the
 6 Department. I mean, I say that. You know, that's
 7 what we were talking about earlier. If we had done
 8 things that were -- provoked the Department, we might
 9 have risked them taking some sort of adverse reaction
 10 against us in terms of funding. So it's a balance in
 11 these things. But certainly, no, they did not lead us
 12 to any conclusions at all.
 13 Q. Can you recall --
 14 A. Until much later. I know you are going to come back
 15 to that.
 16 Q. Yes.
 17 Can you recall what the plan was for using up
 18 the reserves at that stage?
 19 A. Well, the plan was simply to develop welfare --
 20 further developments of the welfare policy that would
 21 have accommodated, provided for increased,
 22 particularly, grants, but some increases in regular
 23 pay, which I know did happen, and also, over time, to
 24 provide more help to the non-infected beneficiaries.
 25 That was the plan but the development of that plan

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1 with the Department, with Martin Harvey of course,
 2 about this subject. I would have been reporting to
 3 the board and telling them what I would recommend to
 4 the board, and this on the back of reporting the
 5 commitments, as I saw them, that had now been given.
 6 But certainly the trustees shared -- I believe the
 7 trustees, I did not hear them say otherwise, they
 8 shared the concern that we had had from the very
 9 beginning about maintaining a level of reserves which
 10 were appropriate for charitable trustees, given our
 11 commitments to our beneficiaries. And I believe that
 12 the calibration that is referred to here was very much
 13 in accord with the trustees' view. So, all right,
 14 I no doubt led it but I certainly didn't drive them to
 15 a conclusion.
 16 Q. Do you recall having discussions with the Department
 17 of Health over this time about the reserves policy?
 18 A. Other than in whatever meetings that had taken place,
 19 which I think I was reporting on there.
 20 Q. Yes. Can you recall what the --
 21 A. I think -- my recollection is that they simply said,
 22 "Well, that's" -- you know, "That's goods news, thank
 23 you", as it were.
 24 Q. Was it something that you felt that or that the board
 25 felt that they had to almost seek the approval of the

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1 took -- as you will have seen, took time.
 2 Q. So if we turn now to MACF0000015_067. So we have been
 3 looking at documents from mid-2008. This is now
 4 a meeting minute from January 2010.
 5 A. Yes.
 6 Q. Can we go, Soumik, to page 4, please. That big
 7 paragraph in the middle:
 8 "The Chairman then directed the discussion
 9 towards the Trust's reserves and how these could best
 10 be utilised."
 11 Then it says:
 12 "After receiving the post Archer settlement
 13 from the Department the reserves, if they retained
 14 their current value, would appear as some £5 million
 15 in the Final Accounts."
 16 Just pausing there, is it right to understand
 17 that the post Archer settlement at that point was
 18 around about £2 million or thereabouts?
 19 A. Yes.
 20 Q. So it looks like about 3 million in the reserves then.
 21 With post Archer it's going to go up to 5.
 22 "Due to the risk that the Department may try
 23 and recoup some or all of these funds, thought needed
 24 to be given to disbursing in the order of £4 million
 25 in reasonably short order ..."

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1 Then:
2 "... £1 million would be the level required to
3 cover 6 months forward spend and management costs."

4 So is it right to understand that at that
5 point, so in January 2010, the reserves policy was
6 still for six months' expenditure?

7 A. Yes.

8 Q. Given that post Archer the expenditure of the Trust
9 had been reduced, and we'll come and look at that in
10 a bit more detail later but had been reduced because
11 much of what the Trust was doing was now being dealt
12 with by the MFET --

13 A. Yes.

14 Q. -- the 6-month reserve policy, in effect, meant
15 £1 million worth of reserves?

16 A. Yes, yes.

17 Q. Hence the reference to really needing to get rid of
18 £4 million in order to be compliant with the reserves
19 policy?

20 A. Yes.

21 Q. Then what do we understand by "the risk that the
22 Department may try and recoup some or all of these
23 funds"? Where did that come from at that stage? Were
24 the Department saying anything of that nature?

25 A. No, I don't remember, apart from, as we've seen, the

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1 report, go to page 9. We can see the beginning of the
2 "Reserves Policy" at the bottom there, and if we go
3 over the page, second paragraph down:

4 "With much the greater part of the Government's
5 commitment to the support of the Trust's beneficiaries
6 now taking the form of non-discretionary disbursement
7 and accordingly the funds available to the Trust for
8 discretionary support [have] substantially reduced
9 ([to, at that point, £2.3 million] in the year under
10 review), the sum currently required to provide six
11 months' forward cover has been reduced to ...
12 £1 million."

13 So that's what you spoke about earlier. It
14 doesn't set out there what the level of reserves was
15 at that time. Can we turn over to page 12. Can we
16 get it from the information here? There's an opening
17 balance, there's an investment portfolio value, other
18 net assets valued and a closing balance. Can we tell
19 what the reserves are from that information?

20 A. Well, that's the total assets, aren't they?

21 Q. Yes.

22 A. But that's just over 5, it matches the 5352. So
23 you're talking about an investment portfolio, which is
24 effectively the reserves of 4 million, yes.

25 Q. Yes. So it's still looking, at that stage, at needing

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1 reserves -- the fact of our reserves were a constant
2 point of reference. They'd not -- I don't recall them
3 at any stage -- sorry, at that stage, saying: if you
4 don't reduce your reserves quickly we will reduce our
5 discretionary funding -- the funding we give you for
6 discretionary purposes -- until you have.

7 That's what that minute is referring to, as
8 a recoup -- there was never any question of them
9 taking it back, but simply saying, "We won't give you
10 any more money until" -- or, "We will reduce your
11 funding until you have used it up."

12 But we were -- rather as in the previous years
13 we had been concerned that there was a risk that the
14 Department would simply continue not funding
15 appropriately or even at all -- you know, if it was
16 appropriate or adequate -- at the back of our minds we
17 knew this was a manoeuvre that they could take. And
18 as we will see later on, that is what they did indeed
19 threaten at a later date.

20 Q. Yes. So if we just look at the annual report then,
21 that seemed to trigger those conversations that you
22 just alluded to, that's MACF0000004_017.
23 MACF0000004_017 -- sorry, MACF00000047 -- sorry,
24 Soumik, I've given you the wrong -- _017.

25 That's 31 March 2011 annual report, financial

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1 to reduce by 4 million?

2 A. Yes, or by 3 anyway.

3 Q. Yes, by 3 anyway.

4 A. Some progress had been made, in other words, but not
5 as much as we needed.

6 Q. Then if we go then to MACF0000061_104, we get to the
7 meeting that you have spoken about with the Department
8 of Health. We see that you have attended with
9 Martin Harvey, Linda Haigh, and Gillian Brown. Who
10 was Gillian Brown, can you remember?

11 A. No, I don't. 2011 -- yes, I don't to be -- I don't
12 mean to be rude to her but I don't remember her.
13 I was aware that I think she was brought in onto the
14 staff in order to assist Linda Haigh who was
15 responsible for the finances, but I don't remember
16 much more about her. Forgive me, if she's listening.

17 Q. The first paragraph, Ms Wight acknowledged receipt of
18 the annual report and accounts, which we just looked
19 at and, if you go down to the bottom of the page,
20 second paragraph, Mr FitzGerald returned to the issue
21 of reserves as set out in the Trustees' Report and
22 Chairman's Statement, and you then set out the history
23 of the reserves policy.

24 If we go over the page:

25 "Mr FitzGerald advised that MFT were working

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hard to reduce reserves through its disbursements policies and ... the Trustees were now planning to press ahead with a broad review of beneficiaries' circumstances similar to that conducted by (Mr Barnard on behalf of) the Trust in 2003/4."

So we've heard evidence this week about Mr Barnard's long-term review. Is that what you're referring to there?

A. I don't -- to be honest, I don't remember. In terms of 2003/4, this would have been in preparation for, whatever, the Funding Long-Term Survival paper and I don't now remember who Mr Barnard was.

Q. So it looks there as though the Trust is really only at this stage beginning to formulate plans about how to reduce reserves, is that accurate?

A. Well, it says we're working hard. I mean, it had been working hard, certainly for the whole year, and was making some progress, as we pointed out earlier and, by this stage, as you can see, I said it would take another two years to get it down to -- I'm not sure I recognise that figure -- but the Department of Health said the figure was in line with their views. So two years and the time-frame seemed to be acceptable to the Department of Health then, acceptable in the sense that we didn't feel we were

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page you can see that's referred to, so I don't recognise the 100 to 200K.

Q. The next paragraph Mrs Jecock is informing that funding of all charitable bodies "under considerable scrutiny", and there's discussion, and then the following paragraph, you say Macfarlane are better placed to do something about their high level of reserves and suggest an agreed figure within two years, and the:

"DH stressed that the time for this reduction needed to be much sooner. Ms Wight acknowledged [Macfarlane's] efforts to build up income levels for widows but stressed again that the reserves needed to be reduced sooner rather than later. [You] reiterated that change cannot happen overnight ... realistic time-frame to reduce ... reserves would be two years."

The following paragraph is where:

"Ms Jecock said the MFT should recognise that the reserves might have to be used for a time to fund the Trust's current commitments to Beneficiaries as financing was under tight review and [the Department of Health] Finance were limiting the pot of money to cover non-NHS programmes."

Is this what you are referring to earlier?

A. Yes, it is, yes.

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running a risk of them turning round and saying: you'll have to use it as part of your regular payments.

Q. I think what you're suggesting in the next paragraph is exactly that:

"... a period of two years ... appropriate [to reduce] the reserves."

You're there saying not the 1 million but the 100,000 to 200,000.

A. This is -- I should say this is a minute or report of a meeting which was prepared by the Department of Health. I don't think we ever saw their minutes. You will have seen in your papers minutes that Martin Harvey typically would have prepared and I would have reviewed, and I -- this is why I say I don't recognise that 100,000 to 200,000 level. It doesn't seem to me to make sense. Certainly, a period of two years, I would have been saying then that it would take us that length of time to get down to our six-month cover.

Q. So your recollection is that the reserves policy was still, as set out in the annual report then, you would have been saying 1 million --

A. Yes, six months cover. I would certainly have said six months cover. You can see -- at the top of that

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Q. "Ms Wight offered room for negotiation. She suggested submitting a paper setting out why it was necessary to maintain the reserves and how [Macfarlane] intended to use them; she stressed that she could not guarantee this would be effective but it might help to make it clear to Finance why the reserves should not be required to be used in lieu of a discretionary allowance next year (and possibly longer). When Ms Wight reiterated that [Macfarlane] might still have to use some of its reserves for the discretionary top-ups, Mr FitzGerald said that beneficiaries would then expect that any reserves used in this way should be refunded later because they had been held back for their benefit and should be used for them and not to fund the [Department of Health's] commitment to continue discretionary funding."

Then the bottom paragraph there:

"Mrs Jecock said that the only reason for suspending discretionary payments would be the existence of reserves."

Then we see the action on the next page:

"[Macfarlane] to produce proposal, demonstrating clearly the means by which reserves would be reduced to £100-200k (Ms Jecock added that should be closer to £100k) by the end of 2013. The

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paper should be submitted as soon as possible and no later than the end of the first working week in January."

SIR BRIAN LANGSTAFF: Just looking at those figures, they are missing a nought compared to the position from which you began.

A. Yes, yes.

SIR BRIAN LANGSTAFF: To reduce it by a factor of 10 would be to reduce it from six months to rather less than one month.

A. Yes. That's why I said I don't recognise that number but ...

SIR BRIAN LANGSTAFF: But it's repeated.

A. I know it's a repeat of what's said in the previous page, absolutely, yes. Sorry, I can't help further with that but, certainly, the Trust -- well, obviously after reporting all of this to the board the trustees were determined to reduce the level but it's still, as far as I was concerned, to reduce it to the six months that level but also recognising that it would take time and, you know, certainly not less than a year and more likely two, if one were being sensible about it. Sensible in the sense of -- you know, the one thing -- one of the problems with the reserves in terms of we have the issue facing the Department that,

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it, but there we are.

MS SCOTT: Why was it that the reserves were not distributed and were still significantly in excess of the reserves policy, by millions at the end of 2011?

A. I think -- well, I can only answer to that is it did take -- it was taking time to develop the policies that we wanted to have in place in order to be able to use the reserves -- what we considered to be appropriately.

The most challenging thing, post-Archer, was that we were looking to develop policies that would provide much greater support for the non-infected beneficiaries. We still recognised, as you will have seen, that the implementation of Archer, as far as the Government's implementation of it was concerned, still left us in a position where we still needed to provide some support, not inconsiderable support, to some, if not all, of our infected beneficiaries. But the greater emphasis was going to be -- needed to be, we felt -- to move towards supporting the non-infected beneficiaries.

The challenge there was, first of all, to find them, the ones we didn't know about, and we knew very well that there were quite a few who -- well, had not kept in touch with us and then, secondly, to

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so far as beneficiaries were concerned, the point that was made there, we felt strongly -- and not surprisingly the beneficiaries felt even more strongly -- that this was, in a sense, their money which we were holding on, as far as we were concerned, to provide for future times, whatever the future, whatever the length of that future was. But whatever happened, it was their money and so there was at one point when we realised that this sort of attitude was being adopted in the Department, there was a time -- there was a moment, rather, when at least one, and I think probably among the user trustees, if I can use that expression, you know, felt that well -- no, it would not have come from the trustees because they knew perfectly well what our position was.

But it would have come from beneficiaries and representative beneficiaries who say "Well, why don't you just dish it out, distribute it all among all of us". Of course, we then had to come back to the fact -- sad fact was that we couldn't do that because we were a charitable trust and our obligations were to relieve need, and so on, and just dishing out a dividend to everybody would not have been -- well, we would have been personally liable if we had done that, however much we would have liked to have done

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establish -- again, to establish what their needs were. So this was not going to happen overnight and that was why, you know, there was a figure of seven years at one point. Actually, I should withdraw that because that was pre-Archer. But post-Archer, you know, on any realistic basis it was going to take two years to do that.

There was some progress had been made in the year before or the year of Archer, I think, but not much, not enough.

Q. From the meeting minute that we looked at, where the Trust is telling the Department of Health in December 2011, you know, "We're thinking of doing a review much like the one done in 2003", it looks as though that the Trust really is at the beginning of that process. Would it be fair to say that the Trust was slow in disbursing the reserves? Would you accept that?

A. Well, I would accept that we would have liked it to have been much faster, put it that way. I don't recall beyond the explanations that I have already offered in terms of the difficulty of identifying -- or the challenges in identifying the beneficiary groups in question that there was any other reason why we should have gone faster. I don't think I can --

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there is anything I can add to that. It just took time.

Indeed, it was still another year -- this is end of 2011, this meeting -- 2011 or --

Q. December 2011.

A. 2011. So it was 12 months, I think, after that, after my -- the end of my time, when the policies were eventually adopted. I'm going to say July 2012, but I wasn't there. And it was then that the -- by then the policies were adopted. And I hope -- not for me to expect but I hope they were then implemented with sufficient speed that they were able to make, by then, an effective and rapid reduction.

SIR BRIAN LANGSTAFF: When was it in 2012 that you ended?

A. April.

SIR BRIAN LANGSTAFF: So the last financial report would have been yours? Would it have been the next chair's?

A. No, I would have done -- my last chairman's statement would have been the 2011 one. Roger Evans would have written the one for 2012.

My recollection is that the 30 April board meeting -- well, not 30th -- end of April board meeting, which is my last one, that this matter and the policies to be adopted in order to provide these greater -- the greater support for the non-infected

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energy in trying to get the Government to understand that they had -- were not even implementing the philosophy or the logic of their own response, which was the reason why we were going to have to continue to provide discretionary support as well as the non-discretionary payments that were going to go through what proved to be MFET.

So a lot of time and energy was taken up in doing that, but the recognition that we were going to provide -- we would hope to provide more for the non-infected community was certainly apparent then by the end of 2009 and thought was being given to how we were going to do that, how we're going to provide that further support, that's for sure.

But it -- I also said, we actually resorted at that stage, and this is by then probably in 2010, to appealing by national -- advertising in the national press, I don't remember exactly where, for widows and others affected to come forward. Because certainly what we did not want to do was to disburse all the reserves -- well, not all the reserves but a sufficient part of the reserves at that stage on those we did know about, expecting at that stage there to be a considerably greater number coming forward.

So I don't doubt things might have been done

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community would have been discussed at that meeting. And I believe implemented or approved for implementation at the next one, but I'm not -- I can't swear to that. I believe -- that's my recollection anyway.

MS SCOTT: Do you accept that the consequence of the reserves having built up or remained high, however you want to put it, over those years were twofold: first of all, that over those years particularly the bereaved community didn't have access to additional funding that they might have had?

A. If you are suggesting that these policies could have been adopted earlier --

Q. Yes.

A. Well, until we knew how the Government was going to respond to Archer, there really wasn't anything very much we could do beyond aim to reduce to the six months level of cover. Certainly after that we could have -- we were in a position, rather, to accelerate that process.

Q. Just to give you -- Archer reported in February 2009 and the Government response was in May 2009. Does that sound right?

A. Yes, yes. So, you know, we could see -- I mean, we then spent, as you know, quite a lot of time and

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more quickly but certainly there was no lack of effort on the part of the trustees or, indeed, of the office or the NSSC to try and move things forward.

Q. Just for completeness sake, as you have indicated you left you stepped down as chairman in April 2012?

A. Yes.

Q. By then, the -- during your time there, the Department of Health -- did the Department of Health suspend funding as they had threatened to?

A. No, no, but the threat was fairly clear. Well, as you saw in the minute that they have recorded. No, but they didn't. We would have expected payment -- no, I'm sure -- I'm sure not, because if they were going to reduce the payment for 2012/13, we would have known about it by the time of my last board meeting and I don't recall there being any threat. But, I mean, the threat was there.

But the fact that the threat was there over those last months, 12 or otherwise, was a cause of concern too to the primary beneficiary community, because they -- or, rather, how we were going to respond to that threat, because they didn't want to see -- well, some of those who purported to or did represent them, they didn't want to see, you know, the reserves being disbursed *in toto* over in this

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direction when they were concerned that, you know, they had needs that might not then be as fulfilled as they would like.

So there was a balance to be drawn. I wouldn't want to put too much emphasis on that but it was a subject that was brought up, as to how we should balance the use of the reserves in that way and whether we shouldn't keep more in the longer term for the primary beneficiaries.

Q. I'm going to ask you now about the policies for regular pay to beneficiaries, but before Archer and after Archer. Before I do that, can you recall whether or not the Macfarlane Trust published a handbook during your time there? Does that ring any bells with you?

A. No, it doesn't. If it's in the same area, if you like -- I mean, the office guidelines were certainly a familiar subject for me and the office guidelines were available to all beneficiaries, so ... but I don't remember a handbook as such, no.

Q. So do you recall how beneficiaries were informed of policies or guidelines for regular pay or single grants or changes in those policies?

A. I think it's incorporated in the welfare policies.

Q. How was that disseminated to beneficiaries?

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undoubtedly, yes.

Q. Can we go, please, to MACF0000016_032.

This is a minute of the NSSC on 6 June 2007, so right at the start -- well, fairly near the start of your tenure.

A. Yes.

Q. It says, if we go down to the bottom of the page, please, regular payments review and costs estimates arising, and so -- second paragraph, the chief executive introduced the paper that had been circulated:

"Following a considered discussion it was agreed that the following proposal should be made to the full Board of Trustees at their meeting."

That's the point you made earlier, that the policy is formulated here but then approved or rejected by the full board?

A. Yes.

Q. Then a synopsis of the paper set out in respect of monthly regular payments and appropriate supplement adjustments and the annual summer and winter payments?

A. It is on the next page.

Q. Go to the next page:

"... arising from the recent regular payment survey, all those with a gross household income of

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A. I think the fact that they -- particularly with regard to regular pay, the fact that they existed was well known. I don't think they were -- no, I'm not going to be sure of it.

An awful lot of communication was done through the quarterly newsletters. The more informal communications through the Partnership Group and indirectly through The Haemophilia Society will have provided channels of communication. But the office guidelines were known to be available. All beneficiaries knew the office guidelines were there in the office. They were not sent as a, you know, whatever it was, 20-page document to all beneficiaries, but if they wanted to know more, it was always there.

Q. So they could ask for it to be sent or they could come and see it or --

A. Or they could just ask --

Q. Ask what was in it?

A. What was in it, you know, or what they were interested in.

Q. So what was in the office guidelines, as far as you can recall, was not public knowledge but it was well known in the community?

A. Oh, yes, yes. Available to all, yes. Oh,

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less than £30,000 per annum as shown or where their census forms indicates should receive the higher rate of regular payment as published (£305.00). In addition this would apply to all infected intimates."

So am I right in understanding that this was a policy that ensured that primary beneficiaries, as they've been termed, i.e. people with haemophilia who were infected, and any partners who were infected got the same rate of pay?

A. Mm-hm.

Q. "... all registrants and infected intimates, regardless of household income, receive the monthly supplement of £61.00 hitherto paid only to those receiving the higher or middle rate care component of the disability living allowance or attendance allowance.

"That the supplement for a non-infected 'live-in' partner be £30.00 for all registrants who would receive the higher rate of regular payment."

Then:

"For all those receiving the higher rate of regular payment ..."

Supplements for children are set out. And:

"Where an infected partner is living with a registrant and the 'family' has dependent children,

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the supplement will only be paid to the registrant."

Then:

"(5) Registrants with a household income of more than £30,000.00 per annum would receive the current standard rate ... (£255.00) together with the £61.00 supplement ..."

And then supplements for live-in partners and dependent child are set out for that cohort of registrants as well.

So I can take you to the minute if necessary but -- of the Macfarlane Trust board minute where this is accepted, but does that accord with your recollection of the regular payments that were given to infected beneficiaries during your -- the early years?

A. I wouldn't have been able to tell you without seeing this, you know, what the amounts were. But yes, it looks familiar to me, yes. And as you say, it's how this would have been set.

Q. Then we go down to:

"The situation in respect of non-infected widows would remain unchanged ..."

We looked at the policy in place before you came, earlier on this week -- the following changes:

"Financial support would be withdrawn:

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were in need.

Q. But this isn't here suggesting that the Macfarlane Trust is making any investigation into the financial circumstances of the widow in the new relationship?

A. No --

Q. It's the fact of the new relationship, irrespective of the financial position that the widow and new partner find themselves in?

A. Yes, yes.

Q. So do you have any -- can you recollect why that was thought to be an appropriate policy change?

A. I don't recall any discussion about it. I think an assumption was made whether it was possible for a widow to -- a former widow entering into a new relationship to make any further application to the Trust. I don't know. This is -- I don't recall. This was the policy because it was -- and it was based on an assumption that somebody who had remarried had "moved on", in quotation marks.

Q. And then we see:

"Discontinuance of incapacity benefit or severe disablement allowance or withdrawal of the (to be introduced) [ESA]."

And then it says this:

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"- After 10 years and with no change in circumstances."

Can you recall anything about why these changes were being made -- or being recommended, I should --

A. These aren't -- these weren't changed.

Q. I think --

A. I beg your pardon. I beg your pardon. No, I don't remember, no.

Q. Then:

"Three months after remarrying or entering into a stable relationship."

Do you have any recollection of discussions about why support should come to an end for a widow who otherwise would qualify for support because of a new relationship?

A. No is the short answer. I don't now remember the discussion particularly. I think the expression that was used, and I can't now remember if it was a board meeting or in some other papers, but the concept of "moving on" is what that is about. If widows were -- and some chose to anyway -- wanted to move on and leave the Trust behind, they would -- in any event, if a widow did find a stable future and a supported future going forward, then it seemed right to reserve, preserve the funds of the Trust to support those who

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"Where support to dependant children is made available, this would cease when majority is achieved."

Can you recall what the provisions for support to dependant children were? This suggests that it's rather discretionary. It may be available to --

A. No, it was in the regular pay, wasn't it? It was supplement to the regular pay.

Q. Yes, so that suggests, doesn't it, that one would get support, I think paragraph 4 for example --

A. And 5, yes.

Q. -- supplement -- would get supplements. The last sentence on that page makes it sound as if there may be circumstances in which dependant children wouldn't get payments. Can you help us at all with that?

A. Oh, I'm assuming -- no, I can't directly but I -- without going back up the page, there were circumstances I think in which, at a higher level of household income, no regular pay was made at all. I can only assume that that is what that is referred to.

It may also be a not very elegant drafting. It may simply mean that where there are dependant children support would cease when majority is achieved. That's how I remember it, if I can remember

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1 it with any precision at all.

2 **SIR BRIAN LANGSTAFF:** Even on that latter formulation, it

3 is replacing dependency as the criterion for payment

4 with the criterion of age.

5 **A.** Yes.

6 **SIR BRIAN LANGSTAFF:** Which, not long after this, might

7 have fallen foul at least of the policy underlying the

8 Equality Act, as might marital status.

9 **A.** As might marital status, yes. I bow to your point.

10 It's not something that occurred to any of us I think

11 at that stage.

12 **SIR BRIAN LANGSTAFF:** No. Well, it plainly wouldn't have

13 done. No advice I imagine was taken.

14 **A.** No, certainly -- the only advice that I recall ever

15 being taken about -- the external advice that is --

16 was taken from the Charity Commission. Because I know

17 these sorts of policies, all these policies were

18 shared from time to time with the Charity Commission

19 and the -- in order to be -- for them to say they were

20 satisfied that we were within whatever guidelines they

21 wanted -- sorry, had, not wanted. But, no, I don't

22 remember any legal advice being taken.

23 **SIR BRIAN LANGSTAFF:** I don't think I can go so far as to

24 begin to suggest that it might be unlawful, because

25 this is a charity not necessarily covered by

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1 and schemes:

2 "First, to provide money on an *ad hoc* basis to

3 beneficiaries who could point to specific needs

4 savoured strongly of poor relief. Victims, some of

5 whom before they were infected had enjoyed high living

6 standards and were capable of substantial earnings,

7 were now required, as they saw it, to go cap-in-hand

8 and beg for discretionary relief. However sympathetic

9 and sensitive the Trustees, the victims felt

10 patronised. Secondly, victims of HIV also continued

11 to feel that there remained an element of stigma

12 attached to the condition, and sometimes felt

13 embarrassed in discussing it."

14 Can you recall, when you read this report,

15 whether either of those two findings were a surprise

16 to you or anyone at Macfarlane Trust?

17 **A.** No, not at all. Not at all. That was one of the

18 great difficulties that the trustees had in terms of

19 administering the Trust and the funds of the Trust to

20 the best of their abilities, that you couldn't avoid

21 particularly -- if we could go back, I'll just reread

22 the beginning of that paragraph, but certainly the

23 second, the whole idea that provision should be made

24 for the victims of this terrible tragedy solely on the

25 basis of being able to establish financial need, it

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1 discrimination statutes, but nonetheless, there's an

2 element of movement of policy or opinion which you're

3 telling me wasn't reflected in 2007 anyway, no-one

4 thought of it.

5 **A.** No, no. No.

6 **MS SCOTT:** I'm going to ask you some questions about the

7 post Archer position. You have already given quite

8 a lot of evidence in relation to that so we might be

9 able to deal with that quite briefly. But it's

10 probably helpful to look at what Lord Archer's report

11 actually says before we get to that. So can we go to

12 ARCH0000001, please.

13 There we can see this is the report of the

14 Archer Inquiry also published 23 February 2009. Can

15 we go, please, to page 75. Next page, please.

16 Here we're in "Chapter 9 - Governmental

17 response: financial relief". I think governmental

18 response means to the infected blood. Then if we go

19 over to page 78 -- no, the page before.

20 If we go to the bottom, the last paragraph on

21 that page, I just wanted to get your observations on

22 these findings:

23 "This method of providing relief was flawed in

24 two ways."

25 Here Lord Archer is talking about the trusts

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1 seemed as wrong to the trustees as it did to the

2 beneficiaries. The trustees had to do the best they

3 could with the position they found themselves in.

4 Yes, and the idea that they had to go cap in hand and

5 beg for discretionary relief is very -- was as

6 unacceptable to us, as I say, as it was to them. And

7 the fact that it "could point to [savouring] strongly

8 of poor relief", it's the same point said in

9 a different way. It was as unacceptable to us,

10 I repeat, as it was to the beneficiaries themselves.

11 Indeed, it was -- I know -- I recall, rather,

12 there were some -- some reason why some victims

13 preferred not to be in touch with the Trust, because

14 they just didn't want to have to think about it.

15 **Q.** And on that point Lord Archer is saying, well, that

16 may be to do with the stigma.

17 **A.** Yes, exactly. Yes, yes.

18 **Q.** The Macfarlane Trust, in your recollection, were well

19 aware of that, were they?

20 **A.** Oh, yes. Oh, yes.

21 **Q.** Can we --

22 **A.** Which is why we were as keen as Archer was, and why in

23 our submission to Archer we were making exactly these

24 points, that it's unacceptable, it should be

25 unacceptable, whether you call it political or moral

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basis, for this issue, these problems, to be dealt with in the way that was set up back in 1988/89.

Q. Soumik, can we go to page internal pagination 108, it may be electronic 109. I'm not quite sure. In fact, we should go back a page just to explain what we're looking at here.

Chapter 12 "Recommendations":

"We believe that the following recommendations would help to meet the unmet needs of patients with haemophilia and their families."

Then if you can go over to the next page, please, and the bottom of the next page, number 6:

"Direct financial relief should be provided for those infected, and for carers who have been prevented from working."

Then:

"We propose that the scheme should have the following characteristics: [can we go over the page]

"It should be paid through the [DWP] in the same way as existing statutory benefits ... and not through ... Macfarlane or Eileen Trusts, or Skipton Fund. The Government would thus have direct responsibility to the individual beneficiary for providing the necessary resources.

"Entitlements should be payable if infection is

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just take this sort of fairly broadbrush.

A. Yes.

Q. Is this right, that the Government had identified -- the Government's response was, well, we will give the Macfarlane Trust beneficiaries, those that are infected, primary beneficiaries, those who are infected, £12,800 per annum?

A. Mm-hm.

Q. The Macfarlane Trust response was: that's not enough, we don't think that's enough, you should give them more, something like £16,000 to £18,000 per annum.

A. Yes, the reason for our picking that number was not because it was a perfect number but it was what we saw as what their response -- we saw that to be what we saw their response to logically require, which was to double the payments that the infected beneficiaries, the primary beneficiaries, had been having, and we went to quite a length to explain to them why their figure was wrong and that it ought to be the higher number and -- on the basis that we thought the higher number would actually get much closer to what we understood Archer to be saying, you know -- we didn't know what -- Archer didn't put a figure on it but that's what we thought was consistent with his approach, as well.

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established within the appropriate time-frame [with] An appeal mechanism ...

"Entitlement should not be means-tested but should take the form of an initial capital sum, followed by prescribed periodical payments.

"... no distinction dependent upon the reason for the treatment ...

"The anomalies which at present apply according to the age when the recipient was first infected, or when infection took place [et cetera] should be rectified."

Then a reference to Eileen Trust and Skipton Fund:

"Payments under the scheme should be disregarded for the purposes of ... benefits.

"There should be a table of amounts payable in the case of double or multiple infections."

So those were the findings, the recommendations, made by Lord Archer. You have referred in your evidence to the response that the Macfarlane Trust made to the Government's response to Archer, and we can see in the documentation quite a lot of toing and froing between the Department of Health and the Macfarlane Trust following the Government response in May 2009. I wonder if we can

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So that was the thrust of our -- it was a number of exchanges with the Department and with ministers about that but it got nowhere. I say -- it did get somewhere in the sense that I believe this was sequential, you will correct me if I'm wrong, that they did then say, well, we'll give you some more money, Macfarlane Trust, that is, to dispense on a discretionary basis to make up some of the difference.

Q. Is this right: do you recall this, that that's right, that the Department then ended up saying to you, well, look here's a pot of money out of which comes all the £12,800 payments per annum and you, Macfarlane Trust, can have the rest to disburse as you see fit, in accordance with your charitable objectives. Is this right, that you went back to the Department saying, well, that means that then we have to apply the criterion of need to those top-up payments, could you not, Department, just give them more on a non-discretionary basis, so that need doesn't come into it and referring at that stage to the Archer recommendations, that these payments should not be means tested?

A. Exactly.

Q. It was that argument, was it, that fell on deaf ears?

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- 1 A. Yes, yes.
- 2 Q. So the position, post-Archer --
- 3 A. Well, both arguments did. You know, the argument
- 4 about the numbers and the fact that they were
- 5 inconsistent and illogical fell on deaf ears and then
- 6 the response to say that, well, we'll give you some
- 7 for discretionary funding, and our reaction to that,
- 8 well, that puts us in a difficult position because,
- 9 you know, all these people have got these annual sums
- 10 which we can't ignore when we have to try and
- 11 establish need, and that makes it much -- it puts us,
- 12 again, in a difficult position, as against some who
- 13 feel very much in need, but arguably might not be, if
- 14 you were going to try and be strict with the
- 15 charitable interpretation of need, as against others
- 16 who clearly were still in need.
- 17 So it just was a very unsatisfactory -- the
- 18 Government response did not deal with the fundamental
- 19 issue which Archer had pointed out and which you have
- 20 just -- is apparent from those two sentences that we
- 21 looked at a bit earlier.
- 22 Q. I do want to ask you a bit -- in a bit more detail
- 23 about the assessment of need, and so on, looking at
- 24 the time that is probably going to be after lunch, but
- 25 if we can just establish as a matter of fact what,

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- 1 Q. That --
- 2 A. You have only got to say all that to realise just how
- 3 unsatisfactory it was.
- 4 Q. This is sticking for a moment with the infected
- 5 beneficiaries, there was also the opportunity to apply
- 6 for single grants to the Macfarlane Trust but those
- 7 were given in exceptional circumstances?
- 8 A. Yes.
- 9 Q. Then I think we're going to need a document for the
- 10 non-infected community, because it gets perhaps
- 11 slightly more complicated. Can we have
- 12 MACF0000047_017, can we have, please, page 8 of this.
- 13 This is the annual financial report, year ending
- 14 31 March 2011, and if we go to page 8 of that
- 15 document -- yes -- we have, if we move down the page
- 16 "Support to non-infected beneficiaries". In that
- 17 second paragraph there, we have the first element of
- 18 support, is that:
- 19 "... trustees ... determined that payments
- 20 should ... continue to be made to [a] widow or
- 21 [a] family carer which would have the effect of
- 22 ensuring that the value of a deceased's beneficiary's
- 23 household of the non-discretionary payments received
- 24 before his death would be maintained for
- 25 12 months ..."

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- 1 post-Archer, what Macfarlane beneficiaries were
- 2 getting in terms of financial assistance.
- 3 There was the £12,800 per annum, which is often
- 4 referred to as the non-discretionary payment which was
- 5 given by Government through the MFT, didn't come via
- 6 Macfarlane Trust.
- 7 A. No.
- 8 Q. Then the --
- 9 A. That was because we couldn't do it. It's not possible
- 10 to do that through a charity, certainly not through
- 11 our charity anyway.
- 12 Q. Then the Macfarlane Trust were giving top-ups, is that
- 13 right --
- 14 A. Yes.
- 15 Q. -- to the -- and this is to the infected community --
- 16 A. Yes.
- 17 Q. -- top-ups to the infected community, tapered
- 18 depending on their household income?
- 19 A. Yes.
- 20 Q. The bands were in bands of £7,000: 7 to 14, 14 to 21,
- 21 21 to 28; is that right?
- 22 A. That's what I recall, yes.
- 23 Q. So if you were in a particular band your top-up was
- 24 a particular amount?
- 25 A. Yes.

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- 1 In other words, if a primary beneficiary dies
- 2 the MFET non-discretionary payment would presumably
- 3 stop, Macfarlane Trust guaranteed that payment to the
- 4 bereaved family for 12 months. Is that what that is?
- 5 A. That's what my understanding is.
- 6 Q. Then, secondly:
- 7 "In addition the Trustees adopted a policy,
- 8 which was backdated to effect from 20 May 2009, of
- 9 providing financial assistance for all those widows
- 10 whose household income were less than £15,000."
- 11 Is this right, that the policy was to bring the
- 12 income up to £15,000? Can you recall that?
- 13 A. I can't. I suspect that is what it meant but
- 14 I honestly can't remember. Yes, I think that must
- 15 have been it but, forgive me, I don't remember.
- 16 Q. It may help the last sentence of that paragraph, in
- 17 fact. Then it says:
- 18 "Since this year end" --
- 19 A. I'm sure that's what it was.
- 20 Q. -- "a clearer understanding having been obtained of
- 21 the numbers involved, the target level of minimum net
- 22 income has been increased to £18,000 ..."
- 23 A. I'm pretty sure, having gone through that, that does
- 24 accord with my recollection.
- 25 Q. So that was the two provisions for widows. Again, do

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we understand that that's all widows, irrespective of whether they have children, irrespective of whether they are incapacitated, et cetera?

A. That is what my understanding was, yes.

Q. Then we come on, in the next paragraph, to children:

"... Trustees continued their policy of making regular monthly payments to the benefit of children who have lost one or both of their parents at the rate of £3,000 per annum for the first child and £1,200 per annum for each subsequent child."

Then:

"In addition ... a new policy for the benefit of children of living infected beneficiaries (most of whom are receiving regular discretionary payments for themselves) [that must refer to the infected beneficiaries] of regular monthly payments at the rate of £1,200 per annum."

So, in other words, infected beneficiaries have a supplement, in a sense, if they have children living with them.

A. Mmm, and widows presumably -- and widows.

Q. Well, I think that's children living with infected beneficiaries.

A. Oh, is it? Okay, I'm sorry.

Q. Can you recall, because the annual report is silent on

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our national advertising produced exactly no applicants.

Q. Can you recall where you advertised, which newspapers?

A. No, to be honest.

Q. Can you recall whether any consideration was given to ensuring that the advertisements covered Scotland, Northern Ireland and Wales, as well as England?

A. Well, I have to believe they did but what the circulation -- what the newspapers were and what their circulation was, I don't know, but I only say this and -- perhaps light-heartedly is the wrong word in the circumstances, but we had -- one of the trustees was, if you like, representative of Scotland and he would have been very sure to make clear that anything we were doing -- and he was actually very close, as I recall, to the community in Scotland and these communities would have known -- the bereaved communities would have been -- many of them would have known others who were no longer either chosen to or were no longer chosen to be supported or were no longer supported by the Trust and others who never had been. So my guess is that that is the more likely route from which new applicants came in.

It was just known within the communities and, certainly, The Haemophilia Society, as far as

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this, whether or not there was the opportunity for the bereaved community, or for the bereaved and dependant community, the non-infected community, to apply for single grants after Archer?

A. No, I can't. I can't, I'm afraid. Sorry, just

reading that again, that paragraph at the top of the page indicates that they could, yes. So:

"The total amount disbursed by the Trust in support of the total of 134 widows and dependants in the year under review, including single grants for those with specific needs, was [£806,000]."

Q. Yes. Thank you.

A. The previous year 229 to 121. Sorry, that's what I thought, yes.

Q. You've made the references on a number of occasions but I think you said that the consequence of this policy of now giving regular payments to widows, irrespective of whether or not they were incapacitated or had dependent children brought back into the fold a number of widows who had not had support from Macfarlane Trust for some years.

A. Yes.

Q. You have explained that you had to find those widows because they weren't --

A. Well, we set out. I mean, because again, as I recall,

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Macfarlane Trust beneficiaries and bereaved beneficiaries were concerned, they certainly had a mechanism -- not a mechanism, a way of keeping in touch, a means of keeping in touch with all of the people with whom they had been engaged, as it were, in the past and they would have done their best to try to make sure that those who were did qualify or could qualify would come forward.

But it took time. I would be interested to know one day just how many -- three years later, how many more widows had finally come forward. Because, from memory, we've got 134 widows and dependants and then -- as compared with 121. And we would have -- we were expecting -- I think we referred to it in a previous document -- that there be at least 200 widows only -- alone, I mean, regardless of dependants coming forward.

So the slow progress.

MS SCOTT: Sir, I note the time and I was going to move on to looking at the assessment of need.

SIR BRIAN LANGSTAFF: We'll take a break. We will take an hour. That will be long enough for you to --

A. Absolutely.

SIR BRIAN LANGSTAFF: So the usual rules will apply during the break. That is that you mustn't talk to anyone

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1 about the evidence you have given or you think you may
2 yet be asked to give. Anything else is fine.

3 A. Very good. I understand that.

4 SIR BRIAN LANGSTAFF: 2 o'clock.

5 (1.02 pm)

6 (Luncheon Adjournment)

7 (2.00 pm)

8 SIR BRIAN LANGSTAFF: Yes.

9 MS SCOTT: Before lunch, you were giving evidence about
10 the levels of payment for widows and dependants
11 post-Archer.

12 A. Mm-hm.

13 Q. I just had a couple of supplemental questions to ask
14 you about that. Can you -- is this right, that when
15 those conversations first started out, initially the
16 level of payment was put at £12,000 and then that went
17 up to £15,000, which we saw in the document, and then
18 it subsequently went up to £18,000; is that correct?

19 A. I think that's correct. I wouldn't be certain of it.

20 Q. Do you remember what was the basis for setting those
21 levels at 12, 15, 18 and so on?

22 A. I can't remember what it was. I can only assume that
23 it was on largely on the basis of affordability within
24 the whole beneficiary support arrangements and
25 remembering that, better or worse, priority was always

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1 This is a minute of a Macfarlane Trust board
2 meeting on 19 July 2010. And if we turn, please, to
3 page 4 -- yes so we start -- "The National Support
4 Services Committee" is the heading.

5 Then if we can turn to the bottom of the page,
6 looking at minutes and so on, and then right at the
7 bottom of there, the trustees expressing concern about
8 recommendations being made and, if we go over the
9 page, about:

10 "Providing regular payments to widows then
11 removing them because they were not affordable could
12 prove more damaging than not paying them in the first
13 place; would it be right to quadruple the income of
14 those on very low incomes and do they really need
15 it ..."

16 And talking about different areas of the
17 country and so on.

18 Then the next paragraph, in response to those
19 concerns being raised about raising widows --
20 providing regular payments to widows:

21 "The Chairman replied that the [Department of
22 Health] had already agreed that of the roughly
23 £2 million originally allocated for the support of the
24 non-infected community roughly half could be used for
25 additional discretionary support for the infected

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1 given to the primary beneficiary.

2 Q. So effectively one's looking at the pot, working out
3 how many potential beneficiaries there are and then
4 working out what's affordable?

5 A. Yes. I think that's right.

6 Q. Can you help us with this: is it right that what the
7 Macfarlane Trust was looking at was the level of
8 household income? So if the level of household income
9 was below 12 or 15 or 18, then the Macfarlane Trust
10 would step in, rather than the income of the
11 individual?

12 A. Definitely the household.

13 Q. Household?

14 A. I think that is as between husband and wife, or
15 partner and partner, or whatever. I don't think we
16 would have taken account of anybody else living in the
17 household but I think it means the combined, yes.

18 Q. Why was that?

19 A. Why? Because it factored into the assessment of need.
20 It would have to be.

21 Q. Just picking up on a point you have just made about --
22 again, which you have made several times in relation
23 to the primacy, if I can put it that way, of the
24 primary beneficiaries in terms of the Macfarlane Trust
25 policies, can we have, please, Soumik MACF0000015_002.

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1 community; the chances [therefore] of having to
2 withdraw the regular payments ..."

3 Presumably from the widows:

4 "... were virtually non-existent since the
5 funds came annually from the [Department of Health]
6 and the policy was well within budget ..."

7 So it's not in respect of the widows policy
8 that I ask you questions -- in respect of the decision
9 made by the Macfarlane Trust to use half of the funds
10 provided by the Department of Health for the widowed
11 community for the primary beneficiaries.

12 So are we to understand that what you're
13 talking about here is -- the roughly £2 million is the
14 post-Archer Macfarlane Trust allocation from the
15 Department of Health?

16 A. Yes.

17 Q. Is it right to understand that initially the
18 Department of Health is saying to the
19 Macfarlane Trust: look, you know, you pay the primary
20 beneficiaries through the non-discretionary £12,800
21 per annum through MFET, and the £2 million allocation
22 is for your non-infected community.

23 A. Yes.

24 Q. Is that the way it was --

25 A. No, no, no. I think what was being said, the 12,800

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1 didn't come acting through Macfarlane anyway --
 2 **Q.** Yes, correct.
 3 **A.** -- but that's a distinction, I know, that is not
 4 immediately relevant. What was left -- the additional
 5 2 million was for us to spend on -- for our benefit of
 6 our beneficiaries. We had said, or I had said -- in
 7 our discussion with the Department we said we were
 8 very anxious in the light -- not least because of what
 9 Archer had said, we were very anxious to do much more
 10 if we could for the non-infected community. And what
 11 they were saying here, which is perhaps not very
 12 clearly expressed, is that they would have no
 13 objection. They weren't going to tell us what to do.
 14 It was always understood that we had -- it was for us
 15 to do what we thought right with the funds that we
 16 had, but if that's what we thought was right, then
 17 they would be -- they would certainly not raise any
 18 issues or concerns about it.
 19 So it was half-half effectively. So, you know,
 20 the 1 -- half of the 2 million was, as I understand
 21 it, or recall it, we were planning to use to make
 22 additional discretionary payments to the infected
 23 community and the other half, the other million, to
 24 the non-infected community.
 25 **Q.** So the wording set out here suggests that initially

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1 **A.** It's not how I recall it. I have to admit or
 2 acknowledge that that's what -- that appears to be
 3 what is said. It appears to say that:
 4 "... of the roughly £2 million originally
 5 allocated for the support of the non-infected
 6 community roughly half could be used for additional
 7 discretionary support ..."
 8 **Q.** That could be read as allocated by the Department of
 9 Health or the Macfarlane Trust?
 10 **A.** Oh, yes. Well, yes, that's true. It's not very well
 11 written, I agree. But the allocation, as far as the
 12 Department's concerned, was £2 million for
 13 discretionary purposes, and they had it in mind that
 14 we were going to use a very substantial part of that
 15 for the non-infected community.
 16 The argument that we would have made about what
 17 we were more likely to want to do is that actually
 18 what you've done in terms of implementing Archer is
 19 not adequate for the primary community. That isn't
 20 enough. For all the reasons we've already been --
 21 we've been through all the numbers earlier. And so,
 22 therefore, we need to use some of this money,
 23 a substantial portion of it, for the infected
 24 community. And they were saying: yes, okay, that's
 25 fine, we have no objection to that.

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1 either the Department of Health or the
 2 Macfarlane Trust -- it's not clear -- had allocated
 3 that £2 million for the support of the non-infected
 4 community and that a decision was now being made by
 5 the Macfarlane Trust with the agreement of the
 6 Department of Health that half of that could, in fact,
 7 be used for the infected community. Is that a fair
 8 reading of this?
 9 **A.** I'm sorry. Yes, that is the right way round, yes.
 10 **Q.** So --
 11 **A.** No, I think -- again, the Department was never going
 12 to dictate and the Trust had not then decided how the
 13 total of 2 million was going to be divided up. There
 14 was clearly -- the 2 million from the -- as far as the
 15 Department's concerned, they knew and approved of us
 16 using a substantial portion of that for the
 17 non-infected community. And what we were saying is
 18 that, "Half-half is what we have in mind", and they
 19 saying, "As far as we are concerned, we have no
 20 objection to that". That is really what that is
 21 saying. It's not as clear as it might be.
 22 **Q.** So the extent that this is suggesting or that this
 23 could be read to suggest that the Department of Health
 24 had allocated funds from that 2 million between
 25 different communities, that's not how you recall it?

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1 **Q.** Can you recall whether -- do you recall whether or not
 2 at any time the Macfarlane Trust internally allocated
 3 that whole budget, that whole 2 million from the
 4 Department of Health post Archer to the non-infected
 5 community?
 6 **A.** No, I'm sure we didn't because -- precisely for the
 7 reason that I've given, that we knew immediately when
 8 the Government announced that it would give more
 9 money, that -- the reason why we needed more money,
 10 one of the principal reasons why we need more money,
 11 was for the benefit of our primary beneficiaries, the
 12 infected community, because what they had put on the
 13 table for them in terms of fixed payments was not what
 14 it needed to be, in our view. I think that's --
 15 that's not very clear, I agree.
 16 **Q.** Can we now, Soumik, have MACF0000124_066.
 17 This is a document called "Draft welfare
 18 policy", and there is no date and no name on the
 19 policy. Can you recall --
 20 **SIR BRIAN LANGSTAFF:** There is a number at the top.
 21 **MS SCOTT:** There's a number at the top.
 22 **SIR BRIAN LANGSTAFF:** Which may very well relate to
 23 a minute --
 24 **A.** It does.
 25 **SIR BRIAN LANGSTAFF:** -- which will have that number.

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1 **MS SCOTT:** Does that "08" mean 2008?
 2 **A.** Yes, I'm pretty sure it does.
 3 **Q.** Sorry, give me a moment.
 4 If we look at MACF0000124_026.
 5 **A.** There you go. July '07 I think I reckoned it was. If
 6 you look at the minutes of the board meeting of
 7 July '07 there maybe a reference to it.
 8 **Q.** So this is a minute from 12 June 2008.
 9 **A.** Right.
 10 **Q.** If we go to page 2, there is "Policy Issues". It says
 11 255.08, which I think is the same number, and then if
 12 you look at (2):
 13 "The draft welfare policy was noted."
 14 **A.** That's it. Sorry, I don't know why I wrote July '07
 15 on it -- yeah, okay. That's it.
 16 **Q.** So we can date this at June 2008, can we?
 17 **A.** Yes, yes.
 18 **Q.** So can we go back then, Soumik, to MACF0000124_066.
 19 This is entitled "Draft welfare policy".
 20 **A.** Yes.
 21 **Q.** Can you recall whether this was the policy that was
 22 more or less adopted by the Trust? It may have had
 23 some changes but --
 24 **A.** I don't know. You will see from what -- the minute
 25 you referred to just now that it said that it would be

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1 the relief of sickness is an integral part of its
 2 purpose. It would be an extreme reading of the Trust
 3 Deed if the MFT were to consider itself only involved
 4 with the relief of poverty *per se*.
 5 "The Charity Commission take the view that
 6 'need' means a variety of demands that can be
 7 interpreted differently. The onus is on the Trustees
 8 of the Charity to apply genuine discretion taking into
 9 account, as far as possible, all the circumstances
 10 that present themselves."
 11 Just pausing there, and you've already alluded
 12 to this in your evidence, but is it right to
 13 understand that the Macfarlane Trust sought the
 14 Charity Commission's advice on what "need"
 15 meant within the trust deed?
 16 **A.** I put it slightly differently. What we were looking
 17 for, we were telling them what we saw as being within
 18 our objectives and aims, permitted objectives and
 19 aims, and we wanted them to indicate that they were --
 20 had no objection, were concurring, or whatever. We
 21 weren't asking them to tell us what need was but it's
 22 a very -- it's a fine distinction.
 23 **Q.** Then it sets out then there at 1.5 what the assistance
 24 is that the Macfarlane Trust provides and then if we
 25 could go down the page, Soumik, to 2.0, "Defining Need

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1 presented to the board at its next meeting.
 2 **Q.** At the next meeting in July?
 3 **A.** In July.
 4 **Q.** Yes.
 5 **A.** Which is why I've put July '08 rather than July '07 on
 6 here. And I have no reason to believe -- I think the
 7 minute of that meeting will tell you whether it was
 8 approved in the same form. I would think it was. And
 9 as that first minute we looked at said, it would then
 10 go to the Charity Commission for their approval -- or
 11 no objection, rather.
 12 **Q.** It's not terribly clear, is the answer to it, when you
 13 are looking at the minutes but, I mean, broadly
 14 speaking, is it a policy that looks familiar to you?
 15 **A.** Yes. It's what I would have expected, I think.
 16 **Q.** To see --
 17 **A.** To see --
 18 -- without the words "draft" on it?
 19 **A.** -- around that time, yes, yes.
 20 **Q.** Can we then look at it in a bit of detail. So the
 21 background is set out in paragraph 1.1 and 1.2. Then
 22 we come to para 1.3:
 23 "It is the view of the Charity Commission that
 24 the Trust Deed of the Macfarlane Trust is not
 25 concerned solely with the relief of financial need;

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1 and the Public Benefit Test":
 2 "The MFT recognises the Charity Commissions
 3 guidance consultation Document 'Public Benefit and the
 4 Prevention or Relief of Poverty'.
 5 Go over the page:
 6 "The MFT believes it meets the public benefit
 7 test when its beneficiary class is a sufficient
 8 section of the public in respect of that test.
 9 "The MFT accepts the ... English Dictionary
 10 definition of 'poor' ..."
 11 Then sets out that, what that means and it
 12 says:
 13 "In that context, the MFT regards its primary
 14 beneficiary and beneficiary cohort as 'poor' because
 15 of their HIV infection or where they have been
 16 affected by the HIV infection specifically in terms of
 17 the family and dynamics arising and that by way of the
 18 HIV infection does not enable those individuals to
 19 enjoy a standard of life that could be 'comfortable or
 20 normal'.
 21 So, pausing there, we took to read that that
 22 all beneficiaries of the Macfarlane Trust, whether
 23 they are from the infected or the non-infected
 24 community, are being treated there as meeting the
 25 definition of 'poor' or 'poverty'?

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1 A. On the basis described, yes.

2 Q. Then it goes on to look at "Benchmarking Need and

3 Financial Relief":

4 "The MFT believes that notwithstanding the

5 financial status of its beneficiary cohort, the term

6 'poor' can be applied because all beneficiaries or

7 prevented from living a life that is 'comfortable or

8 normal'."

9 Then:

10 "... the MFT fully accepts that 'need' is

11 a relative term and 'relief' may depend upon

12 an individual's own financial circumstances."

13 So are we to understand that meaning that all

14 beneficiaries are in need, irrespective of their

15 financial circumstances, in need within the meaning of

16 charity law?

17 A. Yes, because that is picking up the medical health

18 issues.

19 Q. Then section 4.0, "The definition of financial need".

20 So then here we have:

21 "Where a primary beneficiary or beneficiary has

22 household income of less than 60 per cent of the UK

23 median income."

24 Then the definition of financial need is set

25 out giving benchmarks, and so on, through section 4,

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1 A. Yes, I think that's right. I think all -- need always

2 come back to financial need. The question is what

3 brings you to that point and what we had always said,

4 and the Charity Commission agreed, is that financial

5 needs are created -- additional financial needs are

6 created by, in this context, lack of health and in

7 that sense because they have additional needs of that

8 kind then they are -- they come within our ambit and

9 we can satisfy ourselves that we are doing the right

10 thing in all attempts of relieving need in the context

11 of the Oxford English Dictionary definition.

12 SIR BRIAN LANGSTAFF: Is it actually right that everything

13 comes back to financial matters? I mean, suppose

14 something is writhing in pain, what they need can't be

15 relieved by money, it does require treatment.

16 Treatment may cost money but I don't think it comes

17 back to money, does it?

18 A. Well, I'm not sure I'm drawing that distinction.

19 SIR BRIAN LANGSTAFF: Or someone who needs comfort.

20 A. The only -- we did provide -- we do provide, did

21 provide non-financial assistance as well but our

22 primary purpose was to relieve need, however caused,

23 by providing financial support and the financial

24 support was, you know, for example, a different level

25 was providing the additional money to compensate, if

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1 recognising that HIV is:

2 "... a life-long condition which will have

3 a progressive detrimental effect on the individual and

4 a wider but similar effect on the family household."

5 Then we come to, if we go over the page,

6 please, section 5.0 "The disbursement of 'relief' to

7 address need by way of regular payments":

8 "The MFT recognises that the entire beneficiary

9 cohort is 'poor' by virtue of the statements contained

10 [earlier].

11 "The MFT sees the mode of monthly regular

12 payments as the core mode of disbursement to address

13 poverty and meet the definition of 'poor' as stated.

14 "In that context, the disbursement of regular

15 monthly payments should be constructed to address the

16 fact and definition that all beneficiaries are 'poor'

17 but equally accepts that different financial

18 circumstances should apply."

19 So is this definition -- was this definition of

20 need, as identified here, as being the wide definition

21 that encompasses more than simply financial need, was

22 that something that was accepted as the relevant

23 definition for the Macfarlane Trust to apply when

24 considering applications from the beneficiary

25 population?

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1 that's the right word, for additional heating bills

2 that people who suffered from -- those who served from

3 HIV were going to incur because their condition was

4 what was creating the extra financial demand and we

5 were providing resources to meet that demand, that

6 financial demand.

7 SIR BRIAN LANGSTAFF: Yes. Well, I shan't comment further

8 at the moment. At the moment, it appears to me that

9 this definition of "need" and "poor", in the sense of

10 leading a poor life as opposed to being financially

11 short, is a very wide definition and doesn't

12 necessarily bring you back to money, though money can

13 solve quite a number of problems. But it can't, for

14 instance, of its own, easily resolve stigma, which

15 many people had been suffering --

16 A. No, no.

17 SIR BRIAN LANGSTAFF: -- or, for that matter, the cold

18 shouldering that some people may have suffered as

19 a result of their condition.

20 A. Anybody who owned up to it, as it were, did suffer

21 from it.

22 SIR BRIAN LANGSTAFF: That might need addressing by other

23 means, such as providing -- as you did, providing for

24 people to have the society, one of another.

25 A. Oh, yes, yes. That was --

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1 **SIR BRIAN LANGSTAFF:** Those are the points I just had in
 2 mind.
 3 **A.** I see, okay. All right.
 4 **SIR BRIAN LANGSTAFF:** It did strike me that you can push
 5 finance as an answer to everything but it isn't
 6 necessarily. If someone has had a road traffic
 7 accident and is injured on the footpath, he requires
 8 the services of an ambulance. He doesn't require
 9 money.
 10 **A.** That's true but, equally, we had to justify the
 11 payments of money that we were expending.
 12 **SIR BRIAN LANGSTAFF:** Yes.
 13 **A.** That is what these definitions were trying -- working
 14 hard to encompass.
 15 **SIR BRIAN LANGSTAFF:** But they were resolving need on
 16 a very broad basis, I think, is just the point --
 17 **A.** Yes, well, I accept that. I accept that.
 18 **MS SCOTT:** Would you accept this, that on the basis of
 19 this definition of "need" accepted by the
 20 Macfarlane Trust that the Macfarlane Trust could treat
 21 all of the beneficiaries as being in need, without any
 22 requirement to look further into that by way of
 23 financial assessment or otherwise, in order to comply
 24 with charity law? The fact that they may want to
 25 carry out financial assessments in order to decide how

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1 or the trust deed to have provided them with funds
 2 because they are in need within the meaning of this
 3 definition, whether you would want to provide them
 4 with funds, given there are limited funds you want to
 5 share it out fairly is a different matter. But could
 6 you have done, do you accept you could have done that
 7 without breaching the trust deed or the charity law?
 8 **A.** I don't think I do, no. I agree 5.1 appears to
 9 suggest that. But certainly, as I say, it meets the
 10 definition of "poor" in the sense that there is
 11 a *prima facie* qualification but you can't stop there.
 12 You've then got to work -- you have got to assess what
 13 the financial needs -- and there may be other needs
 14 that we could also satisfy through non-financial
 15 support -- but in order to satisfy, in order to
 16 qualify for financial support then we have to take
 17 into account the financial circumstances or assumed
 18 financial circumstances to some extent of the
 19 beneficiaries.
 20 **Q.** Just looking then at the detail of how financial need
 21 is benchmarked here, can you tell us anything about --
 22 do you recall anything about how those figures were
 23 chosen, where they came from?
 24 **A.** The truthful answer is that no, I can't recall
 25 specifically. My sense is that the Charity

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1 to distribute funds is another matter but, in order to
 2 comply with charity law --
 3 **A.** *Prima facie*, yes.
 4 **Q.** Does this follow from that, that the Macfarlane
 5 trustees could have, if they had wanted to,
 6 distributed the funds, the reserves, the whole fund
 7 amongst the beneficiary cohort on that basis, because
 8 the starting position is everybody is in need and,
 9 therefore, we can meet the need in --
 10 **A.** No, everybody is in need but you have still got to
 11 define the extent of the need and we could not, on
 12 that basis, have simply disbursed all of the funds to
 13 everybody equally, as I said earlier this morning.
 14 That is not relieving anything; it's just paying
 15 a dividend. So no, we could not have done that. We
 16 had to establish a need, a financial need, in order to
 17 be able to do that, which is why there were a very few
 18 cases where people were determined enough, quite
 19 possibly fortunate enough, to earn substantial incomes
 20 who did not, despite *prima facie* qualifying, did not
 21 then become entitled under our policy arrangements to
 22 payments.
 23 **Q.** Would you accept that those beneficiaries who did
 24 have -- who were not in financial need, would you
 25 accept it wouldn't have been a breach of charity law

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1 Commission's guidelines were of assistance in this
 2 regard in terms of defining poverty, but where exactly
 3 that 60 per cent came from although it came from
 4 Charity Commission or from an assessment -- there were
 5 stages, I don't actually -- mainly before my time,
 6 I think, when advice was taken from people that,
 7 I forget -- people in the charitable -- consultants in
 8 the charitable sector. I can't remember whether that
 9 was First Actuarial, or it might have been, but
 10 certainly some assistance was obtained from people
 11 like that and so -- no, I can't add to that really.
 12 **Q.** If we look now then at how it was assessed as a matter
 13 of practice.
 14 Can we look at AHOH0000101. It is
 15 a Macfarlane Trust Personal Census Form. If we go to
 16 the last page of that, to the bottom, you see
 17 "Copyright: Macfarlane Trust 2009". Is this
 18 a document that you recognise existing around the time
 19 you were at the Macfarlane Trust?
 20 **A.** I didn't remember it until you asked me to have a look
 21 at it the other day and I saw it and thought I must
 22 have seen that before, yes.
 23 **Q.** Can you go back to the first page, please. So it
 24 begins by saying that this is the confidential -- for
 25 use by the Macfarlane Trust only:

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"... designed to make sure we have your correct details and to make sure you are receiving the correct amount of regular payments.

"Please make sure you complete this census form and return it within four weeks of receipt. If we do not receive the census form within four weeks of dispatch, we will assume that only the lowest level of regular monthly payment ... will be paid."

So we looked at those two levels earlier --

A. Yes.

Q. -- that all beneficiaries, all infected beneficiaries, in any event, were entitled to receipt.

Then if we go over to page 1, please, we can see that that it asks for personal details, asks further down the page who -- bottom half of the page who the beneficiary lives with, whether they own their own home, et cetera, and those arrangements. Then over -- on page -- moving onto the next page, it is just the family details, who their family are, partners, children, and so on.

Then over onto the next page, employment and income details. So you set out your status, your employment status, all the allowances and benefits you have, and then, further down the page, if you are in receipt of income support please provide evidence.

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A. Yes, it was a starting point. It was a starting point. This was the means by which the Trust tried to keep up-to-date information about all its beneficiaries, yes.

Q. Do you know how frequently these had to be filled in, was it annually?

A. No, no, I don't think so. No, I think this was produced at a particular time. If I remember from the last page of this, it's 2009. So I think it -- I don't know whether -- I don't know. I don't think it can have been produced at the time following the Archer Report and the need to re-establish information after that or whether it was another example of the census form being sent out. But I'm sure it wasn't sent out every year. I say I'm sure. I have no recollection of it being sent out every year.

These unfortunately are questions which the dear Mr Martin Harvey would have been very quick to be able to respond to and I'm afraid I can't.

Q. One more question on regular payments. It's MACF0000023_002.

This is a note of a meeting on 24 January 2011 of the Board of Trustees. Can we go to the bottom of that page, please:

"Implications for the Macfarlane Trust of the

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Then you have to say yes or no to whether or not your outgoings exceed your income and if you are on income support -- if you are not on income support, you set out your net income per annum, and if you have children living with you contributing financially to the household, what their contribution is.

Is it fair to assume from that that the household income, in fact, includes income provided by children?

A. It would certainly be taken into account. It's whether it literally counts towards those levels that we were talking about earlier. I don't remember, to be honest. But it was certainly something that the Trust felt it needed to be aware of.

Q. Then if we go on to the next page, part 4, we see that children's details are put in there, ages, whether they live with you and then, at the bottom there, information about whether or not they are in full-time or higher education. Then the last page which we have already looked at, simply allows a space for other information and a signature.

So was this the basis upon which the Macfarlane Trust -- was this the way in which the Macfarlane Trust assessed the financial need of those that were receiving regular payments?

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statement by the Secretary of State for Health on 10 January 2010."

So if we turn over the page, we see what that is. If we go to the second bullet point:

"Stage 2 co-infecteds will receive both the £12,800 per annum paid (by MFET on a non-discretionary basis) to MFT (and ET) beneficiaries and the new £12,800 per annum to be paid to those who have received (or will receive) Stage 2 Skipton payments, together with an additional £25,000."

So that was the announcement; is that right?

A. I think that's, right yes. That's what we picked up.

Q. Then if we can turn forward to page 6, please, of this note, which is the bit I wanted to ask you about. The first bullet point:

"The Chairman believed that the new non-discretionary payment of £12,800 per annum for Skipton Stage 2 recipients will have to be taken into account when considering their qualification for any MFT 'top-up' discretionary payments. However he hoped that the proposed change to the objects clause to permit the medical consequences of the beneficiaries' conditions to be addressed separately from their financial circumstances might provide scope for some of additional relief to be provided in appropriate

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cases."

So what seems to be suggested here is that, once those co-infected beneficiaries, who will be receiving both a Skipton Stage 2 annual payment and the MFET payment, would not qualify for the discretionary top-up payment from the Macfarlane Trust but might qualify for single payments.

A. Yes.

Q. Is that what --

A. Yes, I believe that's what that is saying. I think, as you say, these were, and as it says there, there were either to be top-up payments, a top-up to provide further financial support and, if we were taking into account the 12,800 received from MFET for that purpose I couldn't see how we would not have to take into account the further 12,800 received -- the same beneficiary would receive from Skipton, even though it wasn't from MFT.

But, yes, I think that the second sentence is referring to the possibility of making additional grants notwithstanding.

Q. Can we then just turn back to the welfare policy, just to look at how similar payments were dealt with.

It is MACF0000124_066. Soumik, can we turn to page 5 of this document.

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the households paragraph 6.2 of this policy is are considering:

"Where a primary beneficiary has a household income that lays within benchmark 1 or 2, the requirement that an application form for a grant be completed will not be deemed necessary."

Was that because by virtue of being within those cohorts, the category of financial need is established?

A. Yes, that's my understanding, yes.

Q. Then paragraph 6.3:

"Where a primary beneficiary has a household income that is within benchmark 3, an application form will be necessary, giving financial circumstances, would be required. This is to establish whether or not the requirement could be satisfied from own resources."

So for some categories of beneficiary, financial need is not -- would need to be established?

A. Yes.

Q. That's done by a financial circumstances -- household a financial --

A. A statement.

Q. -- an application form setting out financial circumstances.

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Section 6.0 sets out "Single Grants":

"Single grants would not be available, under the current Office Guidelines, to those primary beneficiaries with household incomes greater than £41,000 per annum but can be applied for and would be subject to the discretion of Trustees. An application form, giving financial circumstances, would be required."

So that's suggesting that all applications for single grants from a household with an income of more than £41,000 would have to come to the trustees and would also have to provide an application form giving financial circumstances. Is that what you recall the policy to be?

A. Yes.

Q. "Where a primary beneficiary has a household income that lays within benchmark 1 or 2 ... requirement ..."

That is defined earlier on in the policy at page 3, halfway down the page:

"1) Household incomes of less than 60 per cent of median income plus 20 per cent.

"2) ... of more than 80 per cent of the median income but less than the full value of the median income ..."

If we go back, again, to page 5, so those are

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A. Yes.

Q. Do you know or are you aware of any guidelines or written guidelines that helped trustees to work out, faced with one of these forms, how you work out whether or not there is financial need or not?

A. Well, I think the reference to a form I think may not be helping us here because I'm sure there would have been a basic form and then the application itself would have said "I need help with this because", and so the NSSC in the first instance -- actually it would be the NSSC, unless there was an appeal or a request for a referral up -- would assess that, the combination of those two things and the likelihood and the reasonableness of a request to say, you know, because of this, that and the other I need financial help with this. My financial circumstances are here but my current circumstances, or whatever, is giving rise to in this request, or application is the following.

So there would be -- the statement or the application would be in two parts, a form and, if you like, a personal statement. That is how I recall it would have been done.

Q. I'm going to move on to a different topic now.

Soumik, can we have MACF0000018_0104.

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Now this is a minute of a meeting in October 2007 but I don't want to ask you about that minute. The document I want to ask you about was provided to the Inquiry as part of a number of documents. I don't know why in particular it's attached to this minute but can we go to page 9 of this document.

And this is what I wanted to ask you about.

It's a letter dated 26 September 2007 from Dave White, head of fraud investigation services at the Job Centre, and it says:

"Issue: The Macfarlane Trust payments and other disregarded sources of income.

"...

"Timing: Immediate."

It says:

"Following recent ministerial correspondence with Chief Executive of The Macfarlane Trust in which concerns were raised over the treatment of beneficiaries of the Trust, please alert all investigators of the need to consider Macfarlane Trust payments and other disregarded sources of income when carrying out the evidence gathering stage of an investigation or during an interview under caution (IUC)."

So are we to understand that this is a memo

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expected the chief executive to have been on top of this already.

Quite why it came up in this context I now can't remember. I think it is referred to in the paper somewhere but I can't remember exactly where it was.

Q. The problem was, was it, that beneficiaries who had received monies from the Macfarlane Trust who were on benefits were being investigated for fraud because they had monies in their accounts that were showing up that couldn't possibly have come from their benefits and so they were being investigated for fraud?

A. That's the context, yes. Well, it was literally an -- well, it says it's the Fraud Investigation department, but it was certainly -- wasn't there a new -- I'm not going to remember this well enough.

I want to say that there was a new system that was brought in which was designed to -- well, reduce the scale of Government benefit payments, and that new system involved, among other things, having this sort of unit set up. And we were aware of that. I think we raised it with the Department as well but I'm not going to be 100 per cent sure. But yes, that was certainly taken up proactively by us, yes.

Q. Then if you turn over the page to the next page on

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sent out by the head of fraud investigation services at the Jobcentre Plus to investigators in relation to the issue of monies received by beneficiaries of the Macfarlane Trust and alerting them to the fact that those payments should be disregarded as sources of income when looking to see whether or not there had been fraud in somebody who was claiming benefits?

A. Yes.

Q. Can we turn over to --

A. We also said, I recall, that -- we sent messages to the communities directly to say: if you get called in to be interrogated, or whatever the right word would be, or if you know you're going to be, then -- and if you want any help, just be in touch with and we will make sure not only that we brief you properly but also that if you've got any issues with these people you let us know straight away, because then we can go round the circle and make sure that what should be done is done.

Q. So this was an issue, was it, that was being raised by beneficiaries to the Macfarlane Trust --

A. No, I think we spotted it. I mean, it was -- no, it's something that -- I don't recall it coming from -- it might have done. It might easily have been something raised by the trustees on the board, but I would have

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this letter, it says there -- sets out the payments that should be disregarded and then:

"Payments from these organisations may be identifiable at the evidence gathering stage of an investigation. However, if the source of the capital/payment is not identifiable, the customer may be invited to attend an IUC."

Interview under caution, presumably.

A. Mm-hm.

Q. "If, during the interview the customer identifies the source of the payments as being from any of the above organisations, investigators should be sensitive in their questioning and limit their questions to the source of the payments and the amounts in payment.

"If the payments relate to The Macfarlane Trust all enquiries should be directed to The Macfarlane Trust ..."

A. Mmm.

Q. Do you have any knowledge or any recollection about whether or not the sending out of this letter made any difference to the amount of beneficiaries that were interviewed under caution?

A. No, in short. I believe it did. I believe it was -- this was -- this exercise was considered to be very important for the benefit of our beneficiaries,

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because they were bound to be -- or some of them were bound to be examined as to their financial circumstances. Whether the letter picked up in the minds of the potential interrogators this possibility straight away, I don't know, but that would probably have required the person being examined to volunteer at the outset what the source of the income -- or, sorry, the cash, the assets that that person had, had to volunteer the source of it in advance to the interrogators. Whether -- and I don't know how often they were able to do that or whether it only actually came up in interview. But no, I was certainly made aware that there were plenty of circumstances where this was invoked.

- Q. Then there is -- I don't know, sir, I will take you to the document if it's helpful but there's a report in a minute of a trustee meeting on 21 January 2008 where there's a report from the chief executive having a recent meeting. So I think -- in fact, I think this must be this meeting with the head of fraud. Do you recall whether or not you were involved in that meeting?
- A. No, I wouldn't have been involved.
- Q. You wouldn't have attended that meeting.
- There's a subsequent meeting in September 2008

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([that being] the second *ex gratia* capital payment that was made subject to signing a waiver where the amounts depended on the age and family status of claimant), the aggregate value of the *ex gratia* payments were similar in value. The Committee noted that the areas where discrepancies or matters of concern could be identified were:

"(a) that MFT infected intimates were included" --

A. "Not".

SIR BRIAN LANGSTAFF: "Not".

MS SCOTT: "... were not included in those that qualified for the MSPT payment of £20,000 with the result

"(b) that an MFT single adult (female)

beneficiary received £23,500 where a similar category of beneficiary from the Eileen Trust received £43,500

... The Eileen Trust beneficiaries were directly infected by NHS blood products through treatment ..."

Go over the page.

A. You have gone one too far.

Q. We need to go back a page.

A. Back one.

Q. Back two, I think. Back to page 2. You've only got three pages. So page 2 doesn't seem to be loaded onto the system.

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with the DWP in which you weren't involved?

A. No.

Q. We've got Mr Neil Bateman, the benefits adviser, who was involved at the behest of the Macfarlane in those meetings and we can ask him, we can put those questions to him.

A. No, no, he was very much involved in that.

Q. I'm moving now to another topic.

It's MACF0000124_074.

This is a note of an NSSC meeting on

7 May 2008.

A. Mm-hm.

Q. Under "Matters Arising":

"The paper considered by the Board of Trustees at their meeting on 21 April having been referred back to the Committee, and now re-circulated with the agenda, was considered. The Committee reviewed the schedule of *ex gratia* capital payments made to the beneficiaries of the Macfarlane Trust and compared them to those made available to beneficiaries of the Eileen Trust. For the most part, the Committee noted that, where the MSPT payment (the unrestricted capital payment of £20,000 made to all haemophiliacs infected with the HIV virus by way of contaminated NHS blood products) was added to the value of the MSPT2 payment

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Let me read it out.

SIR BRIAN LANGSTAFF: Is it one of those documents where something which was a two-sided original has been photocopied or scanned on one side.

MS SCOTT: It may have been.

So let me go back to where we were and see if we can do it by me reading it.

SIR BRIAN LANGSTAFF: Take it slowly.

MS SCOTT: Yes.

So we established that there's a difference of effectively £20,000 between the Macfarlane Trust female beneficiary and the Eileen Trust female beneficiary. The Eileen Trust beneficiaries were directly infected by NHS blood products.

SIR BRIAN LANGSTAFF: People are watching at home so take it slowly.

MS SCOTT: "The MFT female primary beneficiaries were infected indirectly. This distinction is a matter of fact but is likely that the MFT cohort will not appreciate this distinction as they will regard the core route of infection, whether direct or indirect, as by the NHS."

So, pausing there, can you recall how or why the Macfarlane Trust board were considering this matter of unequal capital payments made to certain

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1 categories of beneficiaries back in 1991 at a board
2 meeting in 2008?

3 A. The answer is no, without going back to 21 April.

4 Q. If you don't recall, you don't recall.

5 A. No, I don't. I mean, it was -- I tell you what I do
6 recall, which is where it became relevant -- but it
7 wouldn't have been in -- I don't think. It might have
8 been ... this was to do with the suggestion that the
9 two trusts should be merged.

10 Q. Yes, that's where I was going to take you next.

11 A. That's the context in which I remember this
12 distinction being drawn.

13 Q. So let me then take you to that document then. If we
14 go then to MACF0000012_131. This is a document we
15 have already looked at today. It's the minute of the
16 meeting between the Department of Health and
17 Macfarlane Trust on 28 October 2008.

18 A. Mm-hm.

19 Q. If we go to the last page of that minute, under "Any
20 Other Business/Related Matters":

21 "Christopher referred to the option of a merger
22 between the Macfarlane Trust and the Eileen Trust.
23 This was still the [Department of Health's] preferred
24 option although Brian acknowledged the arguments put
25 forward by the Eileen Trust regarding the loss of

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1 A. 19, no --

2 Q. Sorry, 2008. Forgive me.

3 A. Whereas the previous --

4 Q. The previous was --

5 A. Was May -- no, April.

6 Q. It was May 2008.

7 A. Yes. So, no. I don't know -- I don't know in what
8 context that first -- I don't recall in what context
9 that first reference to this point was made.

10 Q. Then one last document on this point for me asking
11 questions which is MACF0000012_015.

12 A. That point was the difference in capital payments for
13 the female primary beneficiaries. It was
14 a long-running sore and we were very conscious of it.

15 Q. That was something that beneficiaries were bringing to
16 the Macfarlane Trust?

17 A. Absolutely, yes. Well, the female ones particularly.

18 Q. The last document I wanted to look at on this issue is
19 this one. It is headed "Implementation of the
20 Government's response to the Archer Report - Funding
21 of the Macfarlane and Eileen Trusts". Do you
22 recognise this document? Is this a document you have
23 seen before it being provided to you for the Inquiry?

24 A. No, I don't recognise it.

25 Q. Do you think it's a Macfarlane Trust document?

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1 their own identity if a merger was to take place."

2 Then there's a number of reasons put forward as
3 to why it would not be practically possible to do with
4 administration and moving and so on.

5 Then, towards the bottom -- two-thirds of the
6 way through that paragraph:

7 "Christopher added that the major stumbling
8 block to the possible merger would be money and the
9 inequalities that exist between the two trusts. If
10 the [Department of Health] were to fund the
11 equalisation of payments to beneficiaries, including
12 that of the capital payments made in the
13 late 80s/early 90s, and the merger did not cost the
14 Trust anything then he would be happy to try and
15 influence the other Trustees and the beneficiary
16 community. Brian said that the Eileen Trust needs to
17 provide DH with all sums of the merger. He added that
18 the merger might be more cost effective than buying
19 out the Eileen Trust."

20 So is that what you were referring to?

21 A. Yes.

22 Q. That that's what you recall?

23 A. That's when I remember it coming up. I don't know --
24 what was the date of this meeting?

25 Q. So that meeting is 28 October 1998.

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1 A. Let me have a look, if I may. This looks like
2 a Department document to me.

3 Q. It's the last --

4 A. Yes, I think --

5 Q. I don't know, it's got a reference at the top
6 right-hand corner "430.09"?

7 A. Which would suggest that it did get to the Trust, even
8 if it was prepared by the Department it got to the
9 Trust and was referred to in a board minute.

10 Q. So that's a board minute reference, is it?

11 A. That's what I would expect it to be. I don't know.
12 I can't remember whether the NSSC had references like
13 that for their business, I can't remember.

14 Q. We can always check that.

15 A. It's definitely not -- I'm sure it's not a Trust
16 document, no.

17 Q. So it's the penultimate box on the left-hand side
18 "Decision or rule", we've got on the left-hand side.

19 A. Yes.

20 Q. Then the Department of Health "Rationale" on the
21 right-hand side.

22 A. Oh, yes, yes, this is definitely not from the Trust.

23 Q. Well, then the penultimate box at the bottom:
24 "No 'equalisation' of MFT and ET lump sum
25 payment."

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1 A. Yes.
 2 Q. So that seems to be the decision that's been made, and
 3 the rationale appears to be:
 4 "The two Trusts' lump sum provisions are
 5 strictly equal already as between the sexes. No
 6 action needed."
 7 A. Yes.
 8 Q. So, first of all, can you recall the Department of
 9 Health informing you that they had made a decision
 10 that they weren't going to equalise payments?
 11 A. No, I can't but, as you can see, it became -- well,
 12 yes, indeed I can, because of course what we were
 13 looking at just now was at the end of 2008 and this is
 14 in 2009.
 15 Q. So it appears that this is a decision --
 16 A. So it has been a running issue and so -- and I'm
 17 trying to remember now the rationale. What we were
 18 looking at a few minutes ago was showing the Trust's
 19 recognition, in the sense of understanding, that what
 20 the Department said -- the Department had said that
 21 they were treated equally because our female primary
 22 beneficiaries had not been infected by -- their
 23 condition was not as a result of infected blood, to
 24 which our beneficiaries said that is a difference
 25 without a distinction. That's the point that's being

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1 that issue was never resolved during your time on the
 2 Trust?
 3 A. Never was, as far as I'm aware.
 4 MS SCOTT: Sir, those are the questions that I wanted to
 5 ask.
 6 SIR BRIAN LANGSTAFF: Yes. Do you want a break?
 7 MS SCOTT: Yes, please, for Core Participants to submit
 8 their questions.
 9 SIR BRIAN LANGSTAFF: Yes. The purpose of this break,
 10 Mr FitzGerald, is to allow those who are Core
 11 Participants, representative Core Participants, who
 12 are watching to put forward any questions they may
 13 have for you. There are quite likely to be a number
 14 ranging over a variety of subjects. We will come back
 15 in half-an-hour, so 25 to 4, and deal with such
 16 questions as there are.
 17 A. Fine.
 18 (3.05 pm)
 19 (A short break)
 20 (3.35 pm)
 21 MS SCOTT: I have a handful of questions.
 22 This morning you were giving evidence about
 23 the -- I put it -- I suggested it was an impasse
 24 between Department of Health and Macfarlane Trust
 25 about funding in the early years, before Archer, about

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1 made.
 2 Q. Yes.
 3 A. So that's why I say strictly equal -- it says strictly
 4 equal, with the "strictly" underlined.
 5 Q. So the question I ask is whether or not you could
 6 recall this decision being communicated to the Trust
 7 and I think your answer to that was no.
 8 A. I mean, I don't remember it being communicated in the
 9 sense of some written statement addressed to us.
 10 I don't remember that, but it was certainly -- we were
 11 certainly aware and made aware that that was their
 12 position and it remained their position when we come
 13 to the subject -- you know, both in 2008, and again,
 14 I think after Archer -- of the possibility of merging
 15 the two Trusts and we consistently made the point that
 16 that is not going to work unless you do something
 17 about this issue and they were still saying, you know,
 18 you're not comparing like with like.
 19 Q. So that's what you understand -- that's the rationale,
 20 you understand that you are comparing apples with
 21 pears, effectively?
 22 A. That's what they were saying and we were saying we
 23 were certainly not. We compare the outcomes not the
 24 immediate cause.
 25 Q. So it's clear from what you have just told us that

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1 2008?
 2 A. Mm-hm.
 3 Q. When you were considering your options about trying to
 4 get more money out of Department of Health at that
 5 stage, did you consider launching a media campaign,
 6 getting in touch with TV, documentary makers or
 7 anything of that sort?
 8 A. No, not that sort of thing. We took opportunities, as
 9 I said this morning, to write to the relevant
 10 politicians but, beyond that, we always took the view,
 11 given our slightly strange in-between position that we
 12 were not a campaigning body and that there were others
 13 who could and did campaign in those sorts of ways.
 14 But, no we, we did not "campaign".
 15 Q. When you made an appeal to find the widows, the lost
 16 widows --
 17 A. Yes.
 18 Q. -- in the newspaper, you said you didn't think you got
 19 much of a response from that.
 20 A. Yes.
 21 Q. What were your next steps? What was the strategy
 22 after that? Can you recall?
 23 A. Well, as I implied at least, if not said, we relied on
 24 the networks provided by the communities of care -- in
 25 different parts. There were very often -- as

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1 I recall, there were several sort of -- I'm going to
2 call them "hotspots", but there were areas of --
3 localities where there were a number of, particularly,
4 infected beneficiaries who had their own sort of
5 networks, and so word would get out through that
6 means.

7 It's self-defeating -- no, not self-defeating.
8 Our newsletters, again, were making our desire to find
9 more of the beneficiaries -- get more beneficiaries to
10 come forward went, but of course that was only going
11 to existing beneficiaries and you were relying upon
12 them to communicate. And The Haemophilia Society, as
13 I say, were very good in that respect.

14 I suppose the -- there was the
15 Partnership Group, which we touched on I think today,
16 they had men-only events, some of which I attended.
17 And I know, not that I attended, but I know there were
18 female-only events of that kind. I suppose we were
19 relying -- I believe we were relying upon the
20 disseminating opportunities that those events
21 provided. But if somebody had decided, particularly
22 among the earlier widows, that they wished to move on
23 and leave that all behind them, it would have been
24 very difficult to find them -- to get them to come
25 forward, which is why we did the national -- we tried

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1 talking about this earlier, it was a well-known -- I'm
2 not going to say accepted but it was -- the fact that
3 that was the Department's position and that -- you
4 know, as they said, to use their word -- in strict
5 terms the two communities were not alike. And,
6 therefore they said they could therefore argue that,
7 you know, there was no unfairness in the treatment.
8 The fact that that was their position was very well
9 known. And -- I can't remember now whether it came up
10 in the Archer proceedings or not but I'll be surprised
11 if it didn't.

12 Q. What level of reserves did the Charity Commission
13 require or recommend that you maintain during your
14 time as chair of the Macfarlane Trust?

15 A. I can't remember precisely. The Charity Commission
16 had clear guidelines. So clear that I can't remember
17 exactly what they were.

18 It wouldn't have been -- it would obviously
19 vary depending upon the circumstances of each trust
20 that they were -- each charity they were concerned
21 with, I guess, but there was a form of words which
22 I know we've referred to -- or in documents that we
23 have referred to which, as I recall, spoke in terms
24 of -- I'm not going to get this right but certainly in
25 terms of covering future -- being satisfied you had

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1 the national advertising route. And obviously the
2 same applies to those who had passed beyond the
3 support stage from the Trust, although you might have
4 hoped that they would at least have remained
5 sufficiently in touch to know what was going on. But,
6 no, we didn't have any big strategy after that
7 national advertising.

8 And I don't know -- as I said to you earlier,
9 I don't know to this day how many more widows -- it
10 was taking time for more widows to come forward but
11 I have no idea how many more came forward after my
12 retirement, as it were.

13 Q. We were discussing just before the break the issue of
14 the equalisation payments between Macfarlane Trust and
15 Eileen Trust.

16 A. Yes.

17 Q. When you perhaps learnt for the first time the
18 Department of Health's response, which was "No, we're
19 not going to deal with this", can you recall whether
20 or not you took any further action, for example, took
21 legal advice, to see whether or not there might be
22 something that this group could do?

23 A. No, I'm sure we didn't take legal advice. And I say
24 the way I'm sure of that is although I wasn't able to
25 point specifically to documentation when we were

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1 got enough reserves to cover your future commitment,
2 in other words it wasn't just -- the Charity
3 Commission expected you to have something in reserve
4 in order to provide for the future and, as I said
5 earlier this morning I think, certainly before we
6 started to get the commitments, and before -- long
7 before -- and before Archer, we had no reason to
8 believe the Department was committed to the future,
9 and that was why we saw that it would be a grave risk,
10 and indeed a dereliction of our duty, if we did not
11 keep sufficient reserves to ensure that our
12 beneficiaries were not just left to drop off
13 the cliff. And so that was why we set upon and -- to
14 be sure we had one year in reserve, and as I was
15 saying earlier, I would have -- had it ever happened,
16 I would have expected that that wouldn't all have been
17 exhausted in one year, we would have tried to find
18 a way of a gradual reduction. But fortunately that
19 never happened.

20 Q. What contact, if any, did you have with any of the
21 devolved administrations, in particular the Scottish
22 Executive, during your time as chair?

23 A. None.

24 Q. So all of your contact, communication with Government
25 was through the Department of Health?

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A. Yes, yes. We had some -- we were, from time to time -- I referred to the trustee Philip Dolan earlier, who was, if I can say, plugged in to Scotland and haemophilia, in particular, in Scotland, and I don't doubt that he -- he was able to give us comparison, shall we say, from time to time, or he would draw out particular lessons from what was happening in Scotland. He was particularly helpful to us at the time of the Penrose Inquiry and being -- you know, we were kept abreast of what was going on there and how that was going. But we didn't have any direct communication with any of the devolved governments, no.

Q. To what extent do you or did you then or do you now consider the attitude of the Department of Health during your time as chair to have been that the Macfarlane Trust had become an unwanted financial burden or a relic of actions or inactions of past governments?

A. I don't know that I could characterise it is in that way. I mean, sure, they would have been very happy not to have had us on their backs, as it were. But in our meetings with them, and other communications, thinking of telephone calls and others -- between Martin Harvey and the officials in the Department,

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I can't remember. I don't believe that we had -- I know we had a cross-over, if that's the right word, with the Eileen Trust and we had -- I thought it was only one trustee that we appointed but I think it was three out of five certainly at some stage but I don't think we had anything like that with the Skipton Fund. So no, there was interaction which caused the two trusts to take differing views or the same view or anything like that. There was nothing of that kind.

Q. Or to say, "Well, let's not prioritise the co-infected because they are being looked after by Skipton", for example?

A. No, no, no. No, no, no. No, we looked at our -- our job was to look after our beneficiaries and we took them exactly as they were, as our primary beneficiaries.

MS SCOTT: Those are all the questions from the Core Participants.

Questioned by SIR BRIAN LANGSTAFF

SIR BRIAN LANGSTAFF: I just have a couple of questions.

The first is this. You hadn't done any charitable work before you became a trustee and the chair of the Macfarlane Trust.

A. No.

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they always set out to appear understanding. You know, there was no sense of them telling us to get lost or anything like that, but they did take a very unsatisfactory -- whether -- presumably prompted by politicians', with whom presumably they spoke, positions on what we wanted to do. No amount of -- until after Archer, no amount of saying to them that, you know, "We should be able to do this, you know, we're charged with believing need and so on, and we -- in order to be able to do that properly, we need more" -- it just was a blank wall.

Q. By the time you were appointed chair of the Macfarlane Trust in 2007, the Skipton Fund had been running alongside the Macfarlane Trust for three years, how did the existence of the Skipton Fund impact upon the role and decision-making processes within the Macfarlane Trust for the co-infected bleeding disorder patients and their families?

A. In truth, hardly at all. We were, as the Macfarlane Trust, was aware and conscious of the Skipton Fund because we were providing the administration for it, but we had no impact on their -- nor thought to have any impact on what the Skipton Fund was doing. They had their own trustees. We had ours.

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SIR BRIAN LANGSTAFF: And you told us why that was earlier on. When you left, when you finished your term of office, did you leave with a sense of achievement or disappointment, or was it a mixture?

A. Oh a mixture. Very much a mixture. I left -- in terms of the reason and timing of my leaving, I felt that it was time that I did and there should be another Chairman. As it happened -- and I'm sure you are going to be interviewing him or he is going to appear before you, I mean -- Roger Evans had been a trustee as well but he was particularly involved with the development of two work streams, two working groups, the fruits of which were coming together at that time, and so it was eminently appropriate, I thought, for him to take matters on from there. That's to do both with dealing with the reserves and also with the new welfare policies.

So that was the context in which I thought it was the right time for me to leave. As to whether -- so, in that sense, I wasn't disappointed for that reason. I was disappointed as to the outcome of where we got to. We had made not -- well, not so much through our efforts but because of the influence of Archer and all that, things had changed very much to the better for our beneficiaries from the time that

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1 I had started. So that was rewarding but, at the same
2 time, it was very disappointing because there was the
3 Government's, the politicians, chance to get it right
4 at last, to put right what they had not got right all
5 those years before and they just didn't take it. For
6 an amount of money which, in the context of the
7 Department of Health budgets -- whether it was all one
8 or there were two pots, as we were talking about
9 earlier I don't know -- was insignificant, in the
10 context of the whole, and that was very disappointing.

11 But, nonetheless, I felt rewarded because
12 I felt that the trustees, all of them over time, you
13 know, had all shown great commitment to try to do the
14 right thing by everybody, recognising the difficulties
15 they had in satisfying everybody because they knew
16 they couldn't satisfy very many but -- no, so in that
17 sense mixed feelings but they were satisfied, I think,
18 that the job had been done by me and my fellow
19 trustees as well as we could do over that period.

20 **SIR BRIAN LANGSTAFF:** So far as your disappointment that
21 the Government hadn't responded more positively, as
22 you saw it, to the Archer Inquiry it's probably
23 obvious from your earlier answers, but perhaps you can
24 spell it out for us, what would you rather they had
25 done than what they did?

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1 hoped for was being left with providing for and
2 concentrating on the non-infected community, the
3 widows and orphans, and so on, and also it would have
4 been good, we would have hoped, I think and I think
5 our beneficiaries would have hoped, that we would have
6 continued to provide, or be the source of the
7 non-financial support that we were -- so we were --
8 people like Neil Bateman, for example, you are going
9 to hear from, I gather.

10 But, you know, providing a source for that sort
11 of advice and also a way of co-ordinating, if nothing
12 else, some of the beneficiary activities and
13 interrelationships, and so on. All of that there was
14 clearly a good reason for a trust -- if our Trust, why
15 not -- to continue to exist. But there was never any
16 needs and should never have been any need for it to be
17 there to support the victims of this tragedy.

18 **SIR BRIAN LANGSTAFF:** The other thing which I wanted to
19 ask you was simply this: you've spoken about the
20 guidance from the Charity Commission being to keep
21 a certain amount of money in reserve. Did the Trust
22 do what many charities do and take advantage of those
23 accounts which are accessed through being a charity
24 for longer term investment, or where did you keep the
25 reserves invested?

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1 **A.** What we would have wanted them to do was to move the
2 payments, the regular payments -- I mean, it would
3 have been excellent if they had had another *ex gratia*
4 payment to all of those who had originally been
5 infected directly or indirectly but, certainly, that
6 all payments to the primary beneficiaries, as we
7 should call them, should be on a non-discretionary
8 basis, for all the reasons that you were addressing me
9 on earlier as well.

10 You know, these people, all of these
11 beneficiaries, you know, hated the idea that they were
12 relying on charity. They had no business relying on
13 charity to help them through the difficulties that
14 they were living with -- by now living with and
15 expecting to live with for a long period of time.
16 There's long gone the days when the Government and
17 others thought these unfortunates would all be dead
18 within five years, and so, you know, it was -- the
19 fact that we were still left with a rump of the
20 obligations to provide discretionary top-up payments
21 and individual grants nobody enjoyed doing that at
22 all, least of all the people who had to make the
23 applications.

24 So that was the big disappointment and if we
25 had been left with providing -- what we could have

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1 **A.** The reserves were invested in an investment portfolio,
2 which was managed by investment managers, the name of
3 whom I'm not now going to remember.

4 **SIR BRIAN LANGSTAFF:** So this was a bespoke arrangement.

5 **A.** A bespoke arrangement, yes. I don't remember what
6 you're referring to, whether it was available to us or
7 not, I honestly don't know.

8 **SIR BRIAN LANGSTAFF:** Thank you. I have no further
9 questions.

10 **MS SCOTT:** Is there anything you would like to add to your
11 evidence?

12 **A.** No, I think, not least by dint of having that summary
13 at the end, I've said, I think, all you want to hear
14 from me.

15 **SIR BRIAN LANGSTAFF:** Well, I have to say I'm very
16 grateful to you in a number of ways. You've given us
17 a very clear and very helpful exposition of how the
18 Macfarlane Trust functioned, particularly between 2007
19 and 2012, your term of office, and explained why it
20 took the various steps it did and what it thought and
21 how it approached things, from your end of the
22 operation.

23 **A.** Thank you, yes.

24 **SIR BRIAN LANGSTAFF:** The clarity with which you have done
25 that, the humanity has been apparent, I think, to all.

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1 So can I just thank you for that. Can I thank you
2 also for your patience in being kept waiting an hour
3 before we started, coming away this afternoon rather
4 later than you might have anticipated. It's been very
5 good of you not to raise the dicky bird of a complaint
6 about that.

7 **A.** Well, I would never have wanted to do that. If
8 I could say that, now that you have given me the
9 opportunity, and the lead-in with your remarks, sir,
10 what I regret about today is that we didn't have --
11 you didn't have the benefit of having Martin Harvey to
12 give evidence, because he would have had instant
13 recall of a lot of the detail you might have hoped
14 that I would have had, because he was -- as I am sure
15 you will have heard from Peter Stevens and others, he
16 was a very effective chief executive who worked
17 tirelessly in the interests -- not that they accepted
18 that, but that was the way of our lives -- tirelessly
19 in the interests of our beneficiaries. A tribute to
20 him, if I may.

21 **SIR BRIAN LANGSTAFF:** Well, thank you very much.

22 **A.** Thank you, sir.

23 **SIR BRIAN LANGSTAFF:** Next week.

24 **MS SCOTT:** Next week we will be back on the Tuesday,
25 2 March, at 10.00 to hear evidence from Jan Barlow.

1 **SIR BRIAN LANGSTAFF:** And we will be sitting next week all
2 week, I think.

3 **MS SCOTT:** Tuesday to Friday.

4 **SIR BRIAN LANGSTAFF:** Yes.

5 So 10.00 for those who are watching remotely.
6 10.00 on Tuesday. And I look forward to hearing from
7 the witnesses and -- in front of them then.

8 Thank you very much.

9 (3.58 pm)

10 (Adjourned until Tuesday, 2 March 2021 at 10.00 am)

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