Witness Name: David John Mellor
Statement No.: WITN7068001
Exhibits: WITN7068002-WITN7068010
Dated: 25/04/2022

INFECTED BLOOD INQUIRY

FIRST WRITTEN STATEMENT OF DAVID MELLOR

I, David John Mellor, will say as follows: -

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Section 0: Structure of this statement and opening comments

0.1. My name is David John Mellor. I was the Minister of State for Health between 25 July 1988 and 27 October 1989 and Chief Secretary to the Treasury between 28 November 1990 and 9 April 1992. I make this statement to assist the Inquiry in response to a Rule 9 request for a statement dated 4 January 2022. I have followed the general ordering of the Inquiry's request. My date of birth and address are known to the Inquiry.

0.2. I would like to begin my witness statement by making some opening comments.

0.3. First, I wish to express my sympathy for all those who have been affected by the issues being explored by the Inquiry. When the infection of haemophiliacs with HIV was first brought to my attention in my capacity as Minister of State for Health, I had great sympathy for those affected. I considered then – and consider now – that the infection of people by the treatment that was intended to help them was one of the worst medical tragedies in the history of the NHS.

0.4. Second, as will be the case for many other witnesses who are asked to give evidence about events which occurred several decades ago, my recollection of matters independent of the contemporaneous documents is limited. I have provided as full an account as I can about events the Inquiry raises with me but I am heavily reliant on the documents for the detail of this. This is in part a feature of the passage of time but it is also because the issues I am asked about, important as they are, took up relatively little of my time.

0.5. As I have explained below, when I was at the Department of Health, I was not the Minister with responsibility for matters relating to blood and blood products. I did have Ministerial responsibility for AIDS, however. Issues relating to the wider AIDS situation, at a time when there were fears of a pandemic, took up a lot of my time. I remember visiting AIDS wards in

hospitals with Princess Diana, to show support for the patients and I will never forget the suffering that we witnessed. The Department did a lot of work on AIDS prevention when I was Minister of State for Health and I remember very well working with the Health Education Authority on a television campaign, which provided advice to those engaging in risky behaviour, such as taking drugs intravenously, on how they could protect themselves against the threat of AIDS. This campaign was controversial at the time and had to be defended to the Prime Minister on occasion. AIDS was just one of the areas that I had responsibility for when I was Minister of State for Health; it was an incredibly demanding Ministerial post. Other areas that took up a significant amount of my time included the programme of major NHS reform that was being rolled out by the Secretary of State for Health, Kenneth Clarke, as well as heavy work on the "Children Bill", which received Parliamentary and Royal assent and became the Children's Act 1989 on 16 November 1989.

0.6. When I was Chief Secretary to the Treasury, I was concerned with the whole of public expenditure across all government departments. Whilst I was asked to consider a multitude of issues, the points I was being asked to consider were, on the whole, relatively narrow ones relating to the public expenditure implications of a department's proposal. The role of a Treasury minister inevitably involved consideration of the broader economic picture. The broader economic picture at the time was affected significantly by the First Gulf War, the combat phase having started in January 1991. It was against this backdrop that the matters I am asked about by the Inquiry came to my attention.

Section 1: Introduction

1.1. The Inquiry asks me to set out my background and professional qualifications and provide a brief overview of my career.

1.2. I read law at Cambridge University. I was called to the Bar in 1972 and practised as a barrister until 1979 when I was elected as a Member of Parliament ("MP"). I was appointed Queen's Counsel in 1987 by Lord Hailsham the Lord Chancellor in recognition of my work piloting the Police and Criminal Evidence Act 1984 through Parliament, which he saw as a very significant achievement.

1.3. I became the MP for Putney in the General Election of 3 May 1979 and I held that post until the General Election of 1 May 1997.

1.4. During my 18 years as an MP, I had the following appointments in Government:

1) 15 September 1981 to 6 January 1983: Parliamentary Under-Secretary of State (Department of Energy);
2) 6 January 1983 to 10 September 1986: Parliamentary Under-Secretary of State (Home Office);
3) 10 September 1983 to 13 June 1987: Minister of State (Home Office);
4) 13 June 1987 to 26 July 1988: Minister of State (Foreign and Commonwealth Office);
5) 25 July 1988 to 27 October 1989: Minister of State (Department of Health);
6) 27 October 1989 to 22 July 1990: Minister of State (Home Office);
7) 23 July 1990 to 28 November 1990: Minister (Privy Council Office) (Arts);
8) 28 November 1990 to 9 April 1992: Chief Secretary to the Treasury;
9) 11 April 1992 to 24 September 1992: Secretary of State (Department of National Heritage).

1.5. Since leaving the House of Commons, I have been a journalist, broadcaster and after-dinner speaker and I run an international business consultancy.

1.6. Save in respect of the Ministerial roles set out above, I have not had a role (such as committee or society membership or office) on issues directly relevant to the Inquiry's terms of reference.

1.7. I do not have any business or private interests that are relevant to the Inquiry's Terms of Reference.

1.8. I am asked if I gave evidence or have been involved in any other inquiries, investigations or civil or criminal litigation relation to the human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products. The only inquiry of possible relevance that I can recall giving evidence to was the Social Services Committee's follow-up inquiry into AIDS, which led to a report being published on 21 June 1989 [WITN7068002]. This contains a transcription of my oral evidence. The focus of the follow-up inquiry was not on the transmission of HIV by blood or blood products, but the report is of assistance in giving a good overview of the wider-AIDS issues that were being considered at the time I was Minister of State for Health.

Section 2: Decision Making Structures

2.1. I have been asked to describe, in general terms, what responsibility I had as Minister of State for Health for matters relating to blood and blood products, and whether this was an area in which I was particularly involved, or in which I had a particular interest.

2.2. I do not believe that I had responsibility for matters relating to blood and blood products. It appears from the papers I have seen that this brief was held by the Parliamentary Secretary of State for Health, Edwina Currie and then Roger Freeman during my time as Minister of State for Health (see, for example, [DHSC0002445_097], [CBLA0002732] and [DHSC0002429_073]). There also seems to have been a corresponding brief in this area held by one of the Health Ministers in the Lords (see, for example, [WITN7068003], [NHBT0000061_041] and [DHSC0003989_067]), which suggest that Lord Trafford held this brief before his death on 16 September 1989.

2.3. As I have already explained above, however, I did have responsibility for AIDS-related matters and was involved in (for example) work with the Health Education Authority on public health campaigns on AIDS. This responsibility also led to attendance at the Cabinet Sub-Committee on AIDS in relation to issues such as projections of the number of AIDS cases and HIV monitoring and surveillance (see, for example, [CABO0000195_045]). I believe that these are topics addressed in Lord Clarke's Second Statement to the Inquiry. I also had some involvement in issues of financial support for haemophiliacs infected with HIV and, towards the end of my time as Minister of State for Health, the HIV litigation, which I have addressed further below.

2.4. At question 8 of the Rule 9 request, the Inquiry asks me how, as Minister of State, information and issues would be brought to my attention. This was usually done by way of Ministerial submissions sent to my office by officials, which were seen first by my private secretary. I do not think there were set criteria which determined whether a matter was of sufficient importance to be brought to a Minister's attention, this was a question of judgement for officials. It is likely, however, that questions of policy or approach would be raised with Ministers with responsibility in the relevant area, particularly if they related to

important or controversial issues. I am asked how effective the process was in ensuring that the Minister of State was suitably informed of the key issues with which the Department of Health was concerned during the period of my tenure. I have no reason to think the process was *not* effective and do not recall having any concerns about this process at the time.

2.5. I am asked to identify the senior civil servants within the Department with whom I principally dealt, or from whom I received advice, in relation to blood, blood products, the licensing and regulation of pharmaceutical companies and products, self-sufficiency, risks of infection from blood or blood products, the response to such risks, hepatitis and HTLV-III/HIV/AIDS. I cannot now remember who these figures were, but where the names of the individuals involved are apparent from the documents I have referred to them in the account I have set out below of my involvement in the issues the Inquiry has raised with me.

Relationship with relevant departments concerning Scotland, Wales and Northern Ireland

2.6. I am asked at question 10 of the Rule 9 request to describe any interactions I had with the Welsh Office, the Scottish Office, the Scottish Home and Health Department and the Northern Ireland Office in relation to blood, blood products, the licensing and regulation of pharmaceutical companies and products, self-sufficiency, risks of infection from blood or blood products, the response to such risks, hepatitis and HTLV-III/HIV/AIDS. I think it is unlikely that I personally would had interactions with the Welsh Office, the Scottish Office, the Scottish Home and Health Department and the Northern Ireland Office on these issues when I was Minister of State for Health (there is no suggestion of this from the documents I have seen), although there may well have been correspondence on some of these issues between officials from these health departments and Department of Health officials. I cannot now recall whether or how these departments influenced Government policy and that of the Department of Health in these areas. I had some interaction with the Health Secretaries for Scotland, Northern Ireland and Wales during my time as Chief Secretary to the

Treasury on the issues of funding the settlement of the HIV litigation and extending financial support to transfusion recipients infected with HIV, as I have addressed below.

2.7. I am asked at question 11 of the Rule 9 request to describe any interactions I had, in my capacity as Minister of State for Health, with other health-related public bodies in Scotland, Wales and Northern Ireland in relation to blood, blood products, the licensing and regulation of pharmaceutical companies and products, self-sufficiency, risks of infection from blood or blood products, the response to such risks, hepatitis and HTLV-III/HIV/AIDS. I personally would have had no interaction with health bodies in other jurisdictions.

Relationship with the Haemophilia Society

2.8. I am asked at question 12 to describe any interactions I had, or (to the extent that I am aware) my officials had, with the Haemophilia Society. As far as I am aware I did not have any personal interactions with the Haemophilia Society. It appears from the documents I have seen that it was the Parliamentary Under-Secretary of State for Health and the Health Minister in the Lords with the brief for matters relating to blood and blood products who corresponded and/or met with the Haemophilia Society (see, for example, [WITN7068004], [DHSC0002469_012] and [DHSC0003989_067]). As this did not fall within my areas of responsibility, I would not have been aware of any interactions that Departmental officials had with the Haemophilia Society.

The Introduction of HCV Screening Tests

2.9. The Inquiry has asked if, during my time as Minister of State for Health, I was asked to make any decisions on the introduction of HCV screening tests for blood donors in the United Kingdom. To the best of my knowledge and recollection I was not.

2.10. I have further been asked whether I would have expected to have been kept informed on discussions about whether and how such tests should be introduced in the United Kingdom. Since I do not believe that I had Ministerial

responsibility for matters relating to blood and blood products, the answer to this is 'no', although I might have been informed, by officials, of any major policy developments by material submissions being copied to my office.

Section 3: The Macfarlane Trust

3.1. I am asked by the Inquiry at question 14 of the Rule 9 request to detail the nature and extent of my involvement with the Macfarlane Trust during my tenure as Minister of State for Health.

3.2. I can see from the documents now provided to me that I asked my officials for information about the Macfarlane Trust several months into my tenure as Minister of State for Health and, following receipt of that information, I asked to be provided with two monthly reports on the work of the Trust.

3.3. I have set out below a chronological account of my involvement in matters relating to the Macfarlane Trust whilst I was Minister of State for Health. In doing so, I am heavily reliant on the contemporaneous documents now made available to me as my recollection of the relevant events is very limited at this remove.

3.4. On 9 October 1988, the Sunday Times published an article entitled "Aids victims dying before trust pays up" [HSOC0013432]. It was stated in the article that nearly a year after the government pledged £10m for a trust fund to help haemophiliacs with the AIDS virus, only £132,000 had been paid out. The article highlighted the passage of time between the announcement of "the government grant" in November 1987 and the Trust being formed in March 1988, and suggested that trustees had only just agreed a policy to allocate payments. It also suggested that few haemophiliacs were expected to qualify for regular support from the Trust. I was referenced in the article in the following terms:

> *"David Mellor, the health minister, last night said he would investigate the delays."*

3.5. I can see from a minute dated 13 October 1988 from Dr R J Moore (a Departmental official) to Miss Harper (my private secretary) [DHSC0003303_005] that I asked for a note on the Macfarlane Trust and the delay in paying potential beneficiaries alleged in the Sunday Times, which was provided.

3.6. Dr Moore provided the background to the establishment of the Macfarlane Trust, as follows:

> "2. *Tony Newton then MS(H) announced on 16 November 1987 an ex gratia payment of £10m to enable the Haemophilia Society to establish a special trust to provide financial help to haemophiliacs infected with the AIDS virus and their families. He gave an undertaking that payments from the Trust would be disregarded when deciding entitlement to Social Security benefit.*
>
> *3. The Macfarlane Trust was established on 10 March 1988 and the £10m was presented to the Rev. Alan Tanner, Chairman of Trustees on 17 March 1988.*
>
> *4. Our files for the 4 months from 17 November 1987 to 17 March 1998 attest to the priority given to establishing the Trust. In that period DHSS solicitors and Haemophilia Society solicitors were in regular consultation on the form of the Trust deed. The Charity Commissioners and the Inland Revenue were also involved. The Haemophilia Society appointed six trustees and the Secretary of State appointed four. Regulations were laid to disregard any payments from the Trust for housing benefit, income support and family credit. The scheme is unique for DHSS and innovative solutions needed to be sought and agreed."*

3.7. The minute also provided some information about the activities of the Trustees since March, who had met monthly, with working groups meeting more frequently (at paragraphs 5 to 6).

3.8. The basis for the grant was clarified and the allocation policy explained:

> *"It was never intended that the £10m should be compensation. The Trust is a charity and the Trust Deed restricts it to providing relief for those who are in need of assistance. Payments have been made from December 1987 by the Haemophilia Society on behalf of the Macfarlane Trust. The Allocations Committee of the Macfarlane Trust has dealt with applications since June 1988.*

8. So far 350 applications have been received and 297 payments have been made totalling £132,000. The largest single grant was just over £3,000. Some applicants clearly thought they were entitled to 'compensation' and unless they could demonstrate need have not been given a grant.

9. The allocation policy has developed in response to applications received. It is the intention primarily to make regular payments to those on low income as well as single payments for specific items. The Trust has adopted a cautious maximum regular payment of £20 per week subject to a means test. This amount will be reviewed when the Trust have more idea of the number of dependents who might need help over a long period. They are also investigating how best to help with mortgages and life insurance."

3.9. Dr Moore provided a suggested line to take and noted that MPs could be advised to encourage those of their constituents who may be eligible to apply to the Trust (paragraphs 11 to 12).

3.10. My private secretary Miss Harper conveyed my views on the matters I had been briefed on by Dr Moore in a minute to him dated 25 October 1988 [WITN0758023]:

"MS(H) is content to leave matters as they are for the present. However, he has commented that his personal view is that the Trust is being over-cautious in its approach."

3.11. On 27 October 1988 I gave an answer to a parliamentary question from Mr Butler, whether the Secretary of State for Health had any plans to review the administration of payments made to haemophiliacs suffering with HIV infection [HSOC0019206]:

"A new charitable trust, known as the Macfarlane trust, was established on 10 March 1988 specifically to give financial help to haemophiliacs infected with HIV and to their dependents. The government made an ex-gratia payment to the trust of £10 million and by regulations have ensured that payments from the trust are disregarded for the purposes of housing

benefit, income support and family credit. A majority of the trustees were appointed by the Haemophilia society. I believe that we have thereby fulfilled the promise made to the House by my predecessor on 17 November 1987.

"It is now a matter for the trustees to allocate their funds in the way which will best meet the needs of those eligible for assistance. I understand that so far the trust has received about 350 applications and made some 297 payments."

3.12. I am asked at question 17(a) of the Rule 9 request what I meant when I said I believed that we had "thereby fulfilled the promise made to the House by my predecessor". I was referring to Tony Newton's commitment made to the House on 16 November 1987[1] [LDOW0000241] to make an ex gratia payment of £10 million to enable the Haemophilia Society to establish a special trust to provide financial help to haemophiliacs infected with the AIDS virus and their dependents, which I had been briefed on in Dr Moore's minute of 13 October 1988 (see above). I understood from Dr Moore's minute that this commitment included an undertaking that payments from the Trust would be disregarded when deciding entitlement to Social Security benefit. In circumstances where the Government had made an ex-gratia payment of £10 million to a charitable trust established specifically to give help to haemophiliacs infected with HIV and to their dependents, regulations had been introduced to ensure that payments from the Trust were disregarded for the purposes of housing benefit, income support and family credit, and the Haemophilia Society had appointed a majority of the trustees, I believed that Tony Newton's commitment had been fulfilled and I conveyed this belief to the House.

3.13. I am asked at question 17(b) of the Rule 9 request whether, with my knowledge "of the Macfarlane Trust's purpose and with reference to the trust deed", I considered that one payment of £10 million would be sufficient to meet the needs of the beneficiaries at the time I addressed the House. It would appear

[1] In my answer to Mr Butler, I incorrectly gave the date as 17 November 1987 but I see from the Hansard record now provided to me that Tony Newton addressed the House about the ex gratia grant on 16 November 1987

from the documents I have seen that I had not been sent a copy of the Trust Deed by the time I gave my answer to Mr Butler on 27 October 1988; this was provided to the Secretary of State for Health, the Parliamentary Under-Secretary and I under cover of Dr Moore's minute of 17 November 1988 (see below at paragraphs 3.15 to 3.17). As far as I can recall, nobody suggested to me at this stage that a one off payment of £10 million would *not* be sufficient to meet the needs of the intended beneficiaries. This was not an issue raised in Dr Moore's minute of 13 October 1988, and, as I understand it, this was not the concern being raised in the Sunday Times article of 9 October 1988.

3.14. Also on 27 October 1988, M A Arthur provided the Secretary of State for Health with a note he had requested on the Macfarlane Trust [DHSC0003295_003]. Whilst my office was not sent a copy of this note at the time, I can see that it led the Secretary of State to raise a number of questions with officials, which were recorded in a minute from his private secretary to Mr Harris (HS1) dated 9 November 1988 [WITN0758025]. This minute was copied to my office and the Parliamentary Under-Secretary of State's office, with Mr Arthur's minute of 27 October 1988. The Secretary of State's questions were as follows:

> *"i. why has only £132,000 been paid out of £10 million?*
> *ii. what plans do the Trust have for the £10 million?*
> *iii. how long do the Trust expect the sum to last?*
> *iv. what did Mr Newton say that the intention of the Trust was?"*

3.15. The Secretary of State's questions were answered in a minute from Dr Moore dated 17 November 1988 [DHSC0020286], also copied to my office and that of the Parliamentary Under-Secretary of State.

3.16. Dr Moore explained that:

i. The initial priority of the trustees was to contact all potential beneficiaries to establish a likely level of demand whilst formulating an allocation policy. The amount paid out necessarily began slowly but was rising rapidly as more applications were received and dealt with, and all applications needed careful scrutiny.

ii. A major call on the £10 million was seen by trustees to be supporting dependents and they were investigating ways in which they could help with mortgage payments and life insurance. Meanwhile they were increasing the number of beneficiaries receiving weekly maintenance payments and those being given lump sums for holidays, domestic appliances, etc.

iii. The trustees did not have any definite expectations of how long the £10 million would last. They were concentrating on meeting financial need which they were interpreting as alleviating poverty, they were aware that their responsibility to dependents would remain for years to come and they were "husbanding their resources" since they were aware that the Trust might not receive further funds from government.

iv. The policy outlined by Mr Newton when he announced the ex-gratia payment in November 1987 had been incorporated into the Trust Deed, a copy of which was attached to the minute.

3.17. Dr Moore also advised that officials were maintaining a close contact with the officers of the Trust and the trustees. Officials considered that trustees appreciated the urgency of the need and were not in any way complacent, and that they were tackling the complicated task given to them in a responsible way.

3.18. On 2 December 1988, my private secretary, Mr Davey, sent a minute to Dr Moore with my comments on his minute of 17 November 1988 [DHSC0003311_014]:

> *"MS(H) has seen your minute to Mrs Goldhill of 17 November. He has commented that he would like to receive 2 monthly reports on the activities of the Trust, commencing January 1989. I would be grateful if you could arrange this."*

3.19. I am asked at question 18 of the Rule 9 request about a letter from Dr Moore to the Reverend Alan Tanner, Chairman of Trustees of the Macfarlane Trust, dated 6 December 1988 [DHSC0003311_012]. This letter refers to Ministers having expressed some concern at recent press reports which suggested that

the Trust had not been distributing money as quickly as it should. It also refers to my request for two monthly reports on the activities of the Trust. Whilst I did not see this letter at the time, the background to it is set out above. In answer to the specific questions raised by the Inquiry:

a. Both the Secretary of State and I had asked officials for information relating to the progress of the Trust's work following the Sunday Times article of 9 October 1988.

b. I asked for two monthly reports on the activities of the Trust because I wished the Trust to progress the allocation of grants to beneficiaries with all due alacrity and considered that the best framework for imposing some pressure to do so was regular reporting. I think that I was sufficiently concerned by the reports of delay in the Sunday Times article that I thought this step was necessary to assure myself that the work of the Trust was proceeding expeditiously.

c. The reports I requested were provided, albeit that the first of these reports covering activities to mid-January 1989 does not appear to have been sent to my office until 10 March 1989 **WITN7068005** The second report was sent to my office on 17 March 1989 ([DHSC0003308_007], [DHSC0003309_001], [DHSC0003308_001] and [DHSC0003308_002]). The third report was sent to my office on 21 July 1989 ([DHSC0003319_012], [DHSC0003320_004] and [DHSC0002956_002]). Searches of the documents carried out on my behalf have not located any further periodic reports provided to me before I left the Department on 27 October 1989. It seems from a letter from the Reverend Alan Tanner to Mr Hepple [*sic*] dated 26 June 1989 that the first two reports provided had not led me to raise any concerns [DHSC0002955_009], and I cannot recall having had concerns on reading the reports.

d. I cannot recall there being any further investigations carried out, at least not at my behest. Having in place a framework for reports to be provided on the Trust's activities, I would not have put in train further

investigations unless I had been concerned about the content of those reports.

e. As set out above, both the Secretary of State and I raised questions to our officials following the Sunday Times article of 9 October 1988, prior to Dr Moore's letter to the Reverend Alan Tanner of 6 December 1988.

3.20. I am asked at question 15 of the Rule 9 request whether the Department of Health had an obligation actively to monitor the Macfarlane Trust and, if so, by what process. I was not at the time and am not now aware of there being any such obligation.

3.21. In answer to question 16 of the Rule 9 request, I received updates on the Trust's progress in making payments by way of the two monthly reports I requested.

3.22. I am asked at question 17(d) of the Rule 9 request whether I was aware of any discussions during my time as Minister of State about the effect on the Macfarlane Trust of increased life expectancy of people with HIV and AIDS. I can see no indication on the documents I have been provided with that this specific issue was raised with me by officials at this stage and I do not think I was aware of such discussions at the time.

3.23. Question 19 of the Rule 9 request relates to an answer I gave to the House on 19 October 1989 in response to a parliamentary question to the Secretary of State for Health from Mr Ashley, whether he would *"request the Macfarlane Trust to consider giving grants for legal fees that have arisen solely because haemophiliacs have become infected with the AIDS virus."* [WITN0758028]. This was one of three parliamentary questions asked by Mr Ashley about the administration of the Macfarlane Trust. My response to all three questions was as follows:

> *"The Macfarlane Trust is an independent charitable trust. It is a matter for the trustees, and not the Department, to determine within the provisions of the Trust Deed the criteria for allocating funds. A copy of that Deed is in the House Library. I understand that the Trust consider it inappropriate to help with legal fees incurred by haemophiliacs with HIV who wish to*

pursue claims for compensation. Those who consider themselves in need of assistance can apply for Legal Aid in the normal way."

3.24. I can see that a suggested reply was produced by Departmental officials ahead of me answering Mr Ashley's questions and that an explanatory note was provided [WITN7068006], although it is unclear whether I had sight of the explanatory note at the time. This note made clear that the Department had strictly observed the independent status of the Macfarlane Trust since it was established in March 1988, that it was for trustees to decide applications for financial help.

3.25. In answer to question 19(a) of the Rule 9 request, as far as I can recall, neither I personally nor the Department raised this issue with the Macfarlane Trust, although I imagine that officials would have established what the Macfarlane Trust's policy on applications for legal fees was before providing the suggested reply they did. Given the independent status of the Trust, it is unlikely that I, other Ministers or officials would have felt that it was appropriate for the Department to have intervened in this matter. I think my view at the time would have been that the Trust's approach was correct. I would have been concerned if funds that were intended to allow beneficiaries to mitigate the effects of their infection were being used to pay lawyers.

3.26. In answer to question 19(b) of the Rule 9 request, it is my understanding from the explanatory note referred to at paragraph 3.24 above that the Macfarlane Trust decided applications for financial support with reference to its Grant Allocation Policy, which the author of that note stated was circulated to MPs in November 1988. I am unable to say from my knowledge whether any government department had a role in the development of the Grant Allocation Policy generally, or any policy the Macfarlane Trust may have had relating to applications for legal fees specifically. I think it is unlikely, given that decisions about allocation of grants were for trustees and not the Department of Health, or (as far as I am aware) any other government department.

Section 4: The HIV Litigation

4.1. At question 20 of the Rule 9 request, the Inquiry has asked me to explain, in broad terms, my role as Minister of State for Health in the litigation brought against the Department of Health and other defendants by people with haemophilia who had been infected with HIV ("the HIV litigation"). I do not recall having been given formal responsibility for the HIV litigation by the Secretary of State, although I can see from the papers now provided to me that a number of submissions were addressed to me, with a copy being sent to the Parliamentary Under-Secretary of State (by this stage Roger Freeman). This may have been because of my overall responsibility for AIDS. Whilst it is difficult now to remember the detail of becoming involved in questions relating to the HIV litigation, I think I regarded it as an important matter, all the more so because of the desire, always at the back of my mind, for there to be a good outcome for the people who had suffered in this way. It is also likely that I took an interest because of my legal background.

4.2. In answer to question 20(a) of the Rule 9 request, and as I have explained above, I had a level of responsibility for the HIV litigation. Ultimate responsibility for this rested with the Secretary of State for Health (in the sense that he had ultimate responsibility for *everything* within his Department) and as such on at least two occasions I took the view that the Secretary of State should consider the papers relating to certain developments himself (as is addressed further at paragraph 4.46(c) below). I understand that the Parliamentary Under-Secretary of State for Health had responsibility for blood products more broadly, consistent with the fact that the first submission sent to Ministers about the litigation was sent to the Parliamentary Under-Secretary's office rather than mine and future submissions were generally copied to his office as well.

4.3. As to question 20(b) of the Rule 9 request, I have set out my chronological involvement in the HIV litigation below at paragraphs 4.6 to 4.45 and it is apparent from that summary and the underlying documents which Departmental officials provided me with advice on this issue. I do not think that anyone outside the civil service provided advice directly to me.

4.4. I am asked at question 20(c) of the Rule 9 request to explain the interaction I had with the Treasury and No.10 in respect of the HIV litigation. I do not recall having any direct interaction with either the Treasury or No. 10 on this matter when I was Minister of State for Health, and there is no suggestion of this on the documents which have been provided to me.

4.5. I am asked at question 20(d) of the Rule 9 request the extent to which, if at all, I was assisted by my own legal training and career in dealing with the HIV litigation. In answering this question, I am asked to describe, in broad terms, the nature of my practice at the Bar. Having a legal background made it easier for me to understand the flow of information about the litigation that came to me in submissions but I was considering the litigation as a Minister, not as a lawyer. As such, my legal training and career had limited relevance to the questions I was being asked to consider in this capacity. By the end of my time at the Bar I mainly practised in industrial relations law.

4.6. Based on the documents which have been provided to me, it appears that the HIV litigation first came to my attention in June 1989. In answer to question 21 of the Rule 9 request, I do not think I had any involvement in or knowledge of the HIV litigation before becoming Minister of State for Health.

4.7. On 15 June 1989, Mr Dobson (Health Services Division 1) sent a submission to Mrs Kirk, private secretary to the Parliamentary Under-Secretary of State for Health, Roger Freeman, about the litigation [DHSC0004776_039]. This submission was copied widely, including to my private secretary, Mr Davey and the offices of the Permanent Secretary and the Chief Medical Officer, Donald Acheson. The submission informed Ministers of the litigation, sought Ministers' views on the case for resisting the plaintiffs' attempt to proceed by way of a group action and sought Ministers' views on other options for handling the litigation and the controversy it was likely to engender. The submission was sent ahead of a meeting with the Treasury Solicitor planned for 21 June 1989 in preparation for a court hearing on 29 June.

4.8. The background to the litigation was set out at paragraphs 2 to 4 of the submission. Paragraph 4 included a view from officials about the merits of the claims being brought:

> *"We believe that the government has a fair chance of successfully defending its role and that of HAs in the court actions, given that at every stage it has acted as swiftly as possible to minimise the risk of infecting haemophiliacs with AIDS in the light of the best expert opinion available at the time."*

4.9. The arguments for and against a class action from the perspective of the plaintiffs and the Government were set out at paragraphs 5 to 7 and some options for Ministers to consider were set out at paragraph 8:

> *"In the light of these arguments, would ministers wish to:*
>
> *i. attempt to resist the class action and try to fight each case individually, or*
>
> *ii. accept in principle the value of a class action but suggest a subdivision so that 3 or 4 cases typifying different aspects could be examined first?*
>
> *And would they wish:*
>
> *iii. officials to seek to bring forward one of the blood transfusion cases as a test case"*

4.10. The submission also addressed the question of no fault compensation, at paragraph 9, with Mr Dobson asking whether Ministers wished officials to examine the option of a no fault compensation scheme, such as the one developed by the West German authorities.

4.11. Paragraph 10 of the submission dealt with publicity and Mr Dobson asked whether Ministers wished to see more detailed proposals for seeking publicity to convey the Government's position on the litigation.

4.12. On 16 June 1989, Mr Dobson sent Mr Davey a note covering some handwritten comments made by Mr Heppell on his submission of 15 June 1989 [WITN7086007] and [DHSC0003849_114], addressed to Mrs Kirk. These comments read as follows:

> *"Mrs Kirk*
>
> *I have discussed with Mr Dobson*

The Government has so far resisted liability. But Ministers would not want to appear to be exploiting legal procedures I recommend: 8(ii), 8(iii) 10 and against 8(i) and 9."

4.13. On 26 June 1989, Mr Dobson sent my office a further submission on the HIV litigation, based on the submission of 15 June 1989 but updated following a conference with Counsel [MHRA0017681]. This was copied to the offices of the Parliamentary Under-Secretary of State, the Permanent Secretary and the Chief Medical Officer, among other recipients. Ministers' views were sought, once more, on the case for resisting the plaintiffs' attempt to proceed by way of a group action, the question of ultimate liability raised by Counsel for the Department and other options for handling the litigation and the controversy it was likely to engender.

4.14. The arguments for and against a class action from the perspective of the plaintiffs and the Government were set out at paragraphs 6 to 8. It appears that the input of Counsel in conference had led to the options presented to Ministers in relation to the class action question being modified, Mr Dobson having noted Counsel's suggestion that early litigation be steered towards haemophiliac cases, the (relatively small) number of transfusion cases not being representative. The proposed way forward was set out at paragraph 9:

"In the light of these arguments, do ministers agree that our Counsel should

i. accept in principle the value of a class action but suggest a subdivision so that 3 or 4 cases typifying different aspects could be examined first?

ii. try to steer early litigation towards the haemophiliac cases"

4.15. Mr Dobson's submission of 26 June 1989 contained a new section on the role of the Department, at paragraphs 10 to 11. Mr Dobson noted that action was being taken against individual doctors and health authorities as well as the Department. Counsel had asked whether the Government would increase the financial allocations to health authorities who lost actions against them, something officials advised against. Counsel had also raised a 'duty of care' argument relating to the health authorities:

> *"11. Counsel has indicated that he will wish to establish that, in respect of choice of patient treatment, the 'duty of care' lay with the HAs and not with the Department. He recognises that there could be presentational difficulties in this – it would be important not to imply that the Department had no role in, for example, disseminating expert guidance – but he regards it as necessary to establish this principle both as a precedent for future litigation, and for tactical reasons so that he can argue that proceedings against the Department should be withdrawn. Are Ministers content with this approach? (The role of the licensing authority and the Committee for Safety of Medicines raises different issues and MCA will be putting up a separate submission on this.)"*

4.16. The section of the submission dealing with no fault compensation had been modified since Mr Dobson's earlier submission. The West German scheme was referred to and the advantages and disadvantages of such a course were set out but Mr Dobson's conclusion was as follows:

> "*We do not therefore propose to examine this option further. Do ministers agree?"*

4.17. The section of the submission relating to publicity remained unchanged.

4.18. The submission included a summary of recommendations at the end:

> "*14. Ministers are asked to agree*
>
> - *the proposal for handling claims from haemophiliacs (paragraph (9i))*
> - *that early cases should be restricted to haemophiliacs (paragraph (9.ii))*
> - *that RHAs/DHAs should defend their own cases and meet their own costs without indemnity as at present and that Counsel can so represent (paragraph 10)*
> - *that Counsel can represent that the duty of care in respect of patient treatment lies with other defendants (paragraph 11)*
> - *that no fault compensation is not an option (paragraph 12)*
> - *that proposals for positive publicity for the government's position should be submitted (paragraph 13)."*

4.19. Also on 26 June 1989, a submission was sent to my office by D O Hagger (Branch MB1 of the Medicines Division) [DHSC0043529]. This submission was copied to the offices of the Parliamentary Under-Secretary of State, the Permanent Secretary and the Chief Medical Officer, among other recipients. It was said to complement Mr Dobson's submission of the same date, which had been sent to the Medicines Control Agency ("MCA") in draft on 23 June 1989. Mr Hagger's submission noted that the Licensing Authority ("LA") and the Committee on the Safety of Medicines ("CSM") had been joined in the litigation and provided comments on the 'duty of care' issue and 'no fault compensation' which took account of the Ministers' role as the LA for human medicinal products.

4.20. At paragraphs 5 to 8, Mr Hagger set out why his team took the view that the 'duty of care' or public policy legal arguments should not be used to avoid action against the LA/CSM. Whilst there were arguments for the use of such arguments, neither defence had ever been used by the LA/CSM before, it might not be attractive politically for the LA to be seen to be seeking to avoid court redress over drug damage however strong the technical justification and Ministers might consider that the public would view such avoiding action as especially inappropriate in this particular case.

4.21. No fault compensation was addressed at paragraph 9 of the submission:

> "*Pressure on the Government to introduce a no fault compensation scheme for patients alleging drug damage first arose during the Opren case and the issue has since been raised several times over drugs in general, both inside and outside Parliament. The Government's consistent line has been that this is a matter for individuals and the industry, if necessary through the courts. The Government has also referred to measures introduced in March 1988 by the Consumer Protection Act 1987 and to the Civil Justice Review. Allowing no fault compensation solely in the case of haemophiliacs contracting AIDS through use of blood products would not be easy to ring-fence and the line against giving compensation to other 'deserving cases' alleging injury from taking other medicinal products, eg. Benzodiazepines would be hard*

to sustain. The recommendation in the HS paper, paragraph 12, that no fault compensation is not an option, is strongly supported."

4.22. At paragraph 10, the recommendation made by Mr Hagger was as follows:

"*Ministers are invited to agree:*

(a) not to use the 'duty of care' (or public policy) legal arguments to avoid action against the Licensing Authority/CSM; and

(b) that no fault compensation is not an option (as recommended in the HS paper, paragraph 12)."

4.23. On 24 July 1989 my assistant private secretary, Rachel Woodley, provided my comments on Mr Dobson's submission of 26 June in a minute to Mr Arthur (also from HS1) [DHSC0003989_071]:

"MS(H) has seen your submission of 26 June and has commented:

For the present

- I agree with the line proposed at Paragraph 9.

- I am cautious about the line at Paragraph 11. I believe HAs act under our guidance in such matters. Equally though I do not favour offering any indemnity at this stage.

- I would not wish to pursue the West German scheme. But I would welcome a checklist of information as to how other countries with this problem have dealt with the matter.

- The infection of haemophiliacs with the AIDS virus is a great tragedy – one of the worst medical tragedies of recent times.

In the longer term Mr Mellor has said that he is not convinced that this approach will be adequate. Mr Mellor would like a meeting to discuss this in early September. Mr McHugh will be contacting you to arrange this."

4.24. I am asked a number of questions about Mr Dobson's submission of 26 June 1989 and my comments made in response set out in Ms Woodley's minute of 24 July 1989, at question 23 of the Rule 9 request.

4.25. I am asked at question 23(a) why this submission was sent to me, rather than the Secretary of State or other Department of Health Ministers. It would not have been unusual for this kind of submission to come to other Ministers in the first instance, rather than going directly to the Secretary of State; the Secretary

of State would not have been able to consider every submission that was put up to Ministers on every issue across the Department and part of my role was to assess when a matter should be brought to the Secretary of State's attention. As I have already touched on and address further below, when the HIV litigation came to my attention for the second time in October 1989, I took the view that the Secretary of State should be made aware of developments and papers were copied to his office accordingly. I do not know why Mr Dobson's submission of 26 June 1989 was sent to me and only copied to the Parliamentary Under-Secretary of State, who might have been the more obvious Minister to deal with this as he had responsibility for blood products. I note that Mr Dobson's original submission dated 15 June 1989 was, in reverse, sent to the Parliamentary Under-Secretary of State and copied to my office. It is possible that I expressed interest in being briefed on the litigation following this. I know that I considered it an important matter at the time, first because I felt for those who had suffered so awfully as a result of being infected with HIV and secondly because of my interest in the law.

4.26. I am asked at question 23(b) to provide reasons for the position I took on the matters put to me for consideration. In relation to paragraph 9 of Mr Dobson's submission, I agreed with the course proposed by officials and Counsel that the Department should accept in principle that the claims brought should proceed by way of a class action but suggest a subdivision so that 3 or 4 cases typifying different aspects could be examined first, and that early litigation should be steered towards the haemophiliac cases. This would have seemed like a sensible course to me. My thinking on the 'duty of care' argument relating to health authorities is, I think, apparent on the face of Ms Woodley's minute; I had reservations because I considered that health authorities acted under the Department's guidance in relevant matters. As I have addressed further below, I believe I also thought that it was an unattractive argument, especially in the context of this particular set of facts.

4.27. I am asked at question 23(c)(i) what my views were on the West German scheme and why I did not wish to pursue it. It is difficult to recall exactly what my thinking was at the time, but I think that I did not see a compensation scheme

of the type set up in West Germany as being an answer to the litigation. The scheme was said by Mr Dobson to have involved haemophiliacs who had been infected being "offered a relatively modest sum – believed to be about £30k – in return for an undertaking not to sue for damages". I think that my view at the time would have been that the West German scheme was a relatively crude way of dealing with matters, and that a sum around the level of £30,000 per individual affected would not be enough to be attractive to the plaintiffs.

4.28. In answer to question 23(c)(ii), I would not have discussed pursuing such a scheme with the Secretary of State, or the Treasury, since officials were not proposing to examine this option further and I was not in favour of it.

4.29. In answer to question 23(c)(iii), I do not know the basis on which Mr Dobson suggested that many haemophiliacs might not accept compensation.

4.30. I am asked at question 23(d) whether the "checklist of information as to how other countries with this problem have dealt with the matter" I requested was provided. Searches carried out on my behalf have not located any documents to suggest that it was, although I think that I saw some information relating to the approach taken in other countries later when I was briefed on the HIV litigation in my capacity as Chief Secretary to the Treasury (see paragraph 5.17 below).

4.31. I am asked at question 23(e) why I formed the view that the approach set out in Mr Dobson's submission of 26 June 1989 would not be adequate in the longer term. My view from the outset was that a solution needed to be found that provided a good outcome for the plaintiffs in this case, that dealt more obviously with the consequences for the people who had suffered and were suffering as a result of their infection with HIV. I think that I was interested in trying to find a creative solution and thought that being too narrowly legalistic about this case, defending the litigation along conventional lines, was unlikely to be adequate.

4.32. In answer to question 23(f), I do not think I had specific alternatives to the outlined approach in my mind at that early stage, I just felt that more thought needed to be given to what could be done. I was setting down a marker that I thought a better answer to this would be needed.

4.33. In answer to question 23(g), it appears from the documents retrieved by searches carried out on my behalf that my request for a meeting led to a meeting between the Chief Medical Officer, Donald Acheson and I on 30 August 1989 (see the minute dated 23 August 1989 sent by Dr Rejman to the Chief Medical Officer's office ahead of this meeting [MHRA0017687], which enclosed a briefing for Dr Acheson). No minutes or notes of this meeting have been located, however, and I cannot recall what was discussed so long after the event.

4.34. It appears from the documents I have been provided with that the next time I became involved with questions relating to the HIV litigation was in October 1989, following the publication by the Sunday Times on 1 October 1989 of an article entitled 'Blood money: the battle for justice' [DHSC0046937_132].

4.35. On 11 October 1989 my private secretary sent a minute to Mr Heppell entitled 'Haemophiliacs – Sunday Times article' [DHSC0003849_078], which read as follows:

> "*1. While returning from Qatar, Mr Mellor handed me the attached article from the 'Sunday Times'. Mr Mellor has asked for advice as to whether there is any case for changing the basis for funding the Macfarlene [sic] Trust – if we can find any money for 'topping up'. He also would like to know what criteria the Trustees apply when making awards.*
>
> *"2. He feels that the Department will lose on this whatever the outcome of the court case, and would like to see what more can be done. He thinks Secretary of State should also be made aware of the problem, and I am copying this to Mr McKeon accordingly.*
>
> *3. I would be grateful for advice by 24 October please."*

4.36. On 12 October 1989, the Duchy of Lancaster's office contacted my office to request a line to take regarding a letter dated 10 October 1989 from the then Editor of the Sunday Times, Andrew Neil [DHSC0006484_021]. Whilst I do not think I would have been aware of this request at the time, this appears from the documents sent to me by the Inquiry with the Rule 9 request to have led to a

briefing note being sent to No. 10 by Departmental officials [DHSC0006484_020]. It seems that this briefing note was shared with my private secretary, although a fuller response to my request for a briefing conveyed in Mr Davey's minute of 11 October 1989 was provided on 26 October 1989 [DHSC0002536_078] (as to which, see further below at paragraph 4.45).

4.37. In the meantime, on 17 October 1989, Mr Wilson of the MCA sent a submission to my office, copied to a number of officials, entitled 'HIV, Valium/Librium litigation' [DHSC0041034_021]. My views were sought on the question of whether the 'duty of care' argument should be raised at a preliminary hearing in the HIV litigation on 23 October.

4.38. The background to this request was set out at paragraphs 2 to 5 of the submission. A case involving Valium had been brought against the LA and CSM alleging negligence in not warning of the dangers of benzodiazepine dependence. Counsel acting for the LA/CSM in that case had given strong advice that an argument should be run as a preliminary issue that neither the LA or the CSM owed a duty of care to an individual and that there was therefore no case to answer. Whilst the argument had not been run in litigation involving the LA/CSM before, there were two recent cases in which it was held that a public body set up to protect the public at large had no duty of care to individuals. It was said that Counsel considered that the argument should be run in the Valium case and that he took a similar view in relation to the HIV litigation. A written opinion from Counsel on the issue was awaited. Mr Wilson noted that it may be difficult to raise the duty of care issue later in the HIV case if it were not raised at the hearing on 23 October. Further, not raising it in the HIV case could make it difficult to raise it in the Valium case.

4.39. My view was sought in the following terms:

> *"6. We would accordingly like MS(H)'s view on whether to instruct Counsel to indicate on Monday that Licensing Authority and the CSM may want to raise this issue in the preliminaries in the HIV litigation. If he agrees, does he also wish to extend this to cover the position of the Secretary of State in respect of his duties in NHS legislation?"*

4.40. I was provided with a draft submission on the Valium/Librium case [WITN7068008], which had not been finalised as officials were waiting for Counsel's written opinion on the case.

4.41. On 18 October 1989, Mr Dobson sent a submission to my office commenting on Mr Wilson's submission of 17 October 1989 [DHSC0006279_018]. Mr Dobson addressed the question of extending the 'duty of care' argument to the position of the Secretary of State under NHS legislation (as opposed to his responsibilities as the LA). He raised two potential difficulties with applying the 'duty of care' argument, that there is no general 'duty of care' to individual patients, in this context in the HIV litigation. He advised that the next day, solicitor colleagues would be asking Treasury Counsel whether he saw any prospect of running the 'duty of care' argument solely in respect of the LA/CSM and not in respect of the Secretary of State's NHS responsibilities. In conclusion, it was suggested that:

> *"i. MS(H) should allow Treasury Counsel to raise the "no duty of care" argument at Monday's hearing as a possible preliminary issue across the board, but that*
>
> *ii. HS1/SOL should seek further advice from counsel on the scope for deploying this argument solely in respect of the Licensing Authority/CSM."*

4.42. On 23 October 1989, my assistant private secretary, Ms Woodley, sent a minute to the Secretary of State's private secretary, Mr McKeon [DHSC0041034_009]. The minute was copied to a number of officials including Mr Wilson and Mr Dobson. It read as follows:

> *"Mr Mellor has considered the attached submission from Mr Wilson of 17 October and has commented:*
>
> *"I do not think it would be to the Government's advantage to take this path in the HIV cases. We should be much criticised and public confidence put at risk. However, I do not think the valium/librium situation is the same. In my view it is not so serious and I think there would be advantage in giving the point an outing there."*
>
> *MS(H) said that he would like S of S to consider these papers."*

4.43. On 25 October 1989, Mr Wilson sent a minute to Mr Dobson and my private secretary, Mr Davey, on the question of the 'duty of care' argument [DHSC0046945_060]. I was provided an update following advice from Counsel as follows:

> *"3. Counsel has advised (orally) that it would be very difficult to raise the duty of care issue in the Valium case and not in HIV when as he sees it the issues, at least for the Licensing Authority and the CSM are identical. He points out that to argue the issue in that case but not in the HIV case could in itself cause bad publicity about an implied difference in Government attitude to sufferers from tranquilliser dependency as distinct from haemophiliacs with HIV infection.*
>
> *4. Counsel suggests an alternative, for consideration, as follows: -*
>
> *a the duty of care issue should be argued in respect of the licensing Authority and the CSM under Medicines legislation in both HIV and valium cases.*
>
> *b the duty of care issue should not be raised in the HIV litigation in respect of the Secretary of State's responsibilities under NHS legislation.*
>
> *c but in the HIV litigation the argument should be run that the allegations which concern questions of policy (eg on priorities and resource allocation) should be struck out as non justiciable, leaving other allegations concerning other aspects of the Department's involvement in its administrative/operational function, intact as issues to be tried in the main proceedings.*
>
> *5. The alternative at 4a commends itself to the MCA.*
>
> *6. Would MS(H) like to consider this matter again in the light of Counsel's suggestions?"*

4.44. I do not think I would have had a chance to consider this document before I left the Department of Health on 27 October 1989. There is no evidence that I did so on the documents I have seen. I remember discussions about my proposed move from the Department of Health to the Home Office having taken place over a number of days before my departure, and it is likely therefore that I was fairly fully occupied by these discussions and the prospect of moving Department at this time.

4.45. Similarly, whilst Mr Dobson sent a briefing entitled 'Haemophiliacs and AIDS: Sunday Times campaign' to my private secretary on 26 October 1989 ([DHSC0002536_078], [DHSC0002536_079], [DHSC0006401_090] and [DHSC0002536_081]), in response to my request conveyed in Mr Davey's minute to Mr Heppell of 11 October 1989 (see paragraph 4.36 above), I think it is very unlikely that I would have seen this (and even less likely that I would have had a chance to consider it) before my departure the next day.

4.46. At question 24 of the Rule 9 request, I am asked a number of questions about the approach taken by the Department to the litigation following the publication of the Sunday Times article of 1 October 1989. I have set out my involvement during this period above in general terms. In answer to the specific questions raised by the Inquiry:

a. I think it is accurate to say that I was "increasingly uneasy" about defending the litigation in the way proposed. As I have already alluded to, I had a great deal of sympathy for the plaintiffs in the case, who on any view had suffered dreadfully as a result of the situation that had been visited upon them. It felt wrong to me to argue that these individuals were not owed a duty of care by the Department. I also considered that the number of individuals involved was relatively small (Mr Dobson's submission of 26 June 1989, at paragraph 4, put the number of haemophiliacs who had become infected with the AIDS virus as a result of receiving infected blood products at 1,200). I therefore thought that it should be possible for us to do something to help them. I do not recall whether other Ministers felt "increasingly uneasy" or not. As to the points made by Andrew Neil, his was a highly effective polemic.

b. I am asked by the Inquiry why I felt that "the Department will lose on this whatever the outcome of the court case", why I wanted "to see what more can be done" and whether I had any particular action in mind (as per the minute of 11 October 1989 from my private secretary to Mr Heppell, the full text of which is set out above at paragraph 4.35). My assessment of the likely consequences for the Department came from experience. I had by this point been a Minister in difficult Departments for the best part

of a decade. One could not fail to be affected by what had happened to the plaintiffs in this case. I wanted to see what more could be done because I felt that if ever there was a case for doing something exceptional this was it. It seems from Mr Davey's minute that I had in mind further funding of the Macfarlane Trust, and wished to have advice on the options from officials.

c. It was my job as Minister of State to make sure that the Secretary of State was never taken by surprise. In relation to the HIV litigation, on at least two occasions I took the view that the Secretary of State should consider the papers relating to developments himself and papers were sent to his office accordingly (see, for example, Mr Davey's minute of 11 October 1989, the content of which is set out at paragraph 4.35 above and Ms Woodley's minute of 23 October 1989, paragraph 4.42 above). In parallel, I may very well have raised the litigation in conversation with the Secretary of State when we met in person.

d. I am asked by the Inquiry how effectively civil servants responded to my request to see what more could be done on the litigation. I can see from the papers now provided to me that my request set out in Mr Davey's minute of 11 October 1989 led to a submission with a full briefing and annexes being sent to my office on 26 October 1989 ([DHSC0002536_078], [DHSC0002536_079], [DHSC0006401_090] and [DHSC0002536_081]). This was the day before I left the Department and I think it is very unlikely I would have seen these documents before my departure. As such, I do not feel able to comment on their content now.

e. The Inquiry has asked me how closely involved I was in the detail of the discussions within the Department about the litigation, evident from a number of documents I have been provided with. I would not have seen at the time any documents beyond those enclosed with submissions and minutes sent to my private office staff. I have already addressed above the documents which I think I would have seen at the time. I am asked whether I would have seen Counsel's advice. This does not appear to

have been sent to me with any relevant submissions or minutes and I therefore do not think I saw this at the time.

f. I am asked about a briefing note that the Department provided to No. 10, referred to in a minute from Mr Heppell to Mr Dobson dated 16 October 1989 [DHSC0006484_020]. Mr Heppell suggested in this minute that the briefing note had been provided to my private secretary on the previous Friday. I am asked to provide any evidence I can about the briefing note that was sent to No. 10. Document searches carried out on my behalf have located a one page background note and line to take on the HIV litigation, which appears to have been faxed to a member of the No. 10 staff on 10 October 1989 ([DHSC0046937_032] and [DHSC0046937_033]). It is possible that this is the briefing referred to by Mr Heppell. The searches done did not locate any correspondence from Mr Heppell to Mr Davey enclosing this background note and line to take and I do not know whether I saw this at the time. It does not appear to add materially to the information I did receive from officials referred to above. I am asked if I recall what involvement the Prime Minister and her office had in the litigation at the time. I am afraid I do not.

g. I am asked to explain why I preferred not to run an argument on the Government's duty of care in the HIV litigation, but wished to do so in the Valium/Librium litigation (Ms Woodley's minute to Mr McKeon of 23 October 1989, the content of which is set out above at paragraph 4.42). I felt that the cases were of an entirely different nature. As I have already explained above, I felt the circumstances of the haemophiliacs infected with HIV as a result of their treatment provided by the NHS to be somewhat exceptional. I did not think that taking technical legal points in the HIV litigation was the way to go.

h. I am asked whether I was made aware of the views of civil servants about my decision on the 'duty of care' argument before I left my post as Minister of State for Health. As stated above, I do not think I would have had a chance to consider Mr Wilson's submission of 25 October 1989 before I left the Department on 27 October 1989.

i. As addressed above, I do not think I would have seen Mr Dobson's submission of 26 October 1989 before I moved to the Home Office.

j. The Inquiry asks what effect, if any, the Sunday Times campaign had on the position of the Department of Health and the wider Government on the HIV litigation. I expect that it did have an effect, although I cannot say what that effect was given the timing of me moving Departments. The Sunday Times is an influential newspaper and the issues being raised by it were not ones that could easily be pushed aside.

4.47. I am asked by the Inquiry at question 25 of the Rule 9 request whether I continued to receive briefings on the progress of the HIV litigation between my departure from the Department of Health on 27 October 1989 and being appointed as Chief Secretary to the Treasury on 28 November 1990. I did not receive briefings on the HIV litigation when I was at the Home Office and I would not have expected to, the Home Office having no involvement in the litigation.

Section 5: Litigation Settlement

5.1. I am asked a number of questions in the Rule 9 request about my involvement in the HIV litigation settlement when I was Chief Secretary to the Treasury. I would like to say at the outset that I am entirely reliant on the Inquiry providing me with documents from the time when I was at the Treasury as my legal team does not hold any Treasury documents. If any further relevant documents are identified after this statement has been provided, I will provide a further statement to deal with these.

5.2. I am asked at question 26 of the Rule 9 request who the senior figures at the Treasury involved in the litigation settlement were and who was responsible for the legal advice provided to the Treasury. I have no independent recollection of who these figures were now, but where the names of the individuals involved are apparent from the documents I have referred to them in the account I have set out below of my involvement in the HIV litigation whilst I was at the Treasury.

5.3. It appears from the documents provided to me by the Inquiry that I was first sent a submission about the HIV litigation in my capacity as Chief Secretary to the Treasury on 29 November 1990 [HMTR0000002_011]. This was from A J C Edwards and was copied to the Chancellor and, it appears, other officials. Mr Edwards explained the state of play in the following way:

> *"2. Counsel for the haemophiliacs, Hugh Evans, has now told DH's counsel, Andrew Collins QC, that he would be prepared to advise his clients to settle for payments totalling some £42 million. Ministers need to decide how the Government should respond.*
>
> *"3. Mr Waldegrave has asked to discuss this with you in the next day or two. It will be necessary to consult the Chancellor and the Prime Minister as well. The passage of time since DH's receipt of counsel's proposal on 9 November and the mounting cost of legal preparations both argue for an early response."*

5.4. Mr Edwards set out the background to the litigation at paragraphs 4 to 12, including explanation that a further £24 million had been provided to the Macfarlane Trust the previous year to finance "non-discretionary payments of

£20,000 to each of the 1200 then known sufferers" and detail of recent discussions that had taken place between the Treasury and the Department of Health about the question of settlement.

5.5. The legal advice that the Department of Health had received from the Solicitor General and Andrew Collins QC, as reported to the Treasury, was summarised and it was noted at paragraph 14 that as the date of the trial had approached the Department of Health's legal advice appeared to have become more cautious. The Treasury's legal advice was summarised as follows:

> "*16. Our own legal adviser, while confirming our impression that DH's legal advice was likely to err on the gloomy side, has noted the risk that the judge might seek to extend the common law in this area along the lines that it has already been extended in areas such as loss adjustment for insurance.*"

5.6. Mr Edwards explained that the Department of Health's lawyers were putting the costs to the Government of letting the cases proceed at not less than £20 million, a figure that the Treasury's legal advisor considered to be extremely high.

5.7. The comparative costs of litigation versus settlement were addressed in the submission, as was the case for out-of-court settlement, the case for allowing litigation to continue, public expenditure consequentials, conditions for out-of court settlement and tactics on the response to the haemophiliacs' Counsel.

5.8. Mr Edwards concluded as follows:

> "*29. If the Chancellor is content, you may like to listen to what Mr Waldegrave has to say and, subject to that, explore the pros and cons of a possible out-of-court settlement with Mr Waldegrave along the lines sketched out above.*
>
> *30. If you feel as a result of your discussion that the balance of advantage lies with pursuing an out-of-court settlement, preferably along the lines and subject to the conditions suggested in paragraphs 26-8, you may like to suggest that if Mr Waldegrave minutes the Prime Minister you will stand ready to write in support.*"

5.9. I am asked at question 27(a) of the Rule 9 request whether I was provided with a copy of a minute from R B Saunders to Mr Edwards dated 27 November 1990 upon becoming Chief Secretary [HMTR0000002_010]. I would not have been as this is a minute between officials about what to include in a submission to be sent to me. Since I would not have seen this document at the time, I cannot answer question 27(b), which relates to an opinion expressed by Mr Saunders in it.

5.10. In answer to question 27(c), I would have seen the submission dated 29 November 1990 at the time as this was sent to "Chief Secretary" the day after I took office.

5.11. I am asked at question 27(d) whether I was broadly satisfied with the recommendations made in respect of settlement of the litigation. The context of this submission was a proposed meeting with the Secretary of State for Health, William Waldegrave and I to discuss whether settlement of the litigation along the lines proposed by Counsel for the haemophiliacs should be proposed to the Prime Minister. I was aware of this case from my time as Minister of State for Health, as addressed above. I had felt from the outset that the Government needed to find a solution that provided a good outcome to the people who had suffered so awfully as a result of being infected by their treatment, whatever the legal merits of the case. A similar view appeared to have been taken by the High Court judge hearing the case. As explained by Mr Edwards by way of background in his submission of 29 November 1990, Mr Justice Ognall had urged the Government "not to take a narrowly legalistic view but to explore the possibility of settling out of court". I am sure that I would have wanted to explore settlement of this case with Mr Waldegrave (as he then was) on consideration of Mr Edwards' submission. As is addressed further below, when I met Mr Waldegrave on 6 December 1990 we agreed that the litigation should be settled for the amount that had been identified by Counsel for the haemophiliacs as a figure he would be prepared to recommend to his clients.

5.12. In answer to question 27(e), I do not think my views on the litigation had changed since I was Minister of State for Health. The difference would have been that I had less time to deal with the matter as Chief Secretary to the

Treasury, which was a taxing role requiring oversight of issues emanating from all Departments. There would also inevitably have been a greater focus on whether settlement made financial sense, given the role of the Treasury in maintaining control over public spending.

5.13. I am asked at question 27(f) about Mr Edwards' comment that "our own legal adviser's impression is that the £20 million figure is extremely high". In relation to this, I am asked to what extent the Treasury relied upon the Department of Health's assessment of the costs for settlement. This was a reference to the Department of Health's estimate for the potential legal costs of all parties if the litigation were fought. It appears from the documents that Treasury officials asked Department of Health officials for an explanation of how this estimated figure had been reached, which was provided. It seems that there was some debate about whether this estimate was justified. Treasury officials would naturally have been keen to ensure that the figures provided in support of the alternative scenario to settlement were accurate. The debate appears to have led to a range of £12 million to £20 million for legal costs of all parties being adopted (see Annex A to the letter from Mr Waldegrave to the Prime Minister proposing that the litigation be settled [HMTR0000002_019]). I do not think this had any bearing on my assessment of whether the litigation should be settled.

5.14. At question 28 of the Rule 9 request, I am asked about my impression of the Government's strategy towards the litigation when I was appointed as Chief Secretary to the Treasury. I received Mr Edwards' submission of 29 November 1990 the day after I was appointed as Chief Secretary. My impression of the strategy to the litigation was that serious consideration was being given to settling the litigation for the sum identified by Counsel for the haemophiliacs. I cannot comment on the decisions made by my predecessor as I was not being asked to consider any such decisions by Mr Edwards at the time. I was simply being asked to consider the merits of settlement in light of the indication given by the haemophiliacs' Counsel ahead of a meeting with Mr Waldegrave. As I have already indicated, I was in favour of settlement.

5.15. On 3 December 1990, Mr Saunders sent a minute to me [HMTR0000002_014], again copied to the Chancellor and other officials. It was said to be a "post

script" to Mr Edwards' minute of 29 November 1990 and covered three further points to bear in mind when I met with Mr Waldegrave: Social Security disregard; international comparisons; and knock-on effects.

5.16. In relation to Social Security disregard, it was noted at paragraph 2 of the minute that the proposal from Counsel for the haemophiliacs contained the proposition that the payments should be disregarded for entitlement to means-tested social security benefits. This was described as "probably inevitable" but Mr Saunders explained that DSS had been informed of the proposal and were "considering whether it would cause them problems".

5.17. As to international comparisons, the following information was provided:

> *" 4. The UK is of course by no means unique in facing this problem. The £20,000 paid last year stands up well in comparison with other countries. If the present proposal were accepted, giving total payments in the range of £40,000 to £80,000, we would be well to the top of the league. The information we have so far about payments overseas is as follows:*
>
> | | |
> |---|---|
> | *Compensation payments* | |
> | *Canada* | *£60,000* |
> | *Germany* | *£27,000 (average: range up to £165,000)* |
> | *France* | *£10,000* |
> | *Exgratia payments* | |
> | *Denmark* | *£20-25,000* |
> | *Norway* | *£2,000* |
> | *Eire* | *£9,000* |
> | *Australia* | *£7 million total* |
> | *UK* | *£20,000"* |

5.18. Possible knock-on effects raised at paragraphs 5 to 7 included the effect for cases of those who had contracted HIV from blood transfusions and cases involving other blood borne viruses, as well as the implications in relation to the principle of no-fault compensation more broadly.

5.19. I am asked at question 29(a) of the Rule 9 request to what extent, if at all, the Treasury's strategy towards the litigation and subsequent settlement talks was informed by financial support schemes in other countries. International comparisons would have been relevant to our decision – this information allowed us to adjudge the projected UK figure against the figures for other countries. I had always been keen to achieve a good outcome for the individuals who had been so badly affected. I think that I would have been reassured that the settlement figure identified by Counsel for the haemophiliacs placed the United Kingdom "well to the top of the league" in comparison to compensation and *ex gratia* payments made overseas.

5.20. I am also asked, at question 29(b), to what extent, if at all, the Treasury was influenced by concerns that settlement might lead to no-fault compensation in respect of other (unrelated) cases. This appears to have been a consideration at the time, at least in the minds of officials, although any concerns that there were did not dissuade Mr Waldegrave and I from agreeing that the Government should settle the litigation. I cannot recall being particularly concerned about this myself at the time.

5.21. I am asked at question 30 of the Rule 9 request about an internal Department of Health minute from Mr Dobson to Mr Waldegrave's private secretary dated 5 December 1990 [DHSC0003383_006]. The minute attached supplementary briefings on some points which arose during discussion with Treasury officials ahead of the planned meeting between Mr Waldegrave and I. It also addressed how any settlement would be presented. I would not have seen this minute at the time and do not think I can assist with its contents. In particular, I do not know (and cannot now recall) how much, if any, of the information contained within it was conveyed to me during my meeting with Mr Waldegrave. As such, I cannot say, in answer to question 30, whether the information contained in the minute itself addressed the Treasury's principal concerns at that stage of the settlement process or not. I can see from a minute from Mr Edwards to me dated 6 December 1990 [HMTR0000002_017], however, that the supplementary briefings on litigation costs, legal aid and legal advice on the likelihood of losing the action attached to Mr Dobson's minute were provided as

"notes" to the Treasury and then to me. I think it is likely therefore that I had sight of these. Some insight into the Treasury's response to the information contained in these notes is provided by Mr Edward's minute of 6 December 1990. This is addressed further below at paragraphs 5.24 to 5.26. It appears that Mr Edwards still had some concerns, in particular in relation to the estimated litigation costs provided by the Department of Health.

5.22. At question 31, I am referred to the supplementary briefing for Mr Waldegrave relating to the litigation costs and asked about the extent to which the Government's litigation strategy was informed or influenced by recent comparatively sized litigation ("the Opren litigation" is referred to in that briefing). I have no memory now of comparatively sized litigation influencing my thinking on whether the HIV litigation should be settled. This appears from the supplementary briefing to have been raised in support of the Department of Health's estimate of the total legal costs of all parties if the litigation were fought. As I have already noted above, I do not think the discussions about this materially influenced the decision to recommend settlement to the Prime Minister.

5.23. Question 32 of the Rule 9 request refers me to further internal Department of Health correspondence, a minute from Dr Pickles to the Chief Medical Officer dated 5 December 1990 [DHSC0004365_015]. I am asked whether, at the time of my meeting with Mr Waldegrave on 6 December 1990, the issue of potential reputational damage to the National Health Service and associated professionals if the case was either (a) settled or (b) fought and lost was a factor in our discussions. I am also asked whether it was a matter that affected my views on settlement on this or at other times. I have not been provided with any minutes of the meeting that took place on 6 December 1990 and so I cannot say with any certainty whether this issue was discussed or not. I note that there is no mention of this issue in the letter sent to the Prime Minister by Mr Waldegrave on 7 December 1990. I do not remember this issue being raised with me and I do not think it is something that affected my views on settlement at this or other times, one way or the other.

5.24. On 6 December 1990, Mr Edwards sent a minute to me about the litigation [HMTR0000002_017]. This was copied to a number of other recipients, including a Mr Blythe of "T/Sol". It is possible that Mr Blythe was the solicitor at the Treasury Solicitor's Department who was providing the Treasury with legal advice on the litigation, although I cannot recall this individual now.

5.25. Mr Edwards explained that he had requested notes from the Department of Health on litigation costs, access to legal aid and prospects for the case, which he attached to his minute. He provided his comments on those notes.

5.26. I am asked at question 33 of the Rule 9 request about paragraph 2 of Mr Edwards' minute in which he sets out his understanding that junior Counsel's advice meant a "one-third chance of losing comprehensively", an assessment he considered junior Counsel to have made because he suspected that "the judge will bend over backwards to be favourable to the plaintiffs". In answer to the questions at 33(a) to (c):

a. I did not take exception to the flow of the argument on prospects of success. I had always felt that this was an impossible case for the Government to "win", regardless of the technical legal arguments.

b. Whilst I might not have put it in the terms Mr Edwards did (the judge would "bend over backwards" to favour the plaintiffs), I was aware that Mr Justice Ognall had already invited the Government to give consideration to settling the case and I understood that he had sympathy for the plaintiffs, as most people would.

c. I am asked to say whether the Treasury generally accepted Counsel's opinion on the prospects of success. I do not think I can speak in generalities. It would have depended on the particular case. In relation to this case, I am asked whether I or anyone else challenged Counsel's opinion or considered obtaining a second legal opinion. I have seen nothing on the documents provided to me to suggest that Counsel's opinion was challenged by me or anyone else within the Treasury or that consideration was given to getting a second opinion. I think it is very unlikely since the same day that Mr Edwards sent me this minute I met

with Mr Waldegrave and we agreed to recommend settlement for the figure identified by Counsel for the haemophiliacs to the Prime Minister.

5.27. At the meeting between Mr Waldegrave and I on 6 December 1990 we agreed that the Government should accept the "offer" from the haemophiliacs' lawyers [DHSC0003383_003].

5.28. Following the meeting between Mr Waldegrave and I on 6 December 1990, Treasury officials appear to have had input into a minute from Mr Waldegrave to the Prime Minister setting out the proposal that the litigation be settled (see Mr Edwards' minute of 7 December 1990 at [HMTR0000002_073]). I was asked whether I was content to be associated with the minute before it was sent. It seems from the wording of the final minute sent to the Prime Minister in the evening on 7 December 1990 [HMTR0000002_019] that I was, Mr Waldegrave noting at the end of the minute that I endorsed the approach suggested therein.

5.29. In answer to question 34 of the Rule 9 request, I was in agreement with the proposal that the litigation be settled because, as was explained by Mr Waldegrave in his minute to the Prime Minister at paragraph 6, I believed that "we should not pass by a possible opportunity to settle this very difficult issue". I had always felt that fighting the case was not the answer and I was in favour of settling the litigation at the level being proposed by the haemophiliacs' Counsel, which I believed achieved a good outcome for those individuals affected.

5.30. Question 35 of the Rule 9 request addresses the statement in Mr Waldegrave's minute to the Prime Minister of 7 December 1990 that "recipients of the new money would have to undertake to drop the existing cases and forswear bringing any future cases on the matter". I am asked specifically about the extent to which (i) I was and (ii) the Treasury was involved in the detail of establishing the terms giving effect to this condition. I would not have been involved in this at all. I think it is unlikely Treasury officials would have been involved either. I do not think I had any knowledge at the time of any requirement that those receiving payments pursuant to the settlement waive their right to bring claims for Hepatitis C infection as well as HIV infection. I

cannot say whether others in the Treasury had any knowledge of this or involvement in relation to the issue although again I think this is unlikely. I am asked if I had any views on the condition as described in Mr Waldegrave's minute to the Prime Minister. I do not think it was unusual for it to be a condition of settlement of litigation that the plaintiffs undertake to drop the cases in the litigation and not to bring further claims relating to the subject matter of that litigation. As such, I do not think I would have thought this condition was controversial at the time.

Section 6: Funding and Announcement of the Settlement

6.1. I am asked at question 36 of the Rule 9 request about a minute from Jeremy Heywood, my private secretary, to the private secretary to the Chancellor dated 11 December 1990 [HMTR0000002_021]. Mr Heywood was alerting the Chancellor's private secretary to Mr Waldegrave's desire to announce that afternoon that the Government had agreed in principle to accept the proposals put forward by the plaintiffs' Counsel for settlement, whether or not the steering committee of lawyers representing the haemophiliacs had signalled its agreement to Counsel's proposals by then. That I was against such a course of action was referred to in the minute. I am asked why I considered that this would be inadvisable. I considered this to be inadvisable because it is not prudent to announce that agreement has been reached before agreement has, in fact, been reached.

6.2. Question 37 of the Rule 9 request relates to the reference in Mr Waldegrave's minute to the Prime Minister of 7 December 1990 [HMTR0000002_019] to backbenchers exerting pressure on the Government to settle the litigation. Pressure from backbenchers is often of assistance in determining issues but in this case I had already formed a view on the litigation, as set out in full above. This was not, therefore, a significant factor for me in deciding that the Government should settle the litigation.

6.3. I am asked at question 38 of the Rule 9 request to consider a number of documents relating to discussion between February and May 1991 about the way in which the settlement, and the associated legal costs, would be funded, and in particular whether funds should come from the Reserve or the budgets of the health departments. I have set out a summary of the correspondence on this issue below.

6.4. On 22 February 1991 a minute was sent to me by Mr Dickson, a Treasury official, raising an issue about whether the Treasury had agreed to meet the reasonable legal costs of the plaintiffs to all health departments [HMTR0000002_047]. This had been prompted by correspondence from Mr

Lang, the Scottish Health Secretary, in which he had requested that the legal costs of the plaintiffs in Scotland be met from the Treasury Reserve.

6.5. Mr Dickson addressed the agreement that had been reached as follows:

> *"4. The basis of your agreement to meet the plaintiffs' legal costs is recorded in Mr Waldegrave's minute to the Prime Minister of 7 December which set out the details of the settlement you agreed with Mr Waldegrave a day or so before. The agreement was that the Reserve would meet the overall cost of a settlement between £44 and £46 million. Of this, the £42 million payment to the Macfarlane Trust has already been provided to the department, £0-2 million was allowed for undiscovered cases, leaving £2 million for legal costs. (The last item was presumably based on an estimate for England.)"*

6.6. Mr Dickson set out three options for responding to Mr Lang's request at paragraph 5:

> *"(i) accept that all three health departments should have access to the Reserve for legal costs;*
>
> *(ii) agree access to the Reserve for all legal costs, but only up to a total of £2 million (leaving departments to split any shortfall); or*
>
> *(iii) deny access to the Reserve for all three departments on the grounds that they are likely to fall in 1991-92 when they should be able to plan to meet them."*

6.7. In conclusion, Treasury officials recommended the third option, which would allow a fallback position of the second option.

6.8. I considered that it would not be unreasonable for all three departments to absorb these costs if they fell in 1991-92, as was conveyed to Mr Dickson by my assistant private secretary, Mr Bowden in a minute dated 25 February 1991 [HMTR0000002_048].

6.9. I wrote to Mr Waldegrave on 11 March 1991 explaining the Treasury's position on the matter [DHSC0003659_032].

6.10. Mr Waldegrave replied to my letter on 25 March 1991 [DHSC0003660_007]. He expressed concern about the Treasury's stance on the issue and reiterated his understanding that the Treasury had agreed to meet the reasonable legal

expenses for the plaintiffs. He also addressed the £42 million payment that had been made from the Reserve for compensation costs:

> *"As your officials have been told, it is now improbable that payment will be made in this financial year as the legal process has not been completed. Therefore the £42 million can be surrendered this year but will be required from the Reserve in 1991-92. I trust you can agree to this."*

6.11. Having received advice from my officials, I wrote to Mr Waldegrave on 28 March 1991 [CABO0000044_008]. I explained that the Reserve for 1991-92 was already under considerable pressure and set out the Treasury's position on whether compensation costs should be met by the Treasury:

> *"3. It is normal practice that access to the Reserve is only granted when there is no alternative. I must therefore ask you to make every effort to contain most, if not all, of the grant within your existing programme, and to return to me later in the year only if you are unsuccessful in absorbing all of it. I would then be willing to consider, without commitment, a claim for up to £42 million."*

6.12. I explained at paragraph 4 that I could not agree to access to the Reserve for legal costs and asked that these marginal sums be absorbed.

6.13. Mr Waldegrave asked me to reconsider my position by way of a letter dated 22 April 1991 [DHSC0003662_079].

6.14. I received further advice from my officials in a minute from Mr Dickson dated 29 April 1991 [HMTR0000003_002]. They proposed continuing to resist a Reserve claim.

6.15. Notwithstanding this advice, I took the view that this matter should be resolved by me reconsidering my position and granting access to the Reserve. The reasons for doing so are set out in my letter to Mr Waldegrave of 1 May 1991 [DHSC0003100_001]:

> *"2. When we discussed the haemophiliacs' settlement last December, it was expected that the bulk of the expenditure would fall in 1990-91. You obtained £42 million from the Reserve which could not, in the event, be used. The pressure on this year's Reserve means that I*

must resist all discretionary claims and, as you are aware, there can be no automatic carry forward of Reserve claims from one year to another.

3. However, I can see advantage in reaching agreement quickly on this and I understand from my officials that you are under some pressure to conclude the settlement soon. In this instance, despite the pressure on the Reserve, I am therefore willing to assist you by giving access to the Reserve for a maximum of £47 million. This would comprise the £42 million payment to the Macfarlane Trust and £5 million towards plaintiffs' legal costs. I would expect you to share the legal costs with Peter Brooke and Ian Lang on an equitable basis.

4. If any future costs arise in connection with the settlement (such as further payments to unknown claimants who may come forward), I would expect you to absorb them within your existing provision.

5. I have looked at the past papers. You will recall that the estimate of legal costs only a few months ago was £2 – 4 million. I imagine you will agree that in offering you £5 million I am responding more generously than I need to. I am doing this because, having won the war, I don't want us to lose the peace. I am anxious that the matter should be concluded as soon as possible otherwise one of the reasons for doing this is undermined. If there is one thing worse than getting bad publicity by not settling the matter it is getting bad publicity despite having made a very large sum of money available! I wish you well in resolving the final details."

6.16. Mr Waldegrave replied to my letter agreeing that any costs over and above the £47 million should be met from the Department's existing provision and to share the £5 million for plaintiffs' legal costs with Peter Brooke and Ian Lang [DHSC0003664_168].

6.17. I am asked a number of questions at 38(a) to 38(d) of the Rule 9 request about the position I adopted in the various documents referred to above. As I explained in my letter to Mr Waldegrave of 1 May 1991, there is no automatic carry forward of Reserve claims from one year to the next. The starting position when considering whether money should come from a Department's own budget or the Reserve is that the Department must justify why the cost cannot

be met from its existing provision. This is why my officials advised me as they did and why my initial position was that Mr Waldegrave and the other health departments should try and meet the costs from the existing provision first. Ultimately, however, I decided that this was an issue that needed to be resolved, promptly and amicably. As I indicated to Mr Waldegrave, I did not want to jeopardise the progress of implementing the settlement agreement because of an internal row about where the money was to come from.

6.18. In answer to question 38(e), I do not understand the discussions between Mr Waldegrave and I to have delayed either the conclusion of the settlement or the payment of sums to those affected. I understand that settlement negotiations between the lawyers about the terms of the settlement agreement took some time and that it was not until 2 May 1991 that a final offer could be made that was known to be acceptable to the Steering Committee of solicitors acting for the plaintiffs (see the briefing for No. 10 dated 13 May 1991 at [WITN7068009]).

Section 7: The Effect of the Settlement on Scotland and Northern Ireland

7.1. I am asked at question 39 of the Rule 9 request whether I was aware at the time of agreeing to provide access to the Reserve to fund the HIV litigation settlement that the Steering Committee of solicitors acting for the plaintiffs was composed entirely of the solicitors representing the English plaintiffs and, if so, when I first became aware that this was the case (question 40).

7.2. I can see from the documents provided to me by the Inquiry that I was sent a submission raising a possible delay in reaching agreement on the Scottish claims by Mr Dickson on 23 January 1991 [HMTR0000002_037]. Mr Dickson explained at paragraph 6 of this submission that one of the reasons for this was that Scottish lawyers were not represented on the Steering Committee. Mr Lang, the Scottish Health Secretary had suggested that a common date for acceptance should not be imposed to allow Scottish litigants a longer period to consider the offer (around three months). Mr Dickson recommended that I agree to this provided the English and non-litigant cases were settled as soon as possible. I did so and conveyed this agreement to Mr Lang by my letter to him dated 31 January 1991 [DHSC0003657_019]. Mr Brooke, the Minister of Health in Northern Ireland wrote to Mr Waldegrave on 5 February 1991 and a copy of this letter was sent to me [HMTR0000002_044]. Mr Brooke requested a longer period of time for acceptance of the Government's offer in the Northern Irish cases as the differences identified in relation to the Scottish position applied equally in Northern Ireland. I understand from the documents I have seen that I was content for my agreement to extend to Northern Ireland.

7.3. I am asked at question 40 of the Rule 9 request whether I think I should have been made aware sooner that the Steering Committee had been composed of solicitors representing only English plaintiffs. I do not.

7.4. At question 41(a) of the Rule 9 request, the Inquiry has asked me whether it is a fair assessment to say that little or no discussion or agreement had occurred about the effect of the settlement on litigants in Northern Ireland and Scotland before the Government's proposed approach was announced in December

1990. I do not know. This is not something I had knowledge of or involvement in at the time.

7.5. I am asked at question 42 of the Rule 9 request to explain the reasons for the position I took on how the settlement should apply to Scotland and Northern Ireland and how the costs, including legal costs, should be funded.

7.6. In relation to the proposal made by Mr Lang and Mr Brooke that there be a longer period of acceptance of the Government's offer for Scottish and Northern Irish litigants, I agreed to this proposal because it seemed like a sensible way forward. It allowed Scotland and Northern Ireland time to reach agreement on their cases whilst not delaying progress on the agreement in England.

7.7. As to how the costs should be funded, I have addressed my reasoning for the decisions I made in relation to this fully above. In answer to question 44, and as I have explained above, I do not think that discussions about whether the legal costs of litigants should come from the Reserve or be met from the existing provision of the health departments had any impact on the settlement timeline.

7.8. At question 45 of the Rule 9 request, the Inquiry has referred me to correspondence in July 1991 between J D Shortridge of the Welsh Office and Mr Grice of the Treasury on the subject of whether the Welsh Office had been consulted about the arrangements for funding the settlement of the litigation [HMTR0000003_022] and [HMTR0000003_025].

7.9. I am asked at question 45(a) whether this was a matter that was brought to my attention at the time. I do not now remember this being brought to my attention. I cannot imagine that it was something that would have been or, indeed, should have been.

7.10. I am asked at questions 45(a) and 45(b) for my view on whether the Welsh Office was sufficiently consulted over the terms and the amount of the settlement and whether further consultation would "have made any material difference to the outcome". I do not feel able to comment on an issue I do not think I was aware of at the time and would, in any event, have had very little knowledge of or involvement in.

Section 8: The Macfarlane Trust Special Payments Trust – Trust Deed

8.1. The Inquiry asks me to what extent I was involved in the detail of the drafting of the Macfarlane Trust No2 (Special Payments) trust deed [MACF0000083_004]. I understand that the Macfarlane Trust No2 was set up to operate as the body that would administer the awards to beneficiaries pursuant to the settlement of the HIV litigation.

8.2. The documents which the Inquiry has provided to me indicate that I had no role in the drafting of this document, nor would I have expected to have such a role. It was usual practice for civil servants to draft documents such as these and for the drafts to pass between civil servants in different departments if necessary, as was the case here, for discussion and agreement. The detail of the draft would have only been put to Ministers if there were any contentious points that required a Ministerial decision.

8.3. The documents indicate that lawyers for the Department of Health had drafted the Trust Deed by March 1991. It was then considered by officials in the Department of Health and the Treasury and between March and early May 1991 they considered the issues that the Inquiry asks me about, namely:

a. Disregards for social security benefits;
b. Residual funds on the winding up of the Trust; and
c. Disregard for inheritance.

8.4. I am asked what involvement and views I had on these matters.

8.5. By way of a minute dated 3 May 1991 from Mr Dickson to Mr Grice and I [HMTR0000003_008], I was informed that there were at that stage "still a few administrative matters to settle", relating to the Trust. I asked for a note on these matters and my private secretary conveyed this request to Mr Dickson in a minute dated 7 May 1991 [HMTR0000003_117]. A note was provided by Mr

Dickson on 8 May 1991 [HMTR0000003_016]. By this stage, as Mr Dickson explained:

> *"3. The main administrative matter to be resolved is laying the Social Security Regulations to disregard the payments when calculating entitlement to benefits. They will be laid before Parliament on Friday 10 May, and will come into effect on 13 May. The Macfarlane Trust plans to post cheques to those who have formally accepted the offer on Saturday (11 May) in anticipation of the Regulations."*

8.6. As far as I can see from the papers the Inquiry has provided to me, this is the only information I was provided with directly about the "administrative matters" with which officials were concerned at the time.

8.7. In relation to residual funds on the winding up of the Trust, I can see that a draft of the Trust Deed was enclosed with a minute from Mr Dickson to Mr Kelly dated 25 March 1991 [HMTR0000002_055], which was copied to my private secretary. Mr Dickson raised a policy point in the draft that troubled him, relating to the question of how a surplus or a shortfall in funding should be handled. Whilst Mr Dickson's minute was copied to my private secretary, I cannot recall whether it was drawn to my attention or whether I had any involvement in the issue. There is nothing in the documents that suggests that I expressed any view. It appears from the documents that I have seen that this issue was resolved by a minute being laid before the House of Commons (see [HMTR0000003_012]). Whether a minute needed to be laid before the House is something I would have expected officials to deal with, absent there being anything controversial about it.

Section 9: Payments for NHS Patients who did not have Haemophilia

9.1. The Inquiry asks me about the deliberations in Government on whether to make payments to non-haemophiliac NHS patients who contracted HIV from infected blood or blood products between May 1991 and February 1992.

9.2. I am referred at question 47 of the Rule 9 request to a minute from Mr Dickson to Mr Grice and I dated 3 May 1991 [HMTR0000003_008]. This was written at the time that final arrangements were being made for the settlement of the HIV litigation. At paragraph 3, Mr Dickson notes the line the Department of Health had taken on why haemophiliacs, but not others, were being compensated; that haemophiliacs were doubly disadvantaged by a hereditary condition. Mr Dickson offered his opinion that the Department of Health line was "not a convincing argument". At paragraph 4, Mr Dickson notes that there is "very little moral difference between the case of haemophiliacs who were infected by contaminated blood products before it was known that there was any danger in using them, and others who were infected at the same time by similar products".

9.3. I am asked at question 47(a) what my position was on this matter at the time and whether it accorded with Treasury advice. I cannot recall what my position on this was in May 1991 when Mr Dickson sent his minute. I am not assisted on this by the documents I have been provided with. Whilst Mr Dickson's minute led to my private secretary sending Mr Dickson a minute asking for a note on the outstanding "administrative matters" relating to the Macfarlane Trust (see above at paragraph 8.5), that minute does not provide any comments from me on the Department of Health line on non-haemophiliac cases. For this reason, I also cannot assist with questions 47(b) to (d), which also relate to my opinion on Mr Dickson's minute.

9.4. Question 48 of the Rule 9 request relates to a letter from Mr Waldegrave to me dated 2 December 1991 [DHSC0002921_009]. The Secretary of State for

Health suggested that the Government should "move now to resolve the matter by recognising the needs of these people and their families in the same way as we have recognised those of haemophiliacs":

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

9.5. Mr Waldegrave suggested two options. One was to provide the non-haemophiliacs with the same awards as were given to haemophiliacs and their families in the HIV litigation settlement. The second option was to provide those awards plus the same help as given to haemophiliacs under the original Macfarlane Trust. He said the first approach would cost £10 million and the second approach, £12 million.

9.6. At question 48(a), the Inquiry asks me to provide any evidence I can about the circumstances in which this letter was sent, and in particular the discussion that I had with Mr Waldegrave "after last Thursday's Cabinet" (which the Inquiry understands to have been Thursday 28 November 1991). As I have already explained, I am entirely reliant upon the Inquiry for the provision of documents relating to my time at the Treasury. I cannot therefore provide any documents about the circumstances in which this letter was sent beyond those made available to me by the Inquiry.

9.7. I am referred at question 48(b) to an internal Department of Health minute dated 29 November 1991 which records that "the Secretary of State [for Health] had come to an agreement with the Chief Secretary, that something should be done for non-haemophiliac NHS patients infected by HIV in the course of treatment, on the basis that we [DH] would find something towards the assumed £10m-£12m cost" [DHSC0002894_002]. The Inquiry asks whether this is an accurate record of any agreement I had reached with Mr Waldegrave prior to Mr Waldegrave's letter of 2 December 1991. Without any documents from the

Treasury side to shed light on any discussion I may have had with Mr Waldegrave on this matter, I cannot say whether this is an accurate record.

9.8. In answer to question 48(c), whilst it is possible that I had expressed sympathy for the position of non-haemophiliacs infected with HIV by blood or blood products (sympathy I certainly felt at the time), and I may have been open to the idea of doing something for this group of individuals, I think it is unlikely that I had agreed in principle to a compensation scheme at this stage. The correspondence that followed suggests that I had not yet agreed to such a scheme.

9.9. I am asked at question 48(d) to explain my view at the time on the two options presented by Mr Waldegrave in his letter of 2 December 1991. I cannot now remember what my view on these options was at the time. It would appear from my reply to Mr Waldegrave dated 13 January 1992 [HMTR0000003_051], addressed further below, that I was concerned at that stage with the primary question, whether compensation should be provided to this group of individuals or not.

9.10. Following Mr Waldegrave's letter of 2 December 1991, I received advice from my officials about the principle of compensating non-haemophiliac patients infected with HIV in the course of treatment. This advice was set out in Mr Dickson's minute to Mr Grice and I dated 3 December 1991, which enclosed a draft response to Mr Waldegrave [HMTR0000003_043]. Mr Dickson referred to his advice in May 1991 that the there was little moral difference between haemophiliacs infected with HIV and non-haemophiliacs infected with HIV, but that "providing compensation to the second group would take a further step down the slippery slope towards no-fault compensation for medical (and possibly other) claims". He explained that:

> *"7. That concern has not changed. There may be a slim distinction between haemophiliacs and the other group. But at least a line can be drawn. If non-haemophiliacs were to be compensated, it would be all the more difficult to resist compensation claims from others for treatment which had caused health to deteriorate – benzodiazepines (like valium) could pose a large threat. There would be a real danger of introducing no-fault compensation by default."*

9.11. Mr Dickson's recommendation was therefore to try and dissuade "Mr Waldegrave and colleagues" from offering a compensation scheme.

9.12. Before I replied to Mr Waldegrave, I received letters from Ian Lang (the Scottish Health Secretary) and from David Hunt (the Welsh Health Secretary), [SCGV0000237_072] and [DHSC0002717_014], who had written in support of Mr Waldegrave's proposal for compensation. They said they would contribute figures in the region of £900k and £200k respectively.

9.13. A revised draft letter to Mr Waldegrave was provided to me by Mr Dickson on 10 January 1992 [HMTR0000003_050], which reflected discussions I had had with Treasury officials Mr Kelly and Mr Grice.

9.14. I wrote to Mr Waldegrave setting out the Treasury's position on 13 January 1992 [HMTR0000003_051]. I declined to provide "additional access to the Reserve for the blood transfusion patients" for Mr Waldegrave or the other health departments, explaining as follows:

> *"2. I understand why you want to provide compensation for this unfortunate group and I sympathise. But I also have serious reservations about whether it would be possible realistically to ring fence any such compensation. There are a range of other groups who have also suffered as a result of treatment under the NHS where there is no question of negligence. By compensating those acquiring HIV from blood transfusion, we will be taking a further long stride towards no-fault compensation in general.*
>
> *3. Virginia Bottomley put forward a good defence of our current position in the adjournment debate called by Gavin Strang on 20 December. It would be difficult to reverse our position so soon after that clear statement."*

9.15. I also made reference to the extent of doctors' and dentists' overpayments in the current year, which came to well over £100 million which the Department of Health would be looking to the Reserve for. Factoring in claims for overpayments that year from Scotland and Wales, the cumulative figure for overpayment to doctors and dentists came to over half a billion pounds.

9.16. Mr Waldegrave replied to my letter of 13 January 1992 on 27 January 1992 [WITN7068010]. He denied the relevance of the overpayments to doctors and dentists to the question of compensation for "blood transfusion patients with

HIV". He said he understood the difficulty in providing resources from the Reserve and – in handwritten postscript – he proposed that £6million of the money for transfusion patients come from the Reserve and £6million from the Department of Health's existing provision.

9.17. I am asked at questions 49(a) and (b) of the Rule 9 request to explain the position taken in the letter of 13 January 1992 and give my view on it.

9.18. The reasoning behind the Treasury's concern about compensating transfusion recipients infected with HIV is evident from my 13 January 1992 letter. First and foremost, because Mr Waldegrave had not been able to convince the Treasury that compensation for transfusion recipients could realistically be ring-fenced, there were concerns about taking strides towards a system of no-fault compensation. The other factors were the recent public defence of the Government's position on non-haemophiliac patients and the existing calls on the Reserve from the Department of Health, in particular the cost of doctors' and dentists' overpayments.

9.19. In answer to question 49(d), I think I would have agreed with the argument about taking strides towards no-fault compensation. In my role as Chief Secretary to the Treasury, I had an eye to overall government spending with the claims by the Department of Health as part of that. We were not ready or able to deal with the uncontrollable consequences of a no-fault compensation system. In the ensuing 30 years such a system has not been introduced, for good reason.

9.20. As to question 49(c), I would have agreed that the issues of the compensation and the overspend on doctors and dentists were not directly linked. However, again, my job as Chief Secretary to the Treasury was to deal with the spend of all departments. In relation to the Department of Health, it was relevant to consider the provision they had and what they had spent. The overspend on doctors and dentists was an extremely high sum and would mean their claims on the Reserve for other matters would have to be extremely limited. It was my job to control spending which necessarily meant refusing some requests for funds from the Reserve, however sympathetic the cause.

9.21. The Inquiry asks me at question 49(e) whether Mr Waldegrave and the Department of Health would have required Treasury approval to implement the scheme he proposed if it was met solely out of the existing Department of Health budget. I think that they would. Funds allocated to a Department for one purpose cannot, if unspent, be used for another purpose without Treasury approval.

9.22. In answer to question 49(f), the letters from Mr Lang and Mr Hunt did not alter the Treasury's position. As I made clear in my letter to Mr Waldegrave of 13 January 1992, I sympathised with the desire to provide compensation to non-haemophiliacs infected with HIV by their treatment. The problem was the public expenditure implications, where a convincing case that compensation for this group could be ring-fenced had not been made out.

9.23. At question 50 of the Rule 9 request, I am referred to further correspondence leading up to agreement being reached that compensation should be extended to transfusion recipients in February 1992.

9.24. Following Mr Waldegrave's letter of 27 January 1992, Mr Grice provided further advice to me in a minute dated 31 January 1992 [HMTR0000003_055]. The minute addressed "a number of Department of Health matters outstanding all with implications for the Reserve". Mr Grice imagined I might want to consider them together, even if it were then appropriate to deal with them separately thereafter. One of these matters was the compensation of "blood transfusion patients infected with HIV".

9.25. Mr Grice noted that Mr Waldegrave had not, in his letter of 27 January 1992, dealt with the first of the concerns I had raised in my letter of 13 January 1992, namely that I "would have wanted reassurance that any compensation to the blood transfusion patients could be ring-fenced to them and not lead to no-fault compensation in the NHS generally". As such,

> *"10. Substantively, therefore, the situation remains as before:*
>
> *(a) Mr Waldegrave claims he still needs your support to make the compensation; and*
>
> *(b) we have no convincing reason to think that the compensation could be confined to blood transfusion*

> *patients. Our costings of Labour's plans indicated that no fault compensation generally could cost the NHS around £100 million a year. Mr Waldegrave certainly could not find that himself and would have to look to you to do so."*

9.26. Mr Grice explained that Mrs Bottomley had recently again defended the Government's position and that this had led Neil Kinnock to write to the Prime Minister "complaining about this stance". Mr Grice thought Mr Waldegrave might use the opportunity (the Department of Health having been asked to provide a draft reply for the Prime Minister) to intimate to the Prime Minister that he was in correspondence with me on the issue.

9.27. Mr Grice identified 3 alternatives. These were: 1) to provide £6 million to Lord Waldegrave, 2) to suggest he should find it from his own resources or 3) maintain my existing stance and refuse to allow compensation at the same time insisting on surrender of the sum of £6 million that the Department of Health had saved. He recommended the third option and said I would need to respond to Mr Waldegrave regarding the blood transfusion compensation issue.

9.28. My response to Mr Grice's advice was conveyed to him in a minute from my private secretary dated 5 February 1992 [HMTR0005118_005]:

> *"3. On blood transfusion patients infected with HIV, the Chief Secretary said that he would be willing to agree to Mr Waldegrave proceeding with compensation if it was agreed that no further groups would be given similar treatment; and if Mr Waldegrave found all the necessary funds."*

9.29. Mr Waldegrave wrote to the Prime Minister on 7 February 1992 [HMTR0000003_063], proposing that the Government pay similar monies to transfusion patients as to the haemophiliacs. I was sent a copy of this letter.

9.30. Mr Waldegrave set out the background to his proposals and the detail of them:

> *"2. I had put proposals to the Chief Secretary for resolving this issue on the same lines as we did for the haemophiliacs. But for reasons which I well understand, he did not feel able to agree.*
>
> *3. However, given the mounting Parliamentary and public concern, I believe we should reconsider my proposals.*
>
> *4. There are three main elements to them: -*
>
> *First, we pay similar monies as to the haemophiliacs.*

Second, we handle decisions on individual cases, which will be less clear cut than the haemophiliacs, by establishing a small panel or two or three including a doctor and chaired by a lawyer. The panel will decide on eligibility.

Third, anyone accepting payment would, like the haemophiliacs, have to give an undertaking not to pursue legal action. Though like the haemophiliacs, negligence claims could be pursued.

5. *We must recognise the risk of weakening our general opposition to no fault compensation. The Chief Secretary is rightly concerned about this. But we shall have to make plain we are responding, as with the haemophiliacs, to very special circumstances but that our general policy remains firm."*

9.31. Mr Waldegrave told the Prime Minister he could find £3 million that year and £3 million in the next from his existing budget but that he would want equal sums each year from the Reserve.

9.32. I wrote to Mr Waldegrave on 7 February 1992 [CABO0000044_024], noting that I had seen his letter to the Prime Minister of the same date. I noted that he had not addressed the reservations set out in my letter of 13 January 1992, related to "my fear for the consequences of providing compensation to this group":

"2. *….. If we were to go down the route to accepting a right to no fault compensation, it could cost us at least £100 million. At the time we agreed to provide help to the haemophiliacs we thought we could draw the line there and that the settlement would strengthen our position in dealing with Rosie Barnes' no fault compensation Bill. You now wish to draw the line in favour of compensating a wider group. There will no doubt be other unfortunate groups who would take that opportunity to campaign for compensation to cover them.*

3. *But I have a good deal of sympathy for those who have contracted HIV from treatment with infected blood and tissue. I am therefore willing to withdraw my objection provided you are able to give a firm assurance that you and your department will be prepared to draw the line at this group and to face up to requests from other groups."*

9.33. I asked Mr Waldegrave to find the entire funding for the compensation himself. I explained that I could not accept that there was no connection between the funding of the overpayments to doctors and dentists and the payment of compensation to those who had contracted HIV from treatment with infected

blood and tissue, as any additional funding for Mr Waldegrave's programme would fall on a Reserve which had been seriously drained by the doctors and dentists. I did, however, note that I was prepared to be flexible in carrying over money between this year and next, if that were helpful to him. I copied my letter to the Prime Minister.

9.34. The Prime Minister's private secretary wrote to Mr Waldegrave's private secretary on 10 February 1992 [HMTR0000003_067] and a copy was sent to my office. The Prime Minister hoped that the matter could be settled soon and requested some detail on how Mr Waldegrave proposed to ring-fence the award.

9.35. A chasing letter was sent to Mr Waldegrave's office by No. 10 on 11 February 1992 [HMTR0000003_066].

9.36. Mr Waldegrave wrote to me on 12 February 1992 [DHSC0002582_003] thanking me for my helpful response in my letter of 7 February 1992. He explained that in his judgement a "borderline covering all those infected with HIV by NHS treatment in the UK involving whole blood/blood products/tissue and organ transplants" was more defensible than the existing one. Mr Waldegrave said he was grateful for my offer of flexibility in carrying over money between that year and the next. His letter was copied to the Prime Minister.

9.37. I replied to Mr Waldegrave on 14 February 1992 [CABO0000044_030], accepting Mr Waldegrave's judgement that he would be able to defend a borderline as set out by him and noting that he would find the funding from his existing provision and that other health departments had confirmed that they would be in a position to fund their share of the settlement. I sent a copy of my letter to the Prime Minister, Mr Hunt and Mr Lang.

9.38. At question 50(a) of the Rule 9 request, the Inquiry asks me for the reasons I took the positions I did in the correspondence set out above and why, in particular, I was willing to withdraw my objection and agree to the approach that Mr Waldegrave had proposed. The question of whether the provision of compensation to patients infected with HIV as a result of their treatment could be ring-fenced was a crucial one for me, the Treasury and (it seems from the

documents I have been provided with) the Prime Minister. There are obvious reasons for that, which were set out in the correspondence. The cost of moving to no fault compensation in general was not one that could be met by the Department of Health and not one that could be contemplated by the Treasury. Reassurance on this point was ultimately provided by Mr Waldegrave and I therefore decided that I would withdraw my disagreement to the proposals, provided Mr Waldegrave found the money to fund compensation from his existing provision. I was not willing to change my mind about the source of the funding in light of the enormous claim on the Reserve from the Department of Health that had already been made as a result of the doctors and dentists overpayments (a cumulative figure of over half a billion pounds).

9.39. I am asked at question 50(b) what role the Prime Minister played in enabling the proposal to proceed. The Prime Minister was in favour of the proposal in principle but shared my concerns about ring-fencing. The Prime Minister's involvement was helpful, I think, in promoting a compromise between Mr Waldegrave and I.

9.40. I am asked at question 50(c) what I meant when I offered to be flexible in carrying over money between the current year and the next. I meant that Mr Waldegrave would not be required to surrender any portion of his existing budget that had been earmarked by him for this purpose and was not spent that year (surplus money from a department's budget at the end of the financial year would usually be surrendered back to the Treasury). In answer to question 50(c)(ii), this was not a reference to any shift in my position that money for funding this proposal would not be available from the Reserve.

9.41. The Inquiry asks me at question 50(d) whether I was persuaded that the borderline drawn by Mr Waldegrave around patients infected with HIV by their treatment was defensible. I think that I was. I was not aware of any other cases at that time that were thought to be of a similar character to these.

9.42. As to question 50(e), I do not know whether this "borderline" was discussed further beyond the correspondence I have been provided with by the Inquiry. I cannot recall it being, although I am, as I have already made clear, reliant on the Inquiry for provision to me of documents relating to my time at the Treasury.

9.43. I am asked at question 51 of the Rule 9 request whether I had any further involvement in the establishment of the scheme before the General Election that took place on 9 April 1992. I do not know. I have been provided with no documents to suggest that I was. I am also asked what influence the impending General Election had on the decision to establish the scheme. The answer is "none".

9.44. The Inquiry has asked me at question 52 what, if any, discussion I was involved in as Chief Secretary about support for non-haemophilia NHS patients who had contracted hepatitis viruses but not HIV through blood transfusion or blood products. I do not now recall being involved in any such discussions (or being aware of these cases) at the time and I have been provided with no documents that would suggest that I was.

Section 10: General / Other Issues

10.1. I am asked at questions 53 to 54 to provide my reflections on how the Department of Health, the Treasury and Government handled the issues of financial support and/or recompense to people with haemophilia and people without haemophilia infected with HIV, hepatitis and other viruses through the use of blood or blood products provided by the NHS.

10.2. I do not feel able to provide an opinion on the overall handling of these issues by the Government. I was only involved in these issues for two relatively limited periods of time and therefore only have snapshots of the story overall. I feel that the judgement on the adequacy of the Government's response is one for the Chair of this Inquiry.

10.3. The Inquiry asks me at question 55 how I would characterise the relationship between the Department of Health and the Treasury. I think there is a tension built into the relationship. The perspective of these Departments is bound to be different. The Department of Health will always have a myriad of worthy causes for which funding is sought. The job of the Treasury is to control public spending and sometimes it is the job of the Treasury to say "no" to one cause so that another with higher priority, perhaps from a different Department, can benefit. I am asked by the Inquiry to comment on the role of the Prime Minister but I do not think I can usefully do so.

10.4. I am asked at question 56 to provide a chronological list of all statements, speeches or interventions made by me in Parliament during my tenure as Minister of State for Health and as Chief Secretary to the Treasury, insofar as relevant to the Inquiry's Terms of Reference. A table listing these is appended to this witness statement.

Statement of Truth

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

Signed..... GRO-C

Dated..... 25 IV 2022

Date	Reference	Event – please note whether the entry is Commons or Lords, and whether it is e.g. Written Answer, Oral Answer, Debate	Relevance
Minister of State Department of Health and Social Security - 25 July 1988 to October 1989			
21 October 1988	HC Deb 21 October 1988 vol 138 cc1024-5W Aids (Hansard, 21 October 1988) (parliament.uk)	Written Answers (Commons)	AIDS – funding local authorities
24 October 1988	HC Deb 24 October 1988 vol 139 cc67-8W AIDS (Hansard, 24 October 1988) (parliament.uk)	Written Answers (Commons)	AIDS – transmission stats for mosquitos
27 October 1988	HC Deb 27 October 1988 vol 139 c323W AIDS (Hansard, 27 October 1988) (parliament.uk)	Written Answers (Commons)	AIDS – payments to haemophiliacs suffering with HIV infection
01 November 1988	HC Deb 01 November 1988 vol 139 c592W AIDS (Hansard, 1 November 1988) (parliament.uk)	Written Answers (Commons)	AIDS – infection rate of HIV
08 November 1988	HC Deb 08 November 1988 vol 140 c180W AIDS and Drug Misuse (Report) (Hansard, 8 November 1988) (parliament.uk)	Written Answers (Commons)	AIDS – first report on AIDS and drug misuse
15 November 1988	HC Deb 15 November 1988 vol 140 cc555-7W AIDS (Hansard, 15 November 1988) (parliament.uk)	Written Answers (Commons)	AIDS

30 November 1988	HC Deb 30 November 1988 vol 142 cc260-1W AIDS (Hansard, 30 November 1988) (parliament.uk)	Written Answers (Commons)	AIDS – HIV infection and AIDS prediction working group report
02 December 1988	HC Deb 02 December 1988 vol 142 cc437-9W AIDS (Hansard, 2 December 1988) (parliament.uk)	Written Answers (Commons)	AIDS (Control) Act 1987
05 December 1988	HC Deb 05 December 1988 vol 143 c82W HIV-2 (Hansard, 5 December 1988) (parliament.uk)	Written Answers (Commons)	Screening HIV-2 antibodies
12 December 1988	HC Deb 12 December 1988 vol 143 c448W Hepatitis B (Hansard, 12 December 1988) (parliament.uk)	Written Answers (Commons)	Hep B vaccinations
12 December 1988	HC Deb 12 December 1988 vol 143 c450W AIDS (Hansard, 12 December 1988) (parliament.uk)	Written Answers (Commons)	AIDS statistics
13 December 1988	HC Deb 13 December 1988 vol 143 c541W AIDS and HIV (Hansard, 13 December 1988) (parliament.uk)	Written Answers (Commons)	AIDS and HIV
14 December 1988	HC Deb 14 December 1988 vol 143 cc600-1W AIDS (Hansard, 14 December 1988) (parliament.uk)	Written Answers (Commons)	HIV transmissions
16 December 1988	HC Deb 16 December 1988 vol 143 c765W Hepatitis B (Hansard, 16 December 1988) (parliament.uk)	Written Answers (Commons)	Hep B vaccinations

19 December 1988	HC Deb 19 December 1988 vol 144 c133W HIV (Hansard, 19 December 1988) (parliament.uk)	Written Answers (Commons)	HIV transmissions
20 December 1988	HC Deb 20 December 1988 vol 144 c241W AIDS (Hansard, 20 December 1988) (parliament.uk)	Written Answers (Commons)	HIV and AIDS
21 December 1988	HC Deb 21 December 1988 vol 144 cc306-7W AIDS (Hansard, 21 December 1988) (parliament.uk)	Written Answers (Commons)	AIDS resources
21 December 1988	HC Deb 21 December 1988 vol 144 c322W Hepatitis B (Hansard, 21 December 1988) (parliament.uk)	Written Answers (Commons)	Hep B
10 January 1989	HC Deb 10 January 1989 vol 144 cc599-601W AIDS (Hansard, 10 January 1989) (parliament.uk)	Written Answers (Commons)	AIDS warning advertisements
13 January 1989	HC Deb 13 January 1989 vol 144 cc1099-161 AIDS (Hansard, 13 January 1989) (parliament.uk)	Commons Sitting	AIDS debate
13 January 1989	HC Deb 13 January 1989 vol 144 c767W AIDS (Hansard, 13 January 1989) (parliament.uk)	Written Answers (Commons)	Irish citizens receiving AIDS treatment
20 January 1989	HC Deb 20 January 1989 vol 145 c357W AIDS (Hansard, 20 January 1989) (parliament.uk)	Written Answers (Commons)	Second report on AIDS and drugs misuse
24 January 1989	HC Deb 24 January 1989 vol 145 cc860-1	Commons Sitting	AIDS treatment

	AIDS (Hansard, 24 January 1989) (parliament.uk)		
26 January 1989	HC Deb 26 January 1989 vol 145 c716W AIDS (Hansard, 26 January 1989) (parliament.uk)	Written Answers (Commons)	Anti-viral drugs
27 January 1989	HC Deb 27 January 1989 vol 145 c802W AIDS (Hansard, 27 January 1989) (parliament.uk)	Written Answers (Commons)	AIDS – notifiable disease
30 January 1989	HC Deb 30 January 1989 vol 146 cc40-1W AIDS (Hansard, 30 January 1989) (parliament.uk)	Written Answers (Commons)	AIDS treatment
01 February 1989	HC Deb 01 February 1989 vol 146 cc278-9W AIDS (Hansard, 1 February 1989) (parliament.uk)	Written Answers (Commons)	HIV/AIDS – NHS kitchens
06 February 1989	HC Deb 06 February 1989 vol 146 c502W AIDS (Hansard, 6 February 1989) (parliament.uk)	Written Answers (Commons)	AIDS – London treatment stats
09 February 1989	HC Deb 09 February 1989 vol 146 cc806-7W AIDS (Hansard, 9 February 1989) (parliament.uk)	Written Answers (Commons)	AIDS
21 February 1989	HC Deb 21 February 1989 vol 147 c608W AIDS (Hansard, 21 February 1989) (parliament.uk)	Written Answers (Commons)	AIDS education advertising
23 February 1989	HC Deb 23 February 1989 vol 147 cc785-7W	Written Answers (Commons)	HIV/AIDS

	AIDS (Hansard, 23 February 1989) (parliament.uk)		
01 March 1989	HC Deb 01 March 1989 vol 148 c245W AIDS (Hansard, 1 March 1989) (parliament.uk)	Written Answers (Commons)	USA intervention strategies HIV/AIDS
02 March 1989	HC Deb 02 March 1989 vol 148 c318W AIDS (Hansard, 2 March 1989) (parliament.uk)	Written Answers (Commons)	Second report on AIDS and drugs misuse
06 March 1989	HC Deb 06 March 1989 vol 148 cc418-20W AIDS (Hansard, 6 March 1989) (parliament.uk)	Written Answers (Commons)	AIDS/HIV
07 March 1989	HC Deb 07 March 1989 vol 148 c488W AIDS (Hansard, 7 March 1989) (parliament.uk)	Written Answers (Commons)	AIDS
10 March 1989	HC Deb 10 March 1989 vol 148 c70W AIDS (Hansard, 10 March 1989) (parliament.uk)	Written Answers (Commons)	AIDS – prostitution statistics
14 March 1989	HC Deb 14 March 1989 vol 149 c154W AIDS (Hansard, 14 March 1989) (parliament.uk)	Written Answers (Commons)	AIDS – treatment funding
21 March 1989	HC Deb 21 March 1989 vol 149 cc569-70W AIDS (Hansard, 21 March 1989) (parliament.uk)	Written Answers (Commons)	AIDS (Control) Act
05 April 1989	HC Deb 05 April 1989 vol 150 c195W AIDS (Hansard, 5 April 1989) (parliament.uk)	Written Answers (Commons)	AIDS
10 April 1989	HC Deb 10 April 1989 vol 150 cc389-90W	Written Answers (Commons)	AIDS treatment

	AIDS (Hansard, 10 April 1989) (parliament.uk)		
19 April 1989	HC Deb 19 April 1989 vol 151 c203W AIDS (Hansard, 19 April 1989) (parliament.uk)	Written Answers (Commons)	AIDS representation
19 April 1989	HC Deb 19 April 1989 vol 151 cc207-8W Factor 8 (Hansard, 19 April 1989) (parliament.uk)	Written Answers (Commons)	Factor 8
24 April 1989	HC Deb 24 April 1989 vol 151 cc378-9W AIDS (Hansard, 24 April 1989) (parliament.uk)	Written Answers (Commons)	AIDS
09 May 1989	HC Deb 09 May 1989 vol 152 c387W AIDS (Hansard, 9 May 1989) (parliament.uk)	Written Answers (Commons)	AIDS/HIV
09 May 1989	HC Deb 09 May 1989 vol 152 cc388-9W AIDS-HIV Patient Treatment (Hansard, 9 May 1989) (parliament.uk)	Written Answers (Commons)	AIDS/HIV patient treatment
10 May 1989	HC Deb 10 May 1989 vol 152 cc452-3W AIDS (Hansard, 10 May 1989) (parliament.uk)	Written Answers (Commons)	Government AIDS campaign
18 May 1989	HC Deb 18 May 1989 vol 153 cc288-9W AIDS (Hansard, 18 May 1989) (parliament.uk)	Written Answers (Commons)	AIDS
22 May 1989	HC Deb 22 May 1989 vol 153 c411W AIDS (Hansard, 22 May 1989) (parliament.uk)	Written Answers (Commons)	USA HIV trials
17 July 1989	HC Deb 17 July 1989 vol 157 cc32-3W AIDS (Hansard, 17 July 1989) (parliament.uk)	Written Answers (Commons)	AIDS statistics

18 July 1989	HC Deb 18 July 1989 vol 157 c138W HIV Infection (Hansard, 18 July 1989) (parliament.uk)	Written Answers (Commons)	HIV infection
19 July 1989	HC Deb 19 July 1989 vol 157 c203W HIV (Hansard, 19 July 1989) (parliament.uk)	Written Answers (Commons)	HIV
27 July 1989	HC Deb 27 July 1989 vol 157 cc916-7W AIDS (Hansard, 27 July 1989) (parliament.uk)	Written Answers (Commons)	AIDS
17 October 1989	HC Deb 17 October 1989 vol 158 cc36-7W AIDS (Hansard, 17 October 1989) (parliament.uk)	Written Answers (Commons)	AIDS
23 October 1989	HC Deb 23 October 1989 vol 158 cc309-10W AIDS (Hansard, 23 October 1989) (parliament.uk)	Written Answers (Commons)	AIDS
23 October 1989	HC Deb 23 October 1989 vol 158 c317W Haemophiliacs (Hansard, 23 October 1989) (parliament.uk)	Written Answers (Commons)	Haemophiliacs
Chief Secretary to the Treasury – 28 Nov 1990 to 9 April 1992			
(none located)			