

1 Wednesday, 11 January 2012

2 (9.30 am)

3 PROFESSOR JOHN CASH (continued)

4 Questions by MS DUNLOP (continued)

5 THE CHAIRMAN: Good morning. I suppose it's appropriate to
6 say happy New Year, Professor Cash, in the hope that
7 this is the last time I will have an opportunity. And
8 I don't mean just this year.

9 Ms Dunlop?

10 MS DUNLOP: Thank you, sir.

11 Good morning, Professor Cash.

12 A. Good morning, ma'am.

13 Q. By my reckoning this is your ninth day, your ninth visit
14 to give evidence to the Inquiry. I thought I would tell
15 you that that puts you in joint second position in terms
16 of our most frequent witness but since you have another
17 appearance scheduled for next week, after that you
18 should emerge in joint first place, having ten
19 attendances, which is the most frequent number for any
20 witness.

21 So just to record that we are very conscious that
22 you have been here many times and that you have come
23 back time after time to help us with our investigations,
24 and we are very glad to see you back today to assist us
25 further with topic C4.

1 A. Thank you.

2 Q. Where were we? I think it would help if we were to
3 retrace our steps a little bit. We are going back to
4 the turn of the year 1990 to 1991, and we are still
5 trying to understand how it took from November 1990
6 until September 1991 for screening of donated blood for
7 the Hepatitis C virus to be implemented in Scotland.

8 We know from our discussion of this topic before
9 Christmas that at the meeting of the ACVSB committee on
10 21 November 1990 a decision was taken to introduce
11 testing as soon as practicable. At that meeting it
12 appears that a date for implementation of 1 April 1991
13 was suggested. That date does not in fact feature in
14 the minutes of the meeting and I think we have covered
15 that already, but it does emerge from Dr McIntyre's
16 notes of that meeting in November 1990.

17 We have looked at events in the immediate aftermath
18 of that. We have looked at Dr Mitchell's letter to you,
19 reporting on what had happened, and you picking up that
20 we were a little closer to D-Day, is, I think, the way
21 you put it. You were off the blocks very quickly,
22 writing to the directors around Scotland and asking when
23 they individually could begin testing. We have looked
24 at the reply, which was September, on behalf of
25 Edinburgh and Southeast Scotland by Dr Gillon, giving

1 a possible commencement date of 25 February 1991.

2 The first point to make this morning, sir, is that
3 we did have a look to see if we could find any of the
4 other replies -- I'm sure they existed at some point.
5 The only one that we have actually turned up is the
6 Inverness one. It would assist, I think, if we had
7 a look at that. [\[SNB0047189\]](#).

8 So this is coming from Dr Whitrow to you on
9 6 December 1990. It's in response to your letter of
10 27 November, asking when testing could begin. And
11 Dr Whitrow covers some of the practicalities in this
12 letter. He says:

13 "The technical aspects of testing could be
14 introduced at very short notice, subject to the purchase
15 of another microplate washer. The establishment of
16 a counselling system is a very much more complicated
17 matter."

18 And he actually goes into that issue locally in the
19 Highlands and sends you a copy of a letter he has sent
20 previously to a consultant physician in Inverness, on
21 the topic.

22 He says he thinks it would take perhaps two months
23 for the counselling arrangements to be established.
24 Then which kit? The Ortho kit, he is saying. Then can
25 we just look over on to the next page, please?

1 Costings. So in very rough terms, it appears to be
2 along the same lines as the Edinburgh reply, talking
3 about maybe a couple of months. So it doesn't look from
4 this letter as though they were suggesting that they
5 would need anything beyond about the end of February, as
6 their --

7 A. Yes, in terms of testing, testing.

8 Q. Yes.

9 A. As you know, there is a medical scientific committee
10 that met in August 1991, and five days was all that was
11 required as far as the testing was concerned to have the
12 whole of the nation's blood stuff tested on the shelf,
13 cleared. So technically, this fits very much with
14 Bill's comment. The problem in terms of time with the
15 resources and the training required for the donor
16 counselling.

17 Q. I think I was allowing for that really in the couple of
18 months, because if we go back to the previous page and
19 take on board that the letter is dated 6 December 1990,
20 he is saying he would think the counselling arrangements
21 would take perhaps two months to be established. So
22 very roughly speaking, if we were thinking of the end
23 of February, that would really give him January
24 and February and then most of December.

25 A. Yes.

1 Q. I should ask you for the record -- but I don't expect
2 you to remember -- what the tenor of any other replies
3 might have been.

4 A. I don't, to be honest, no, no. It would be speculation.

5 Q. Fine.

6 A. But I don't recall at all there being major problems.

7 Q. Indeed, and that might have stuck in your memory if one
8 of the other centres had written and said --

9 A. Yes, they would have been on the phone rather than --

10 Q. Yes. Right. Of course, we know that implementation at
11 the end of February or on 1 April didn't happen, and we
12 know that Dr Gunson didn't send what one could describe
13 as the equivalent letter for the English directors, that
14 is equivalent to your letter saying, "When, in your
15 area, will you be ready?" He didn't send his until
16 22 January 1991. We know also that in January the
17 Gulf War became a concern and we have seen that referred
18 to in correspondence. No doubt Christmas played its
19 part too.

20 We have seen already that around about the end
21 of January 1991 you were suggesting May or June, and it
22 seems that around about early to mid-February, a date of
23 1 July was in fact selected for the commencement of
24 screening in the United Kingdom. It certainly appears
25 from correspondence of that period that you were

1 operating on that basis and, for example -- and this is
2 not a letter we need to go to -- but one of your
3 letters, [\[SNB0051679\]](#), and some of the other material in
4 the extended narrative, I think, shows you personally
5 operating with the 1 July in your mind.

6 A. As a working --

7 Q. Yes.

8 A. Yes.

9 Q. So if we move now to the end of March 1991, you have
10 told us that on 23 March you received -- well, assuming
11 initially one phone call from Dr Gunson. Well, yes, but
12 let's take it stage by stage. This is a Saturday?

13 A. That is correct, the weekend.

14 Q. So he obviously has your home number?

15 A. Oh, yes, he stayed many times.

16 Q. Right. So he phones you at home?

17 A. Yes.

18 Q. And it is on the general topic of the introduction of
19 HCV testing?

20 A. No, it's about Monday because on Monday, as you know, we
21 had a TTD meeting. Yes.

22 Q. Right. So I think it would assist us if you could talk
23 us through the three phone calls and let's start with
24 number one. Is he giving you news?

25 A. Absolutely.

1 Q. Right. So can you --

2 A. Let me say, as best as I can remember --

3 Q. Fine.

4 A. -- the first was a very acrimonious and distressing
5 phone call because for me, out of the blue -- and
6 I didn't know anything about this -- I think
7 Ruthven Mitchell did actually -- at that time on that
8 Saturday I didn't know anything about the fact that the
9 department, London, had made a decision that there would
10 be yet another field trial on the second generation
11 kits. My understanding was, from Ruthven Mitchell
12 originally -- and this is a matter of record -- that the
13 second generation evaluation would be fitted in after we
14 had started on July -- without any problem whatsoever.
15 But the message that Harold Gunson had on that Saturday
16 was that the department had decided this and I began to
17 say, "What do you mean the department; you mean the
18 advisory committee?" "No, the indemnity."

19 And I instantly realised that we would be -- another
20 month would go by while this kit -- before we started
21 again and I objected, and he made it very clear to me
22 that the departments -- and I should say he kept
23 reiterating that the Scottish Office -- I mean, he said
24 this -- I had no idea whether it was correct -- were
25 party to this decision.

1 Q. I want to stop you there, if I may, and try to separate
2 out some of the elements in what you are saying.

3 You, I think, are telling us that you knew there was
4 to be an evaluation of the second generation kits but
5 you thought it would happen after testing had begun. Is
6 that right?

7 A. Yes, and the reason -- I didn't know this. The reason
8 I was conscious of that was Ruthven Mitchell -- and it's
9 on the -- in your archives -- wrote to me to say, "We
10 have just had an advisory committee meeting, John, and
11 we have been made aware" -- and he was already aware
12 from Abbott -- "that there is a second generation series
13 of kits coming into line, but it has been decided in
14 Ruthven Mitchell's letter that this will be incorporated
15 into our -- an evaluation after we have started."

16 That was my understanding of Ruthven's
17 communication.

18 Q. Right. So you thought, before the phone rang --

19 A. Yes.

20 Q. -- that screening was going to be introduced on 1 July?

21 A. I did.

22 Q. Using first generation kits?

23 A. I did.

24 Q. Right. So what is then the content of the new
25 information?

1 A. The content of the new information -- I mean, I couldn't
2 understand why Harold felt it necessary to phone me at
3 a weekend because on the Monday was a TTD meeting. And
4 he told me he had been instructed to make certain that
5 this second trial of the second generation was agreed
6 and plans were put in place by that committee that was
7 meeting on the Monday morning.

8 Q. So this idea of the evaluation of the second generation
9 kits was around, as it were, but it was to be formalised
10 at the meeting on the Monday. That's what you are
11 saying?

12 A. No, what's very important for me to convey to you is
13 that the change was: we will not start in July, we are
14 going to do another field trial.

15 Q. Yes, right.

16 A. In other words, the notion that we could fit this in,
17 which actually was very real and practicable -- the
18 notion that we would just fit this in after we had
19 started had been abandoned.

20 Q. What about --

21 A. That's when I stuck.

22 Q. What about another position? What about the idea that
23 there was to be an evaluation of the second generation
24 kits but that that would be carried out expeditiously
25 and testing would still begin on 1 July?

1 A. Whether that was technically -- it's a long time ago
2 now. Whether that was technically possible, I don't
3 know, but Harold was already talking -- this is where we
4 ran into a very serious problem, he and I. He was
5 already talking that this must delay the start date
6 of July.

7 Q. Right.

8 A. Now, looking back now, and the fact that we had got
9 these 10,000 specimens plus the -- I reckon we might
10 have been able to have done this very quickly and still
11 stayed with July, which I think is a valid point.

12 At the time, that was not apparent either to me or,
13 I think, to Harold. What was clear to me, he was making
14 it very clear to me, that the consequences of this
15 instruction from the department would be there would be
16 a delay and we would start after July some time.

17 I don't recall in the conversations on that very heated
18 weekend whether the September was -- I honestly don't
19 recall.

20 Q. Well, are you telling us that there was acrimony during
21 the first conversation?

22 A. Yes, very great because I refused to go --

23 Q. All right.

24 A. -- to the meeting on Monday and comply with this, and he
25 knew what that meant because in 1987 -- and he was very

1 much involved in this -- I went public as to my great
2 concern about the transfusion services in England and
3 Wales. And he was clearly very anxious, not only him
4 but other people, to get me on board.

5 Q. So your initial reaction, when he phoned you on the
6 Saturday, was to say what?

7 A. To say, "We don't need to delay at all". As we spoke
8 there were other countries coming on board using the
9 first generation kits, and I have got them listed
10 somewhere, and I'm sure you have, and indeed, if you go
11 back just three or four months beyond that, France were
12 in, Australia were in and so on and so forth.

13 This was the occasion when the advisory committee
14 decided there was insufficient evidence, you will
15 recall. And at that period, France were in, Australia
16 were in, Finland, Jussi Leikola's team were in. We were
17 now X months further on and as we spoke, and Harold and
18 I argued, a whole series of other countries were coming
19 on stream using first generation.

20 And if you look -- I'm sure you have done this -- at
21 the minutes of some of these meetings, there was an
22 illusion -- because there was no evidence of this --
23 that the problem we had that there was soon going to be
24 no first generation kits available and there would only
25 be second generation -- and I argued that because the

1 other countries were coming in, that had to be nonsense.
2 It was not in the interests of the companies to do that,
3 simply to withdraw first generation kits.
4 Q. Right.
5 A. We knew that that was just not happening.
6 Q. We are still in the first conversation.
7 A. Yes.
8 Q. And I'm inferring from what you are saying that you were
9 not making an objection to evaluating the second
10 generation kits --
11 A. No, no.
12 Q. -- per se?
13 A. No, no.
14 Q. Indeed, that would presumably have been inevitable?
15 A. That would have been our duty.
16 Q. It was just that you didn't accept that that had to be
17 completed before testing could begin?
18 A. That's correct.
19 Q. Is that right? Right. Second conversation, what's
20 that? Does he phone you back, do you phone him?
21 I should ask you, how does the first conversation end?
22 A. Telephone slammed down.
23 Q. By?
24 A. Well, the problem was that when I said what I have just
25 told you I said to him, Harold lost the plot -- we

1 became friends again later. He lost the plot and gave
2 me a short sharp lecture on the amount of destruction
3 that I personally had done to the UK blood transfusion
4 services, in association with all the objections and
5 problems, the BMJ article and so on. And I likewise
6 lost the plot and gave poor old Harold a short lecture
7 on the deficiencies of his thing. And the whole thing
8 just deteriorated and the telephones went down.

9 So we left that first telephone call, and all my
10 family were over for the weekend, really in a pretty
11 stressed state.

12 Q. All right.

13 A. The next call you have asked for was from Harold again.

14 Q. Still on the Saturday?

15 A. Still, as I recall, on the Saturday. It could have been
16 Sunday morning because I discussed all this with my
17 young son, who is a doctor, and so on, and family. It
18 could have been on the Sunday morning, I don't recall.
19 But he called me back and he was in a completely
20 different -- he had -- and I was so relieved. He was
21 calmed down and, you know, was very apologetic and I was
22 very pleased to respond likewise. I apologised for
23 losing the plot and it became very clear to me, as we
24 quietly discussed it, that Harold Gunson was under
25 extreme pressure to deliver a second generation field

1 study and in doing so delay the onset of testing.

2 And I listened to all this. He assured me -- which
3 he delivered, and you have got them in your archives
4 now -- that he would send me the documents that would
5 indicated that the department had signalled that this
6 was necessary and it wasn't the advisory committee --
7 they had been bypassed. He said, "I'll send you those
8 documents", and we quietly talked through the thing and
9 the end of conversation was, "Harold, will you give me
10 some time to think about this?"

11 The third conversation I had was I phoned him
12 back -- and this was certainly on the Sunday -- that I'm
13 quite certain -- to say, "All right". I knew, because
14 he had told me, that Ruthven was on board, and I hadn't
15 the courage, frankly, to phone Ruthven and ask him.
16 I don't know but I didn't. But I, on Sunday, conceded
17 the next day, the Monday -- and we had to leave first
18 thing in the morning and fly to Manchester -- I conceded
19 that had I would support Harold in this endeavour. That
20 I did, and that's a matter of record, and it's a matter
21 of great regret to me ever since.

22 Q. Regret to you that you didn't do what?

23 A. Stand up and, if necessary, go public and say, "We are
24 not going down this track, we should do what all these
25 other countries are doing and start implementing first

1 generation tests".

2 Q. Right and the "we" you are speaking about is the UK?

3 A. Well, yes, but it would have been me making the
4 objection and making the point and trying to turn them.

5 Q. Was it all or nothing? Was it that the UK would move to
6 a position where the evaluation of the second generation
7 kits had to be completed before testing began, versus
8 your alternative of sticking with the 1 July date for
9 the whole UK and fitting in the comparative study
10 thereafter? Were those the only two possibilities or
11 was there a possibility in your mind of saying,
12 "Scotland won't sign up to that"?

13 A. To be honest -- and we will be coming to this with the
14 whole McIntosh thing, I can't honestly remember. What
15 I was convinced of at the time, and remained for a very
16 long time, was that whatever we did would require
17 Scottish ministers to agree to. That had been made very
18 plain to me during the HIV and during the Hepatitis C
19 from Archie McIntyre.

20 I could not see -- I mean, I know I have said this
21 and I believed it -- that ultimately the Scottish
22 ministers could have done their own thing if they had
23 wished, but I never was convinced that they would go
24 alone and go outside the UK position. That wouldn't
25 have stopped us saying to the UK, the advisory

1 committee, "Look, there is no need for us to go down
2 this track."

3 So I don't recall ever thinking -- and this comes
4 very clearly later -- that the Scots should
5 unilaterally -- at this point, unilaterally take
6 a particular action that was separate. That actually
7 emerged, in reality, for me -- and I may have been very
8 late -- after the Newcastle debacle.

9 Q. Right. So at this point I suppose -- and I don't mean
10 to be discourteous but I suppose the answer to my
11 question about all or nothing is "Yes," that you were
12 seeing only two possibilities?

13 A. Yes.

14 Q. The UK sticks with the 1 July and the evaluation is
15 fitted in thereafter or the UK adopts a position that
16 evaluation of the second generation kits must be
17 complete before screening starts?

18 A. Yes.

19 Q. Right. How did Dr Gunson know that Dr Mitchell was on
20 board?

21 A. I'm glad you say that because when I finally got the
22 papers from Harold, which was a communication from the
23 Department of Health, I think -- some procurement
24 directorate, I think it was -- there in fact --
25 announcing there would be a second generation study and

1 so on and so on and so forth, copied Ruthven Mitchell.

2 I was totally unaware of this, completely.

3 Now, whether Ruthven -- I had never discussed
4 this -- quite interesting -- with him -- whether he --
5 it was just a few days before -- whether he had read the
6 letter by that time, I don't know, but I was astonished
7 to see -- I think Marcela Contreras copied -- in other
8 words, the team that had done the first generation Ortho
9 and Abbott, were included in this communication from the
10 director. I'm sure you have got this.

11 Q. We are going to look at it.

12 A. Oh, excellent.

13 Q. You won't be disappointed.

14 A. Yes.

15 Q. When you say "Ruthven was on board", is it not
16 conceivable that all that that amounted to was that
17 Dr Mitchell knew that there was to be a plan for
18 a second generation evaluation?

19 A. Absolutely.

20 Q. And that Glasgow would be one of the centres?

21 A. Yes, absolutely.

22 Q. So does the "onboard" comment extend to Dr Mitchell
23 knowing that there would be this postponement from July
24 to September?

25 A. I really wouldn't know that, to be fair to Ruthven.

1 Q. Right, yes.

2 A. That's very important.

3 Q. Okay. So what is the underlying reason for this
4 position that Dr Gunson is advancing to you? "We have
5 to change. We have to have September as the date. The
6 second generation evaluation must be completed." What
7 is the underlying reason for this position?

8 A. That was the subject of the calm, second conversation
9 I had with him, and it was there that again it
10 emerged -- it wasn't the first time -- that there was
11 a fundamental problem that they had south of the border
12 of funding and agreeing that funding system. And by
13 then I was quite certain in my mind, as I look back, for
14 reasons that I can't recall in detail, we knew we were
15 not going to have that problem. We were not in the
16 cross-charging mode. And somebody had let us know that
17 in the event of a decision -- whether it was Mr Tucker,
18 I don't recall -- a decision being made to go... the
19 funding in some way would be found for us.

20 So that was the deep-seated problem that Harold was
21 communicating to me in our conversations, and that in
22 due course was what I told David Mac in the briefings
23 I gave to him.

24 Q. Last time you were here, you used the term "device".

25 A. Yes.

1 Q. And I do want to be careful about this because it
2 connotes deviousness and a lack of frankness, possibly,
3 with the public, with other parties involved in these
4 discussions and so on. From where did you get the
5 impression that there was a device being employed?

6 A. Harold was unable to explain to me why we couldn't just
7 tuck up the second generation test, as the advisory
8 committee had said, after we had started the first, and
9 when I kept saying, "But why can't we do that, why do we
10 have to delay, Harold?" And I pursued him at great
11 length about this. And rightly or wrongly -- and I may
12 be quite wrong -- I came to the conclusion that because
13 of the funding that Malone Lee's team had with the RHA
14 financial directors, others in the department, you know,
15 had devised a way where it gave them more time.

16 Q. Right.

17 A. I have seen no papers that confirm that but I discussed
18 that with Harold and I recall he didn't demur that that
19 was a possibility. I don't think he actually knew for
20 certain. He was just carrying out instructions. But
21 I will tell you who will know: Graham Hart moved from
22 London to become secretary of the Scottish Office at
23 this very time, and, as I'm sure you are aware -- I was
24 aware of this -- and advised George Tucker that this was
25 a unique opportunity that we had. Mr Hart --

1 Graham Hart was heavily into this whole area of
2 transfusion down in the south of England. So we had
3 somebody in St Andrew's House that we could have walked
4 into -- and he could have easily maybe told us but
5 networked and give us the facts.

6 Q. You see, you used the expression, professor, in your
7 answer, "rightly or wrongly"?

8 A. Yes.

9 Q. So is it fair to take from that that Dr Gunson didn't
10 say to you in terms, "The bottom line, John, is you have
11 to go along with this simply because we don't have the
12 money and time"?

13 A. No, he did not say that.

14 Q. Right.

15 A. He did not say that. I eventually capitulate.

16 Q. Even though, on your account he is unable to give you
17 a good reason why this postponement has to happen?

18 A. I don't know what you mean by "good reason". Yes, okay,
19 I'm not sure it was very good or bad. I just felt that
20 we were getting -- this emerges later. We were getting
21 sucked into a delay phenomenon and the problems were
22 south of the border.

23 Q. Right. And you tell us that all along, by which
24 I really mean since the summer of 1989, when this topic
25 began to be discussed in earnest --

1 A. Yes.

2 Q. -- your understanding had been that the final
3 endorsement or authorisation would come from the
4 Scottish Health Minister. So you say that you thought
5 that SHHD were involved in this instruction and your
6 source of information on that was Dr Gunson?

7 A. Absolutely right.

8 Q. So what did he say to you about their involvement?

9 A. Nothing more than that they were on board. I mean,
10 I don't remember the details now. This is a telephone
11 conversation.

12 Q. So I would have to ask the same question as I asked
13 about Dr Mitchell: onboard with the carrying out of an
14 evaluation of second generation tests or onboard with
15 the postponement from July to September?

16 A. I wouldn't know.

17 Q. Right. So was that part of the conversation a bit
18 vague?

19 A. Looking back, it must have been. It was certainly very
20 heated, yes.

21 Q. Right. Just following that theme -- and I think we
22 should look at your statement as well to see how it's
23 reflected there -- I want to ask you one our two
24 questions about SHHD and your role.

25 Your statement on C4, which we should probably have

1 opened up right at the beginning, but it's [\[PEN0172094\]](#).
2 We are around about paragraph 33. In fact that is
3 page 2104. Right. If we look firstly at the answer,
4 which is that underlined paragraph under 33, you say in
5 your answer:

6 "It was at the ACVSB meeting of 25 February 1991
7 that the decision, made in November 1990, to start
8 routine donation screening in July 1991, was reversed
9 ..."

10 And you also say that:

11 "... there is a document dated 21 February ... which
12 seems to indicate that DHSS had already determined ...
13 there would be yet another kit evaluation -- the second
14 generation study ... I was later advised ... that SHHD
15 had previously been consulted and had agreed to this
16 second DHSS inspired and unnecessary delay."

17 So we should read that answer in the light of what
18 you are telling us now, that you don't really recall
19 whether Dr Gunson said to you that SHHD were going along
20 with the postponement?

21 A. Well --

22 Q. It's really the postponement that's crucial,
23 Professor Cash.

24 A. I do understand exactly where you are trying to go. You
25 are asking me, did the department go along with

1 postponement, and I would have to say that there was
2 no -- I'm not absolutely certain that's what Harold told
3 me. Did I assume in all the flak that was flying around
4 that when I said, "SHHD are onboard with this
5 development", I must have assumed that they had taken
6 in -- I mean, these guys are very intelligent -- they
7 had taken on board all that was involved. You are, as
8 an excellent lawyer, nitpicking, quite rightly, in the
9 context of did it mean the second thing, and I'm
10 absolutely certain that on the day I must have assumed
11 that it did. I'm simply saying now that you are making
12 a fair point and I can't be absolutely certain when
13 pursued about it. I don't know whether that helps.

14 Q. If I don't make it, others will, so I'm anxious to try
15 to achieve as much clarity as is possible.

16 A. Yes.

17 Q. Of course, we bear in mind, as we always do, that this
18 is all a long time ago. We also bear in mind that we
19 may never achieve a complete understanding of who said
20 what, and who understood what. And not the least of our
21 difficulties in that regard is that Dr Gunson is no
22 longer with us.

23 A. Indeed, this has been the big disaster for me.

24 Q. Right. Just staying with that paragraph there that we
25 see on the screen under question 33, this document you

1 refer to, dated 21 February, we should look at.

2 A. Yes.

3 Q. I think this is [\[SNB0063947\]](#). Yes. Can we just look at
4 the signatory, please? Yes, I think this is the letter
5 you are meaning, Professor Cash, isn't it?

6 A. I think so, yes.

7 Q. It's in your list of references?

8 A. It's my best recollection, yes.

9 Q. A letter from Mark Fuller, DHSS, to Dr Contreras, dated
10 21 February 1991. We can see from the heading that what
11 is being discussed is a second round evaluation of HCV
12 screening kits. It's not made very clear in the letter
13 that what is being contemplated is evaluation of second
14 generation kits, but it is at least clear that
15 Dr Contreras is being asked about some further study in
16 North London of screening kits, and reference is being
17 made to the work done in the autumn of 1990 by North
18 London, Newcastle and Glasgow.

19 A. That's right.

20 Q. Interesting to note the end of the second paragraph,
21 that the study is not undertaking to examine the
22 samples. This is the work that Mark Fuller is referring
23 to at this point:

24 " ... is not undertaking to examine the samples from
25 all three centres, at least at this juncture.

1 I confirmed with Dr Gunson that we wish to only use
2 North London BTS-sourced donors."

3 So there is some further work being contemplated as
4 at 21 February 1991, but would you agree with me, it
5 doesn't say in terms that there is to be this evaluation
6 of second generation kits; it looks as though this is
7 really a postscript to the work in the autumn of 1990?

8 A. Gosh. That's not my interpretation and, you know, all
9 I can say is this was sent to me by Harold Gunson as
10 evidence that a decision had already been made, and that
11 has always been my interpretation.

12 Q. Right. When was it sent to you?

13 A. All I know for sure is after the dreadful phone calls.

14 Q. Right. So it can't have been a factor in your
15 decision-making between the Saturday and the Monday
16 because --

17 A. No, no, no.

18 Q. Right.

19 A. No, but he told me about them and I, in the first call,
20 demanded that I had proof that this had taken place and
21 that's what he presented to me.

22 Q. Can we just flip back to the statement, please? We need
23 to keep the statement open, I should say. We are going
24 to keep referring back to it. I am going to suggest to
25 you, Professor Cash, that there is actually better

1 evidence to contradict, with respect, your assertion
2 that the ACVSB meeting of 25 February reversed
3 a decision of November 1990 to start testing
4 in July 1991, and of course, the first thing to notice
5 about that assertion is that, as I said in my
6 introductory remarks this morning, in November 1990,
7 ACVSB were talking about April 1991, they weren't
8 talking about July 1991. So that's the first snag,
9 I think, with that first sentence you have there.

10 But let's look in a little more detail at what
11 happened. Still keeping the statement open but going to
12 our extended narrative document, at which we have looked
13 on a number of occasions. It is [\[PEN0172165\]](#). Within
14 this document I would like to look, please, at paragraph
15 9.252, more specifically at the passages in italics
16 which refer to 4 and 5 February. So on to the next
17 page, I think.

18 The first specific passage to note is that reference
19 to 5 February that Dr Hilary Pickles of the Department
20 of Health records in a memo that Dr Gunson had been in
21 touch with her about starting dates for testing:

22 "... all sorts of problems still, for example, exact
23 choice of test, supplies of this, confirmatory testing
24 arrangements, training et cetera, et cetera. There
25 remains real concern about how the necessary money will

1 get into the system. The starting date he wanted to try
2 on me was 1 July: would this be too late? My initial
3 reaction was this would be okay. Attempting to go
4 earlier would mean some stragglers would be left behind,
5 the slight delay increased the chance of the finance
6 being sorted out, and with diversion of RTC resources to
7 Gulf-related activities a short time date might not be
8 feasible ..."

9 So this is actually the emerging of 1 July as the
10 date, the beginning of February seems to be around about
11 the time when 1 July replaces 1 April as the date?

12 A. I think in my head that always arose as a consequence of
13 Gulf War and so on and so forth, the push back. Harold,
14 you remember, wrote to me after the Gulf War -- a letter
15 I wrote to him saying he had never envisaged that it
16 start -- that we will have to make adjustments. I see
17 that as part of this process. I notice that there is
18 a problem of finance to be sorted out.

19 Q. Yes.

20 A. Again, which is interesting but, yes.

21 Q. If we just look on through the extended narrative into
22 the next paragraph. Not the beginning of 253 but on to
23 the next page, if we could, please. This does seem to
24 be around that reference to 13 February. We have
25 already looked at this too, a slightly baffling,

1 secretive conversation. Mrs Falconer of SHHD has spoken
2 to Elaine Webb in DHSS and:

3 "Unofficially it is hoped to commence 1 July."

4 But that is to be confidential and SNBTS are not to
5 know.

6 Well, we actually asked Dr McClelland why that would
7 have to remain secret from SNBTS, which he was unable to
8 explain. Anyway, let's not get distracted into
9 speculating about that. The important feature of all of
10 this material is that the date people are working
11 towards seems to be 1 July.

12 A. That's correct.

13 Q. In the next paragraph indeed, we see Dr Gunson writing
14 to his directors of 15 February advising formally -- and
15 with a commitment -- that the date would be 1 July.
16 Then you are writing the same date. So there are
17 letters crossing. You are writing to him, thinking
18 ahead to the end of June. So everybody in the middle
19 of February is thinking of 1 July and you have suggested
20 in your statement that a different decision was taken at
21 ACVSB on 25 February, but I don't think that is what
22 happened.

23 Let's look at the ACVSB minutes, [\[SNB0018934\]](#). The
24 first thing to notice about that meeting is that
25 Dr McIntyre was there in his role as observer and that

1 Dr Gunson wasn't, because if we look a little bit
2 further down, we can see that he gave apologies. There
3 we are.

4 The discussion of testing takes place between
5 pages 2 and 4. Can we look then to the next page,
6 please? A now rather familiar feature occurs with these
7 minutes, professor, that the minutes don't record in
8 terms what date everyone has in mind. They are not the
9 only set of minutes to suffer from that slight flaw, at
10 least it's a flaw when you are trying to reconstruct
11 history.

12 If we look at paragraph 5, we can see the discussion
13 beginning there. So discussion of such studies as have
14 already been carried out and then on to the next page,
15 please. This is Dr Mortimer speaking, I think:

16 "It would be important for the evaluation of other
17 candidate HCS tests to retain the population of 10,000
18 samples."

19 He thought the committee may wish to see the results
20 from the second generation Ortho and Abbott tests.

21 Skipping the first part of paragraph 6, we can see,
22 though, the sentence at the end of paragraph 6, which
23 reads:

24 "Members agreed it was important for proper
25 evaluation of the Ortho and Abbott 1 and 2 tests to be

1 carried out before RTCs decided which test they would
2 adopt."

3 So the idea of an evaluation, including the second
4 generation tests, and being completed before RTCs decide
5 which test to adopt, does seem to stem from ACVSB
6 in February, doesn't it?

7 A. I have to say, I don't interpret it that way and
8 wouldn't have at all. And I'm probably being over
9 influenced by the letter, the briefing I got from
10 Ruthven Mitchell, which signalled that it could be
11 slotted in at a later date. The notion, however, for
12 me, when I read these minutes, which I have only been
13 able to do in the Inquiry -- I interpreted them as
14 Richard Tedder and Philip Mortimer stating the obvious,
15 that -- which is fine -- that, as second generation were
16 coming on, they would need to be appropriately
17 evaluated. And that is stating the obvious.

18 Q. You see, the sentence does say "before regional
19 transfusion centres decided which test they would
20 adopt". It does read to me as though what is being
21 suggested is exactly what we have been discussing in the
22 context of your phone call with Dr Gunson.

23 A. The regional directors, when they came to the point of
24 making a selection for second generation, they would
25 require an assurance that it had been properly

1 evaluated. I have made the point -- you have had
2 Richard Tedder up here -- I don't know whether you plan
3 to have Phil, who is very much alive and well. My
4 understanding was at that point they were reaching
5 a point where the first generation looked as though they
6 were pretty good and satisfactory, and that we could
7 have done what a whole lot of other countries did at
8 that stage and move to implement, as I said earlier
9 today.

10 I mean, I don't feel super strongly about this
11 unless you wish to make this an issue. I don't read
12 that as one in which we had to be assessing together the
13 first and second generation. The first generation in my
14 view had pretty well been assessed.

15 THE CHAIRMAN: Could we just have a pause?

16 MS DUNLOP: We have been going for nearly an hour. I'm
17 quite content to take a five or ten minutes' stop.

18 THE CHAIRMAN: I wouldn't want to deprive you of the
19 impetus.

20 MS DUNLOP: There is a bit more to go. So there is nothing
21 wrong with having a break.

22 (10.34 am)

23 (Short break)

24 (10.57 am)

25 THE CHAIRMAN: Yes, Ms Dunlop?

1 MS DUNLOP: Thank you, sir.

2 Professor Cash, we have remarked at various points
3 in our hearings that there are a number of meetings we
4 have examined so frequently that we are all starting to
5 feel as though we too were there and maybe this will
6 become one of them, but going back to the ACVSB minutes,
7 from 25 February 1991, we were looking at page 3, which
8 we still have on the screen.

9 This is the chairman summing up the view of the
10 committee and we can read for ourselves these three
11 bullets in paragraph 7 and then on to page 4, please.

12 That seemed to me to be an important comment at the
13 top of the page:

14 "Ortho and Abbott 1 and 2 should in principle be
15 available among others from 1 July for RTCs to choose."

16 I said to you earlier that this set of minutes
17 doesn't say in terms "We are all working towards the
18 introduction of screening on 1 July," but this looks
19 like a pretty strong hint, doesn't it?

20 A. It does indeed, I agree. I wasn't aware of any of this
21 of course.

22 Q. Right, fine. We can do a bit better actually than
23 looking for hints. Can we look next, please, at
24 a document [\[SGH0027881\]](#)? First we should look at the
25 second page so that we can see what this is. This is

1 a note -- and it comes from SHHD -- written by
2 a Mr Bayne on 19 March 1991.

3 A. His name is appearing now. I must say, I have no
4 recollection of ever meeting him. I'm very sad about
5 that. I don't know who he was. Was he above Mr Panton
6 or below him?

7 Q. I think he was below Mr Panton?

8 A. Right. Mr Hogg certainly was.

9 Q. Right. Well, there is quite a large cast, as I think we
10 will see when we come to wind up this topic. There is
11 quite a large cast within SHHD of people writing minutes
12 and memos, and certainly Mr Bayne is one of them.
13 I don't know why it took until 19 March for Mr Bayne to
14 write this note and it may be -- and this is speculation
15 on my part but it's unimportant. So I think I can
16 speculate that he was asked to write up a meeting he had
17 had. He hadn't actually written what had happened at
18 the meeting but he was asked to prepare a note, I think,
19 possibly by Mr Panton. Anyway, let's look at what it
20 says.

21 Can we go back to the first page, please? He says:

22 "Mr Panton and I met with Dr McIntyre on 26 February
23 and he informed us that, following the UK advisory
24 committee meeting, Hepatitis C testing would commence on
25 1 July."

1 There are some references to nuts and bolts,
2 including the need to tie up a procurement contract.
3 Let's just go down to the bottom of the page. Back up
4 reference testing also a problem. Mr Fuller at the
5 Department of Health is being talked about.

6 So I do suggest, Professor Cash, that this does
7 rather contradict your suggestion in your statement that
8 the ACVSB meeting, at the end of February 1991, reversed
9 a decision to start testing on 1 July.

10 A. It has taken us a long time but I'm not at all sure
11 I would disagree with you now.

12 Q. Sometimes, unlike Ikea --

13 A. I hadn't seen this.

14 Q. I'm sorry --

15 A. I apologise.

16 Q. I'm sorry we couldn't go straight to the cash desk but
17 we can see what was missing from the minutes, which is
18 a statement in terms that everybody is working towards
19 1 July.

20 A. Yes.

21 Q. Yes. I should at this point, sir, make a small
22 correction to our extended narrative. We do refer to
23 this discussion in our extended narrative and we say
24 that the meeting involved Dr McIntyre. Certainly this
25 document refers to Mr McIntosh but it was Dr McIntyre,

1 not Mr McIntosh, who was the source of the information
2 about 1 July. Just to record that.

3 So not only was the decision to start testing on
4 1 July not reversed at the meeting in February, it looks
5 as though it was confirmed. Let's look at Mr McIntosh's
6 understanding, [\[SGH0027884\]](#). This is Mr McIntosh
7 writing to Dr McIntyre on 12 March 1991. The topic is
8 "Introduction on HCV testing", and Mr McIntosh refers in
9 the second paragraph to:

10 "The agreed national UK introduction date of
11 1 July 1991."

12 That's interesting to note almost as a digression,
13 that when Mr Panton saw that he was a bit alarmed and he
14 said to Mr Hogg that he thought that that hadn't been
15 finally agreed by ACVSB:

16 "Please discuss."

17 Probably a bit difficult for Mr Panton to work out
18 what was going on, given that nothing was said very
19 clearly.

20 A. I think that rab had a terrible time.

21 Q. So from the documents we are looking at just now, it
22 does look as though at this point -- this is the end
23 of February to the middle of March -- everyone is
24 thinking of testing being introduced on 1 July. If we
25 go back to the extended narrative, please, and that's

1 our document [\[PEN0172165\]](#) and now looking at
2 paragraph 9.257, we have added in more recently this
3 passage in italics:

4 "On 21 March 1991 the NHS procurement directorate
5 ... sent a letter to Dr Gunson in respect of a phase 2
6 evaluation of the HCV screening tests."

7 Of course, we now very familiar with the calendar
8 around about that time. So that's the Thursday, the
9 Thursday before the Saturday when you and Dr Gunson are
10 going to be speaking on the phone. I think because we
11 looked at the other document involving the procurement
12 directorate from February, we should look at this too,
13 [\[SNB0063953\]](#). I'm sorry, it's not on the list but we
14 will just look at the letter itself.

15 There we have it. To Dr Gunson.

16 A. Yes.

17 Q. Yes:

18 "The department has agreed that there should be
19 a second round comparative evaluation of Hepatitis C
20 kits at the Newcastle, North London and Glasgow ...
21 centres ..."

22 Importantly from paragraph 2:

23 "The work ... should start in February for the North
24 London RTC and March for the other centres and be
25 completed by the end of April."

1 I can't pretend that the material has been easy so
2 far but I think it gets possibly slightly more difficult
3 now because that's the Thursday and this is an
4 impression on the part of some of those involved that
5 this evaluation can be completed by the end of April,
6 and two days later Dr Gunson is phoning you and saying
7 that the commencement date will have to be postponed.

8 A. That's right. I can't explain this. I should add that
9 this is a very positive letter to Dr Gunson from people
10 who haven't the faintest idea as to whether the kits are
11 available. And that emerges to be -- Harold eventually
12 lets us know that one of the delays of delivering this
13 second generation was due to the unavailability of
14 second generation kits.

15 Q. Right.

16 A. So, I mean, I certainly agree that that letter doesn't
17 signal what Harold told me -- at least I think he told
18 me -- in those conversations, but it does make it very
19 clear, I think, that the second generation evaluation
20 was something that was not in fact promoted in this
21 specific way by the VSB.

22 Q. I'm not sure that I completely understood that,
23 professor. You have said:

24 "The second generation evaluation was not promoted
25 in this specific way the VSB."

1 A. Yes.

2 Q. Can you explain that a little bit further?

3 A. What I'm saying is the Advisory Committee On the Safety
4 of Blood, they were very anxious -- and rightly so, it
5 would have been normal -- that before new kits were
6 introduced, they were evaluated.

7 Q. Yes.

8 A. What I'm saying is that this instruction did come from
9 ACVSB, that this was signalling money being released for
10 a second round, a new test, and I think what Harold was
11 saying inevitably -- that's what he must have had in
12 mind -- this is going to delay the onset.

13 This became very evident, very evident to him, when
14 there was a delay in the delivery of these second
15 generation kits. That has always been my understanding.

16 Q. But is this letter not simply the procurement
17 directorate --

18 A. Yes.

19 Q. -- carrying out the decisions of the VSB
20 in February 1991?

21 A. Not -- that's not the way I interpreted it. When Harold
22 phoned me -- we had this appalling phone call --
23 I actually chased him very hard, "Who has made the
24 decision that we stop everything and do the second
25 generation before we finally commence implementation?"

1 And Harold made it very clear to me -- and I regretted
2 there are no pieces of paper that we have got that
3 confirms this. Harold made it very clear to me that
4 this was a decision made by the Department of Health and
5 had not involved -- the advisory committee was very
6 anxious that the principle that second generation tests,
7 before they were used, were in fact assessed. I don't
8 think -- that's not a problem at all. He was saying
9 that we have been told to get on and do it, and on
10 Monday -- that's the TTD -- we are going to start
11 planning to do this. And as we talked, he made it very
12 clear this will inevitably make -- I don't know whether
13 he used September at that point -- a delay in the July
14 date.

15 Q. All right. We have looked at the minutes of the VSB
16 meeting from 25 February and in the end, of course, it
17 will be a matter for the chairman, but you and I may
18 have to agree to disagree. You just don't think that
19 the stitching together of the second generation
20 evaluation and the choice by RTCs was made by the VSB.
21 You don't think that those minutes support the
22 proposition --

23 A. I think the mechanisms whereby that was achieved,
24 I believe, were not made by ACVSB, and they were
25 delivered by the TTD on the Monday morning.

1 Q. Well, just to be very clear, what I'm suggesting to you
2 is that the ACVSB, at the end of February, said that the
3 second generation kits had to be evaluated also and that
4 that had to happen before choices were made by
5 transfusion centres about what kits to use in screening?

6 A. No, to introduce second generation tests. We may have
7 to disagree on that.

8 Q. All right. Now --

9 THE CHAIRMAN: If we look at this letter on its own, one
10 interpretation of it might be that this was an
11 implementation of a prior decision?

12 MS DUNLOP: Yes.

13 THE CHAIRMAN: Let's not work out whose decision immediately
14 but just looking at its content, it looks like the
15 procurement directorate, that particular branch --

16 A. Absolutely, sir.

17 THE CHAIRMAN: -- setting out what has to be done. On all
18 that we have seen, would it not have been the ACVSB
19 group that had initiated that?

20 A. Well, I think, in the context that there in principle
21 needs to be a proper evaluation, sir, before second
22 generation kits are purchased, that was very much -- and
23 we know ACVSB said that.

24 THE CHAIRMAN: You see, at the moment it doesn't seem to me
25 on this material to exclude the possibility that another

1 branch of the administration may have been initiating
2 a new approach that was fed through Gunson to you at the
3 weekend.

4 A. That's speculation.

5 THE CHAIRMAN: I know it's speculation.

6 A. That was always my understanding, sir.

7 THE CHAIRMAN: Well, then, perhaps you shouldn't have any
8 difficulty at all in accepting that this letter was part
9 of an implementation process that did have a clearly
10 identified origin.

11 A. I have, I hope, never implied that the procurement
12 directorate made the decision. Somebody else made the
13 decision, sir, and the procurement directorate were just
14 getting on with the job. That has been my position and
15 I regret I haven't any pieces of paper --

16 THE CHAIRMAN: Ms Dunlop is absolutely right, that this is
17 going to need a great deal of reasoning but I just
18 wouldn't want to see us follow a line that perhaps was
19 unproductive because you don't have a clear view as to
20 what -- but you are happy that this would be
21 a directorate meeting carrying out a prior decision?

22 A. It's their job.

23 MS DUNLOP: I should perhaps spell out more clearly,
24 Professor Cash, where I'm going with all of this. In
25 the context of allegations that devices were used and,

1 as I said already this morning, that some people
2 involved in this story in 1991 were less than frank and
3 open about what was going on, I'm putting to you an
4 interpretation, which is slightly different from what
5 you are advancing. I'm suggesting that the ACVSB, which
6 we know from all our previous examination of this topic
7 was the body which was making the recommendations to the
8 UK departments of health, has decided in February that
9 there needs to be an evaluation of second generation
10 kits, that that needs to happen before centres choose
11 the kits they will use, in other words, before they
12 begin screening, and that this letter that we can now
13 see follows perfectly naturally from that as the
14 implementation of that decision, and really the crunch
15 is going to come when it starts to emerge that, for
16 practical reasons, it's not going to be possible to
17 complete that comparative evaluation and have testing
18 begin on 1 July.

19 At that point there is a difficulty but that on that
20 view of matters there isn't really anything particularly
21 sinister. It's to do with practical considerations
22 about availability of kits and so on.

23 A. I can't refute your hypothesis because I don't have any
24 facts. All I can recall very vividly is the difficult
25 position I put Harold in, in trying to understand why we

1 were going on Monday to make these decisions, and the
2 implications it might have on a start date. I just
3 regret he is not available to illuminate it. But this
4 is my best recollection of those discussions.

5 Q. Right. You see, I think we have already, even today,
6 already moved quite a long way from a picture, I think
7 we gained from you last time you were here, and the
8 fault may be mine but there was a picture of this being,
9 as you said, a device, the comparative evaluation being
10 a device to mask the fact that there wasn't money
11 available in England to start testing on 1 July.

12 Obviously, you know, that connotes an element of bad
13 faith or a lack of transparency at the very least, which
14 is why I'm looking at it, to see if that is a necessary
15 conclusion or if it may all be to do with more mundane
16 considerations of what was practically possible in the
17 time available.

18 A. Either interpretation is possible. My interpretation --
19 it's not mine -- the interpretation that I developed
20 rested on the discussions I had with Harold.

21 Hilary Pickles in that letter you sent us, as I recall,
22 very quickly seeing it, did make the point that the
23 delay could in fact be used profitably to see if we can
24 get a better angle on the finance problem.

25 Q. Indeed.

1 A. So, you know, I knew Hilary fairly well. What's Hilary
2 doing saying things like that? Was the notion then that
3 delay was justifiable to try and sort things out? I was
4 persuaded by Harold that that was an option that people
5 well above Harold had considered and I had made the
6 point time and time again, well, there is a man called
7 Graham Hart who should have a good angle on that if you
8 wish to pursue it. He was the man, I'm sure you
9 remember, who became permanent secretary after he left
10 here, of DHSS.

11 Q. Right.

12 A. So a very distinguished civil servant. You know,
13 I think, pursuing me at the level I was at, I think it's
14 all conjecture on my part as a result of some pretty
15 heated discussions with an old friend.

16 Q. Let's just finish looking at this letter, as we tend to
17 say, "for completeness". I don't think there is really
18 anything else particularly material in it but it does
19 spell out some of the practicalities of the further
20 study. Then on to next page, please.

21 Mr Fuller and Dr Rejman are to be involved. We have
22 had reference to Dr Rejman before. We can see that from
23 paragraph 5. A programme of work and then an
24 arbitration provision and then on to the last page.
25 Okay.

1 We have been stuck at the end of March; let's look
2 at the minutes of the ACTTD on the Monday. That's
3 [\[SNB0018793\]](#). You were there?
4 A. Yes.
5 Q. Were you suggesting earlier this morning that, at least
6 during the first of the telephone conversations, you
7 contemplated not even going, or did I misunderstand?
8 A. I honestly don't know that. I don't recall that at all.
9 Q. Right. But you did go?
10 A. I did, because I promised Harold I should go.
11 Q. Right. I don't think we need to read the matters arising
12 but look on to the discussion of this point, which
13 I think begins on the next page. There we are. The
14 introduction of anti-HCV tests into NBTS and SNBTS,
15 starting date and its definition. And here we have it,
16 4.11:
17 "The proposed starting date of 1 July presented
18 difficulties since it was considered essential that the
19 second generation test from both Ortho and Abbott should
20 be evaluated prior to the commencement of routine
21 tests."
22 We can see that there are problems of availability.
23 Ortho not a satisfactory --
24 A. That was five days after the procurement director issued
25 their letter.

1 Q. Yes, referring to completion of the exercise by the end
2 of April?

3 A. Yes.

4 Q. I know. But the Ortho position is not easy and the
5 Abbott position seems to be worse.

6 A. It's unknown at the time.

7 Q. They had not yet given a provisional date for launching
8 their second generation test and in fact we know because
9 we have looked at this before, that there was
10 intellectual property problems. Abbott, I think, were
11 subject to an injunction at the instance of Ortho in the
12 early part of 1991, which certainly cannot have helped.

13 A. I should add that Wellcome were threatened likewise.

14 Q. And if we read the whole of this section, some
15 discussion of practicalities and then, 4.14:

16 "It was agreed that testing of blood and plasma
17 donations would commence on a specified date. There
18 would not be retrospective tests carried out on
19 donations collected prior to that date."

20 Then on to the next page:

21 "Confirmatory testing."

22 Then plasma for fractionation. If we just look down
23 through it. On to the next page. Of course, what's
24 missing from these minutes is any suggestion of what the
25 date's going to be.

1 A. Absolutely.

2 Q. There is an acknowledgment that 1 July looks now to be
3 difficult but it doesn't seem to go any further than
4 that. What's not in the minutes at all, professor, is
5 any reference to funding issues in England. Was there
6 any discussion of that at the meeting?

7 A. I don't recall. But I do recall this was a source of
8 great embarrassment to our colleagues south of the
9 border. I don't know whether it emerges here but if
10 you, for instance, set off and looked as an Inquiry at
11 the whole problem of confirmatory testing for
12 Hepatitis C in England and Wales, some very serious
13 problems arise. Indeed, when they finally started
14 in September, on the 1st, in England and Wales, there
15 were great tracts of the country in which confirmatory
16 testing had not been properly established. That raises
17 some interesting ...

18 So the whole question of funding was extremely
19 complex indeed and the notion that you could just cross
20 charge -- it was very complicated, which I thought was
21 dead easy, you just put ... I had not appreciated that
22 you were operating out of a patient budget. So if you
23 cross charge, patient care would suffer in a region.
24 But mechanisms of moving money, I was told, from one
25 English region to another for confirmatory testing,

1 these very specialised (inaudible) was also at that time
2 a serious problem.

3 This just didn't exist for us. We had got our own
4 very high quality confirmatory -- it was part testing
5 laboratory, it was part of the SNBTS. It stayed within
6 the same budget. Indeed SHHD, once again, delivered the
7 money for us to develop this excellent confirmatory
8 testing.

9 Q. Right.

10 A. So there were some quite really genuine problems here
11 that were not discussed but I discussed them with Harold
12 and you will see at one point in all these minutes, not
13 this one, we actually offered to do some confirmatory
14 testing for England and Wales.

15 Q. Right.

16 A. Because they are in such difficulty.

17 Q. So we understand from what you are saying that around
18 about this time, the English transfusion centres were
19 not in good shape generally to begin the testing, there
20 were a number of practical matters that had to be
21 resolved?

22 A. Yes.

23 Q. Right. Something else that's not in the minutes is any
24 discussion of decoupling the second generation
25 evaluation from the actual commencement of testing. So

1 no one is saying, "Well, given that there are these
2 practical problems, why don't we just start testing with
3 the first generation kits and slot the evaluation of the
4 second generation kits in thereafter?"

5 A. I'm fascinated, if I may say so. You say that because
6 if we go back to the letter I had from Ruthven Mitchell
7 telling me, "Look this is the latest of the advisory
8 committee," this is after they had looked at the first
9 test and said, "Yes, these kits are fine", and then they
10 said at that same meeting, "We will need to bear in mind
11 that when the second generation kits are really
12 available, they will need implementation," it was all
13 our understanding that that would have been sufficient
14 for us to get on and introduce first phase -- the first
15 generation tests.

16 Indeed, when I had the awful telephone calls with
17 Harold, that was the burden of the problem. Why
18 couldn't we in fact start in July, as planned, and get
19 on with it and fit in the second generation evaluation
20 at a later date? I mean -- so when you say that wasn't
21 in the minutes, that was the obvious -- everybody else
22 was doing that. Finland were way ahead but there was
23 a whole bunch of about nine countries in Europe alone
24 that at that time -- at this time were already moving
25 into actual full implementation with the first

1 generation tests.

2 Q. Quite. So --

3 A. That was known. Harold knew that.

4 Q. So why did you not put forward that suggestion at the
5 meeting, if it was obvious?

6 A. I put it forward to Harold and I know we will no doubt
7 run into problems of the briefings of David McIntosh.

8 Q. Let's keep Mr McIntosh to one side for the moment.

9 A. Well, but David was there and he was being briefed to
10 say, "Look this is an option. Why don't we go to the
11 Scottish Office and say, 'For goodness sake, we are
12 caught up in something that's not of our making'."
13 I was putting two and two together and perhaps making
14 five by saying it's a funding problem. I don't think
15 so.

16 Q. Is the answer to my question not that you didn't put it
17 forward at the Monday meeting because you had promised
18 Dr Gunson that you wouldn't?

19 A. Exactly.

20 Q. Right. But would it not have been, perhaps even just in
21 retrospect, a better position for you to take with
22 Dr Gunson that this was all of great importance and
23 needed to be discussed in full at the Monday meeting,
24 all the options? Why did you not say that?

25 A. I can't remember.

1 Q. Right.

2 A. But if you had witnessed these phone calls -- I don't
3 honestly recall, I am afraid.

4 Q. If you are saying that was an obvious alternative, it
5 seems strange, if I may say so, that you parked it just
6 because of a telephone conversation with Dr Gunson.

7 A. When you say "because of a telephone conversation", this
8 is a guy who I respected greatly. He was department
9 adviser for the very topic and he had declared that he
10 had been instructed to get me on board, and after much
11 huff and puff, I went on board. I have already said
12 I deeply regretted that. Subsequently. But I did and
13 that's it.

14 Q. Okay. On the Wednesday -- it's a fast moving picture --
15 you wrote to Mr McIntosh. That's [\[SGF0012026\]](#):

16 "Dear David,
17 "UK BTS: HCV donation testing: start date.
18 "You will want to know that our NBTS colleagues are
19 struggling, on a number of accounts, to meet the 1 July
20 deadline, as previously discussed, and I thought agreed.
21 We believe the fundamental problem is one of financial
22 resourcing.

23 "At a meeting of the UK BTS Advisory Committee on
24 Transfusion-transmitted Diseases in Manchester on Monday
25 last, the following was agreed ..."

1 And the first of the detailed agreements relates to
2 Dr Gunson telling the Department of Health that the
3 1 July start date should be delayed:

4 "... until such time as an evaluation of the new
5 generation of HCV screening tests had been completed.
6 If this is accepted it could push a start date
7 to September. Both Ruthven and I supported this
8 proposal."

9 Then there is some other material about what the
10 definition of a start date is, and then on to the next
11 page, please:

12 "More anon when things are clearer."

13 You are copying that to Dr McIntyre and your fellow
14 directors.

15 Professor Cash, you told us on 1 December that you
16 were suggesting that Mr McIntosh should go to SHHD about
17 this issue and that you wanted him to advance to SHHD
18 what was also your view, that the hold-up in England
19 should not delay Scotland. When did you make that
20 suggestion to Mr McIntosh?

21 A. I can't be absolutely sure but I'm reasonably certain
22 that within days of getting back from the TTD meeting
23 I would have briefed David. I wonder if I could go back
24 to 1 December discussion.

25 Q. Certainly.

1 A. If I may.

2 Q. Yes.

3 A. Because I was very tired at that period of time and I
4 didn't think I performed very well. First of all -- and
5 it relates to something that I saw David McIntosh
6 said -- soon after he was appointed, David McIntosh, in
7 my view absolutely rightly, insisted that we met weekly
8 for briefing meetings, not least because our offices
9 were about two or three miles apart at that time. They
10 took place every week pretty well, on a Friday
11 afternoon, where we briefed each other.

12 The evidence that actually these meetings did take
13 place can be found in a letter I wrote to David
14 in November/December 1991, when I was proposing that,
15 because of the events at the board meeting in June and
16 so on, I came back to the headquarters unit and sat next
17 door to David in terms of offices and so on and so
18 forth, and I specifically made it clear -- and this is
19 on record and you have it -- that what we needed to do
20 is regularise our meetings in terms of agendas, in terms
21 of records. And we had a system, which I thought was
22 absolutely excellent, because we had a number of many
23 things that were going on at that time for briefing, and
24 when you say, "When did I speak to David?" well, for
25 certain, it would be the Friday, I would assume, unless

1 we were away or something, after the Monday that I would
2 have briefed him.

3 Furthermore, I would have briefed him -- and I did
4 brief him -- and explained the position I had found
5 myself in with Harold Gunson, and I wasn't very proud of
6 this, and I felt we should get into the department as
7 soon as we could and I would offer him any help
8 whatsoever.

9 Now, David, I have since read, has no recollection
10 of this and I really find that quite distressing, but
11 these briefing meetings did take place; they were
12 consistent over the piste and the nearest I have got for
13 paper for you is that the second liaison group between
14 the two services, when Harold Gunson told us about the
15 Newcastle difficulties, David signalled -- and it's
16 minuted -- that he would get into the department
17 immediately to clarify the position. And to the best of
18 my knowledge, because I took him on at the board
19 meeting, he didn't do that.

20 And he didn't respond, to the best of my knowledge,
21 to the other briefings I said that we needed to get --
22 et cetera.

23 Q. Let's not get ahead of ourselves. We are up to the
24 Wednesday, when there has been the ACTTD meeting on the
25 Monday.

1 A. On the Monday.

2 Q. You are writing to him this letter and are you saying to
3 us that you think even the Friday of that week you were
4 telling Mr McIntosh that he needed to take some action.

5 A. I have every reason to believe that that would be so,
6 yes, because I felt -- well, I have explained. I felt
7 we had been put into a very difficult position and the
8 fundamental issue was, if it was a funding problem, this
9 wasn't about medicine or science -- I think I said this
10 on 1 December -- this was about policy, and the SHHD in
11 my view needed to be briefed, although I actually
12 thought that Archie McIntyre would have been fully aware
13 of all of this but he was aware because I -- also
14 because I copied him into this letter -- that they
15 needed to consider their position.

16 I cannot escape the conclusion that I would have
17 made this at the briefing meeting on the Friday.

18 Q. You see, the trouble is, Professor Cash, that the
19 language you are using is conditional; you are not
20 speaking of an actual recollection; you were telling us
21 about what you think you would have done.

22 A. Yes, but I had written -- I mean, I had written a letter
23 to the -- to David and I can't imagine that that wasn't
24 taken up at the briefing meeting.

25 Q. Well, there is nothing in the letter. Let's go back to

1 the first page again, please. Sorry, it's the previous
2 letter.

3 The only point of this letter is to give Mr McIntosh
4 information. There isn't anything in the letter that
5 suggests that you are going to need him to take some
6 steps.

7 A. No, I'm not claiming there is. He is being briefed in
8 terms of information following a meeting, and that
9 briefing has gone into the Scottish Office as well.
10 Now, we did this on innumerable occasions in which, when
11 we came to briefings and discussions, he would pick out
12 bits of paper that I had sent to him and vice versa, and
13 we would discuss them. I don't think that's in any way
14 unusual.

15 Q. Right. Staying then with this -- I hope you will
16 accept -- slightly conjectural position about what you
17 would have done, what then on the Friday do you think
18 you would have said to him? What was --

19 A. I have a clear recollection, whether it was on that
20 Friday or subsequently -- I have a clear recollection
21 that isn't conjectural, that I was very concerned that
22 we, the SNBTS -- and for reasons which have not yet been
23 explained -- that had to be David -- I would be happy to
24 go with him -- we needed to get in to explain that there
25 was a problem south of the border that didn't exist in

1 Scotland, but that problem south of the border was
2 having an impact on the timing of Scotland's
3 implementation of the testing.

4 Q. And therefore what?

5 A. Therefore --

6 Q. What outcome would you be seeking?

7 A. I would be seeking -- the outcome -- I don't know where
8 you are wanting to get me to. I think, to be fair,
9 I would be wanting the department officials to actually
10 decide whether they wished to stick with their existing
11 policy, ie they would stick with the decisions that were
12 going on south of the border, or whether the time had
13 come that we went alone. This was a recurring theme
14 over this period.

15 Q. Do you have an actual memory of saying to Mr McIntosh
16 that you wanted him to contact SHHD and moot the
17 possibility of Scotland decoupling from England?

18 A. Oh, yes, no question.

19 Q. You have an actual memory of that?

20 A. I have that memory and it recurred later.

21 Q. What did he say?

22 A. Oh, he was enthusiastic -- I mean, he was enthusiastic
23 at the notion. I think this emerged later at the board
24 meeting that we had on the 11th and 12th. You see, what
25 was astonishing to me was that we didn't get there.

1 Q. You see, he doesn't remember you asking him to do that.

2 A. I realise that. I'm very conscious of that. If I may
3 say so, the minutes of the board meeting, as you know,
4 on 11 and 12 June is very inadequate on this topic but
5 one of the trigger points in which the temperature went
6 up in that heated debate, was I drew David's attention
7 to the fact, in front of all the our directors, that he
8 had agreed to go to the department to promote, in
9 a sense, what Brian was saying some form of
10 consideration as to whether we are going to stay in with
11 the UK and that he hadn't done it, and David was very
12 upset with that.

13 Q. Right. Let's not go to June because we are still
14 in March.

15 A. I appreciate that. I mean, it's evidence that in fact
16 I did try.

17 Q. Well, you said a moment ago that it had to be him. Why
18 did it have to be him?

19 A. I'm glad you have asked me that question. I was very
20 surprised on December 1st that you were not aware that
21 on -- thereabouts, mid-February, the post of national
22 medical director was disbanded and the job description
23 that you went over with me very carefully at the
24 previous occasion I was here was no longer valid. You
25 have got lots of documents in your files which

1 demonstrate that the change was (a) Jim Donald insisted
2 on this. My title was changed. I'm very interested to
3 see David McIntosh was talking about "my national
4 medical director". It didn't exist. He was now the
5 national medical and scientific director, and David has
6 got -- you have a lot of documents which show that my
7 reporting was exclusively now to David McIntosh. We
8 discussed this at great length and I was very
9 comfortable with all this, with one exception. I was
10 a little uncomfortable. David made it very clear to
11 me -- and when he said to you that he arranged to be
12 chairman of the board -- and this was a managerial
13 contrivance -- to tell the world that he was the boss
14 and John Cash reported to him, I had no problem with
15 that.

16 Where we came a little unstuck was David insisted
17 that all communications from the SNBTS from now on, into
18 the Scottish Office, was his job.

19 I took this up with Jim Donald and Jim Donald, the
20 general manager of the CSA, sided with David, and I had
21 a great respect for Jim Donald and that's the way it
22 was.

23 I can tell you there were occasions when David got
24 a little distressed when I was sending copies of
25 documents into the office -- the Department of Health

1 here, without him being aware of that. I must say
2 I made mistakes and I often apologised. But that is
3 very important. The point I'm trying to make is that
4 I had -- when David was appointed, I had no direct
5 access, as far as management line access, into the
6 Scottish Office, and Jim Donald assured me that this had
7 been discussed in the department and they were
8 satisfied.

9 Q. When did all this happen, what you are just describing
10 about the change in arrangements -- just let me finish,
11 please -- that you were told by Mr McIntosh that all
12 further contact with SHHD had to be via him and not
13 directly from you? When did that happen?

14 A. February/March 1990.

15 Q. 1990?

16 A. Yes.

17 Q. And you say there is documentation about this change?

18 A. There are a number of documents. The last one is David
19 presenting a report to Donald Cruickshank in 1992, in
20 which he gave a version of the management structure.

21 Q. Are you saying that, with effect from early in 1990, you
22 made no further direct contact with SHHD?

23 A. I'm saying --

24 Q. Is that what you are saying?

25 A. Yes, I'm saying that. Whether I'm held on to that well

1 enough, I don't know, but yes, it was an issue.

2 Q. Right. If we carry out a study from the beginning of

3 1990 onwards, we will not find any instances of you

4 making direct contact with SHHD. Is that what you are

5 saying?

6 A. Beyond copying letters. Can I make it -- so in other

7 words, he wrote this letter we have got here to David

8 and I copied in Archie McIntyre.

9 Q. Yes. But is the answer to the question, "yes" you are

10 saying that with effect from the beginning of 1990, with

11 effect from this discussion with Mr McIntosh and

12 Mr Donald being involved and so on, you made no further

13 direct contact with SHHD?

14 A. Yes. As far as I recall. This was a big issue and

15 David tackled me the night before he was actually

16 interviewed for the job, actually.

17 Q. Professor Cash, why did you not say that on 1 December?

18 A. That's a very good question.

19 Q. It is a good question, isn't it?

20 A. Yes.

21 Q. That's the obvious answer to it.

22 A. I can only apologise. The answer is I was extremely

23 tired and quite distressed and I apologise.

24 Q. I don't know that we need to go back and look at the

25 transcript. I think it's probably etched in your brain

1 as it's etched in mine, but when you suggested on
2 1 December that any contact with SHHD should have been
3 made by Mr McIntosh, I asked you whether this wasn't
4 really in your patch because you were the national
5 medical director.

6 A. Yes, I was.

7 Q. Would that not have been the point at which you should
8 have explained to us that you were forbidden by
9 Mr McIntosh from making contact directly with SHHD?

10 A. Yes.

11 Q. Why did Mr McIntosh issue that instruction?

12 A. I think you need to ask him that. It would be pure
13 speculation on my part. I would only have to say that
14 I thought David McIntosh, when he was parachuted into
15 the job he was, he had a very tough job. He was taking
16 over the management of an organisation that had not had
17 appropriate line management within it. On the other
18 hand it had had an international reputation, had been
19 highly successful. So he had a pretty tough job. And
20 I was still around.

21 Q. Excuse me a moment, Professor Cash. (Pause)

22 You see, Professor Cash, because you didn't tell us
23 on 1 December -- I'm surprised to hear you say that you
24 were in some way almost gagged by Mr McIntosh from
25 making direct contact with SHHD and that's why on an

1 issue which at first blush relates to patient safety,
2 therefore is one for the national medical director, you
3 felt you couldn't make direct contact with SHHD. I'm
4 surprised to hear you say that. I'm surprised you
5 didn't say it last time.

6 A. I'm sorry, I'm not saying that. We had agreed amicably
7 eventually that the contacts into the Scottish Office
8 from the SNBTS would go through David. Evidence that
9 that in fact had been worked on by David is the
10 documented evidence that he had regular contact with
11 Archie McIntyre, the medic, okay? And of course
12 Rab Panton and to some extent George Tucker. So David
13 in that period, up until what we are now discussing now,
14 had developed contact on 25th, as you recall, of
15 February. He was in the department, liaising with them.

16 Q. Yes.

17 A. And he had, as I understood from what he told me,
18 regular contact. He had no problems with regular
19 contact with Archibald, and I -- I mean, to be honest,
20 after 12 years working in the SNBTS, I eventually was
21 very content with this. This has only become an issue
22 at the Inquiry because I thought David was in touch.
23 It's very interesting. In February 26th, 1991, when he
24 was in, in the documents I have seen, David didn't brief
25 the Scottish Office colleagues about the difficulties

1 that we were already aware of.

2 Q. Well, no, hang on. I don't think he was in on
3 26 February. I think that may be a mistake we made in
4 our narrative. The meeting on 25 February was
5 Dr McIntyre, and Dr McIntyre was telling others in the
6 SHHD that the start date is 1 July.

7 I hear what you say, that Mr McIntosh made direct
8 contact with SHHD. That is unsurprising. What I'm
9 struggling with is the proposition that you were not
10 allowed to.

11 A. I don't like to use the word "allowed". David made
12 a proposition that he would be the lead person in all
13 these matters. That doesn't mean he would consult me
14 very carefully and then take it on to the department.
15 I don't like to use the word "allowed". I much prefer
16 that David felt -- and he had the support of
17 Jim Donald -- that the best management process in the
18 new management arrangements was this way. I accepted
19 that.

20 Q. But this is not about the management of SNBTS; this is
21 an issue which on any view was of very significant
22 importance for patient safety, even if there was
23 a background that Mr McIntosh preferred contact in the
24 ordinary run of affairs to be between himself and SHHD,
25 was this not an exceptional issue on which you, as

1 national medical director, could have made direct
2 contact with SHHD?

3 A. I'm sure I could but I didn't think -- I was content to
4 do this through David. That may have been a very bad
5 judgment. Can I just say that the notion that this is
6 all patient quality of care is an important one. If you
7 look at the papers emanating at that time from the
8 Department of Health in Scotland -- in London, there is
9 a major concern about litigation.

10 Q. Yes.

11 A. And if you look now at the cost of litigation in NHS, it
12 is somewhere costing about £1.5 billion a year for the
13 next -- it has been budgeted. I became involved in that
14 because I was asked by Ranald MacDonald, who is now CLO,
15 to look at whether in fact the proposition that CLO
16 should become privatised, and I became very consciously
17 of that.

18 So the issue that we are talking about is about if
19 anybody breaks away, which we discovered happened in
20 Australia, there was massive litigation consequences.

21 Q. Well --

22 A. And this was a concern, and particularly when
23 I discovered that the money, the 1.5 billion at the
24 present time, is coming out of patient care services.

25 Q. Well, professor, you are taking me off down a side

1 road --

2 A. Well --

3 Q. But I'll follow you down it because if I can just pick
4 you up on your reference to litigation, surely the point
5 is this, that if an error of judgment is being made by
6 the whole group, then the whole group will be sued, the
7 entire blood transfusion service in the whole of the
8 United Kingdom will be vulnerable to litigation. If
9 some members of that group, so some transfusion centres,
10 break away, to use a term that we see used at the time,
11 and do something different, they may not be sued but the
12 remainder will.

13 A. Yes.

14 Q. So it's not a question that the best defence against
15 possible litigation is to stick together, that way
16 everyone may be doomed.

17 A. I'm not sure about "doomed" but you have --

18 Q. Doomed to suffer a lengthy and expensive litigation,
19 which even lawyers would accept is not a happy fate.

20 A. Yes, I can only say that in the briefing memo that you
21 have drawn my attention to, the London -- after
22 Newcastle, this features quite strongly and I don't
23 get -- I take all the points you have made but I don't
24 get that that was a message that was coming through.

25 Q. All right. So can we stay with your mindset around

1 about this time, which you are now telling us is that
2 you were very unhappy about the decision which had been
3 taken at the ACTTD meeting and you wanted SHHD to
4 consider decoupling the introduction of screening in
5 Scotland from the introduction of screening in England.

6 Now, the first thing that we note is that in your
7 letter of 27 March 1991 to Mr McIntosh, not only do you
8 not mention that, you also say at the end of paragraph
9 (a) that both you and Dr Mitchell supported the proposal
10 of the start date being September.

11 A. We did --

12 Q. That does seem to be slightly at odds with what you now
13 say.

14 A. No, I had agreed to do this with Harold Gunson. I have
15 explained I regretted doing it but I had very short time
16 to make decisions and in the light of the day, as I have
17 said, I regretted that and briefed David accordingly.
18 I mean, it doesn't fit but in the circumstances of what
19 happened before the TTD, I believe it does. However
20 regrettable.

21 Q. You didn't use an adverb like "reluctantly". You didn't
22 say "both Ruthven and I reluctantly supported this
23 proposal".

24 A. No, I didn't.

25 Q. All right. A week on the Friday, so this is 5 April.

1 So 29 March would be the Friday of that week. Then on
2 5 April you sent your letter to Dr Gunson, which we have
3 looked at before and we will just look at again,
4 [\[SNB0063958\]](#).

5 On its face, Professor Cash, it does not look like
6 a letter sent by someone who has agreed to a course of
7 action only with reluctance and who is of the view that
8 the course of action is so unwise that Scotland is
9 required to consider going its own way. It doesn't read
10 like that kind of letter, does it?

11 A. No, I don't think it was intended so to do. Harold had
12 written me, I had informed -- I had copied that 27 March
13 letter to all the directors. I think I remember you
14 making the point that this was a three-day turnover and
15 you are now claiming I had the fullest support. I
16 cannot imagine -- I think David McIntosh would agree
17 with me -- that I hadn't in some way consulted with my
18 colleagues -- and it wasn't three days, it was
19 27 March -- that letter that went out, explaining the
20 position.

21 But, no, I agree, I think that it doesn't look like
22 that.

23 Q. No, and that's different from what you said on
24 1 December. I asked you if you had consulted your
25 fellow directors and you said you didn't think so.

1 A. No, I said probably not in that timescale. On
2 reflection I now know -- I have now looked at that again
3 because I was very concerned about that. It was most
4 atypical of me, in my experience. I would have
5 consulted them and looked carefully at that and realised
6 the turnover wasn't as quick as was implied, because the
7 substance of Harold Gunson's letter for my colleagues
8 was in my letter of the 27th.

9 Q. Well, it's a very prompt reply to Dr Gunson's letter of
10 3 April. It must have been a virtually immediate reply
11 to his letter.

12 A. It was pretty prompt and I can assure you that I knew
13 that he was very anxious that there was a prompt reply,
14 that he had some assurance that the Scots would stay in
15 the area that they wished them to stay. That is
16 correct.

17 Q. And you now think that you would have had, will have
18 had, expressions of support from the other directors, so
19 as to entitle you to make the comment that the SNBTS
20 directors --

21 A. Yes, on reflection. I can't remember any occasion that
22 I ever assumed fullest support, I really can't.

23 Q. How do you think you got their response?

24 A. Oh, phoning them, I imagine.

25 Q. So you think that you phoned round all the other

1 directors?

2 A. Yes, that's not -- I'm almost certain I wouldn't need to
3 phone round Ruthven because he was at the meeting. Yes.

4 Q. Right. We haven't found any documents relating to that.
5 We have been over the documents for this period pretty
6 carefully, Professor Cash, and we haven't found any
7 documents recording that you had discussed the issue
8 with directors in other parts of Scotland and they had
9 given their fullest support to this postponement.

10 A. No, that is so. If you look at the document you are
11 looking at now, that comes from Manchester. And you
12 might ask the question: why hasn't it arisen from our
13 own resource. There was a real problem --

14 Douglas Tullis knows this -- of security of documents
15 during this period, and I haven't the faintest idea
16 whether this is relevant and I'm not sure that I put on
17 paper the individual responses I got.

18 I'm simply saying I cannot imagine that I would have
19 said that statement without making contact with my
20 colleagues. And I would have assumed, in the timescale
21 involved, it would have been by phone and this wasn't --
22 that phenomenon was not unusual in our organisation.

23 Q. Right. So you are in effect wishing to alter your
24 evidence on this particular point. So when last time
25 you said you doubt that you made contact with your

1 fellow directors, you now wish to say that you think you
2 probably did make contact with your fellow directors?

3 A. Yes, I said on the last occasion that it was improbable
4 that I had, simply in the timescale. On reflection,
5 because I was very concerned this was most atypical,
6 there was more time and I cannot imagine -- and I'm
7 happy to have that changed, yes.

8 Q. Well, strictly speaking, it's not a facility offered to
9 witnesses. It will be a matter for the chairman in the
10 end to decide what he thinks the position was.

11 A. I appreciate that.

12 Q. But why did you want to send this letter at all?

13 A. I can't recall. I'm reasonably certain that Harold was
14 very anxious to know whether the Scots were on side.
15 I think we have discussed before in the Inquiry the
16 great anxiety our colleagues south of the border had at
17 times, that the Scots would do their own thing and go
18 off, as I say, and do their own thing. I must assume
19 that the reason I wrote this letter was in fact to give
20 Harold Gunson some comfort that we were on side.

21 Q. Right. So you are reassuring Dr Gunson that no Scottish
22 director is going to start testing in advance of the
23 start date of September.

24 A. Yes, unless -- and he knew this -- instructed so to do
25 by SHHD.

1 Q. Well, all right, but, as you sit here now, you think
2 that you had ascertained that from all the individual
3 directors, that none of them would start testing
4 before September?

5 A. No, I didn't ask them that question. I didn't ask them
6 that question. What I must have asked them is, "I sent
7 you a letter on 27 March explaining what happened at the
8 meeting" -- that Ruthven and I took it on board -- "do
9 you have any objections to that?" I don't think it
10 related going as far as you are suggesting.

11 Q. So it's not really offering Dr Gunson the reassurance he
12 is seeking, if he is wanting to know that the Scots
13 aren't going to "break ranks"?

14 A. No, I think that was the best that I could do, that
15 there was no -- this arose, as you, I know, know,
16 in June.

17 Q. Let's not go to June just yet.

18 A. That's an example of something that really arose. It
19 didn't arise at this point.

20 Q. I'm conscious, sir, that we probably should have another
21 break before lunchtime.

22 THE CHAIRMAN: I think we should. There are certain
23 consistencies in the position that are developing, are
24 you going to continue with this yourself?

25 MS DUNLOP: Yes, not necessarily comprehensively, sir.

1 THE CHAIRMAN: I'm not anxious to intervene in any way, sort
2 of in medio, and I will restrain myself.

3 MS DUNLOP: Right, thank you.

4 (12.06 pm)

5 (Short break)

6 (12.23 pm)

7 MS DUNLOP: Right, Professor Cash, we were looking at that
8 letter of 5 April 1991, which we can see on the screen,
9 and I think we have finished looking at it really; it's
10 a pretty short letter.

11 About a month after that, 7 May 1991, you wrote your
12 letter to Dr Lloyd. I didn't think we needed to go to
13 it again. Perhaps in the light of developments this
14 morning, we just will have a quick look at it. It's
15 [\[SNB0118726\]](#).

16 I'm not going to go through the detail of it. We
17 have seen it before and as I'm sure you accept, it's
18 quite a memorable letter, and you have told us you
19 regret some of the language used but one thing that
20 could be said of it, professor, is that it is clear in
21 its assertion of the importance of everyone sticking
22 together, and by "everyone" I mean all the transfusion
23 directors around the UK. Would you not agree with that?

24 A. The only thing that's clear about that is if you look as
25 to who it was copied, you will discover it went to every

1 UK transfusion director.

2 Q. Right.

3 A. That's my first reaction. My second reaction is,
4 reading it yet again -- and I went home and read it
5 again -- I regret it. As I have said, the language --
6 and recall some of the long conversations I had with Huw
7 subsequently, that in many respects it was a letter, I
8 think, misjudged, not to Huw but a growl from the north
9 to our friends south of the border that really it was --
10 if we are going to stick together, we need to stick
11 together. That's all I would say.

12 Q. So it is a letter about solidarity?

13 A. Yes, it is indeed. It is indeed.

14 Q. And you are asking us to accept that at the same time
15 you are seeking, via Mr McIntosh, to overturn the
16 solidarity?

17 A. We got into this -- I was actually seeking, in truth, an
18 opportunity to ask the Scottish Office -- and therefore
19 ultimately ministers -- whether, in the light of events
20 south of the border, they wished to stay in the same
21 mode that they had done previously.

22 I would like -- the options, if they wouldn't, would
23 be to go it alone. But that would be a ministerial
24 decision. So I'm not -- I don't think I made myself
25 clear on 1 December, and I would like to think I might

1 do a better job this time.

2 What I had in mind was that clarification was sought
3 in terms of the policies that were in place in the
4 Scottish Office with regard to this general area.

5 Q. Right. So --

6 A. And I'm not wanting to escape anything because if they
7 said "Yes, we are prepared to completely change," there
8 is no doubt that my own personal view at that stage
9 would be, we would have gone -- "We have no option then,
10 let's do it, we are all ready, we have the funding", and
11 so on.

12 Q. There are some nuances here, Professor Cash. I think
13 I can see two differing perspectives. One is that you
14 were advocating an approach, whether by you or by
15 Mr McIntosh, but advocating an approach to SHHD to say,
16 "Scotland is being held back by disarray in England".

17 A. Is this okay?

18 Q. No, "we need to introduce testing ourselves, we are
19 ready in Scotland and we are funded. There is nothing
20 to stop us starting HCV donation screening in Scotland."

21 That's option A.

22 Option B is a rather more dilute version of that.
23 It is advocating an approach to SHHD in which it is
24 checked with SHHD, confirmed with SHHD, that they are
25 comfortable with maintenance of the simultaneous UK

1 starting date. Are you saying that what you wanted was
2 option B?

3 A. Yes, in the first instance because then it would lead
4 on -- if they said, "We are not content, let's look at
5 the options we may have" -- one of the options -- it's
6 not for me to say this -- would be for our colleagues in
7 the Scottish Office to go down to London to find out
8 exactly what's happening and try and get a better
9 understanding before any decision was made.

10 Q. Right. So why did that not strike you at the weekend at
11 the end of March? Why did you not say to yourself,
12 "This is very important, it's important that I have
13 confirmed directly with SHHD what their position is"?

14 A. Oh, I would have to reply to that by saying -- and I now
15 regret it -- that Harold Gunson convinced me that SHHD
16 had been party to the decisions that were made --

17 Q. All right.

18 A. Okay.

19 Q. So what has caused you then to doubt that that is
20 correct? I'm turning that round, Professor Cash,
21 because if you are saying that Harold Gunson gave you
22 an adequate assurance at the end of March that SHHD were
23 comfortable with this, then why did it start to strike
24 you that an approach needed to be made to SHHD to find
25 out their position?

1 A. I wanted to check it.

2 Q. Right. And you are saying that the approach you thought
3 should be made was one by Mr McIntosh?

4 A. Yes, because we had agreed that --

5 Q. Who should he be going to talk to?

6 A. Whoever he felt he had good contact with to make entry
7 into the Scottish Office, and I would have imagined, but
8 I don't know, that would have been Rab Panton in the
9 first instance.

10 Q. So you are telling us that you have an actual memory of
11 briefing Mr McIntosh --

12 A. Yes.

13 Q. -- and saying that he should go to SHHD?

14 A. Yes.

15 Q. And it must have been some time after the end of March?

16 A. Yes.

17 Q. So at the same time when you are sending letters about
18 UK solidarity, you are also saying to Mr McIntosh --

19 A. We had better check it.

20 Q. Right. And you are telling us you have an actual
21 recollection of one conversation or more than one
22 conversation with Mr McIntosh?

23 A. I can't be sure. I just know -- I mean, we were having
24 very regular briefing meetings, not only on this topic
25 but I honestly can't be sure but I do have a very clear

1 recollection. I'll tell you for why -- and I have
2 already said it -- it arose, this recollection, at the
3 board meeting in June.

4 Q. Well, you have a very clear recollection; if it is very
5 clear, you must be able to tell us what it is. Is it
6 a recollection of one conversation, more than one
7 conversation?

8 A. I have no recollection how many conversations were
9 involved.

10 Q. Right. And if you have a very clear recollection,
11 please tell us the content. You said to him, "David
12 ..."

13 A. A situation has arisen in which we are going to be held
14 back, the testing start date. We need to touch base
15 with the Scottish Office to be clear that they
16 understand this, which I believe they did, and whether
17 they are satisfied with that position.

18 Q. You have previously referred to your offer to accompany
19 him --

20 A. Yes.

21 Q. Is that part of the clear recollection, that you said
22 "I'll come too"?

23 A. Very much so, yes.

24 Q. Did you want to be part of that?

25 A. Yes, I see where you are going, but, yes, absolutely.

1 Q. I'm not sure where I'm going. So I'm glad you can see.
2 What did he say to your offer to accompany him?

3 A. I don't actually recall specifically but I thought we
4 were content with that and he would let me know. I
5 can't recall in any great detail.

6 Q. Would it not have been better for Mr McIntosh to talk to
7 Dr McIntyre? Dr McIntyre, after all, is the person who
8 goes to ACVSB.

9 A. I didn't suggest he should go to Mr Panton; you
10 suggested he might do and that would be entirely up to
11 him.

12 Q. I'm asking you what he had in mind.

13 A. Yes. Dr McIntyre already had been briefed from that
14 letter and so he was in the loop, we presumed, but yes,
15 indeed, yes.

16 Q. Right. Indeed, that would have been better, would it
17 not, to speak to Dr McIntyre and for you to be there as
18 well, so that doctor can speak to doctor?

19 A. Yes.

20 Q. Right. On 8 May you wrote to Dr Gunson, and this is
21 about the response to the Newcastle situation, if we can
22 call it that. This is [\[SNB0051723\]](#). And I think we
23 understand that what's being discussed in this letter is
24 presenting the commencement of testing in Newcastle as
25 part of a study -- indeed that's what the letter says --

1 and that more centres than just Newcastle will have to
2 be involved, and we understand that there were going to
3 be two centres using Ortho and two centres using Abbott
4 and so on, and you proposed that Glasgow should be one.
5 Can we just look at the next page to see the reference
6 to Glasgow, please?

7 Here we are. Paragraph 5:

8 "We should offer Glasgow only into this national UK
9 study and the NBTS will have to find two Ortho centres."

10 So there are going to be four centres in total. And
11 Glasgow will be one of the Abbott two, and then if we
12 just look at the last page, just to complete the letter,
13 you are copying the letter to Dr Mitchell because you
14 are about to go on leave, and you say you are keen to
15 establish:

16 "A wee bit of continuity in SNBTS managerial support
17 for Dr Gunson."

18 What led to the conclusion of that?

19 A. I beg your pardon, I didn't hear that quite.

20 Q. I was just wondering what was behind that thought at the
21 end of the letter, that there was a need to provide
22 a bit of continuity in SNBTS managerial support.

23 A. I think -- because, if look at the proposals in the
24 previous pages, they were medically more scientifically
25 orientated, and if Harold had wanted to come back and

1 say, "I'm not sure about that, I'm not sure about that,
2 what about that?" the obvious person would have been
3 Ruthven to come back to, that's really all.

4 Q. Because these questions about the introduction of
5 screening -- you will be able to see where I'm going
6 with this -- they are really medical questions, and
7 Dr Mitchell helping Dr Gunson would be more useful than,
8 say, somebody like Mr McIntosh helping Dr Gunson.

9 A. In terms of the science, nonetheless, I felt David
10 should be kept informed as to what was going on.

11 Q. Yes, we can see that somebody else has written "silent
12 copy to Mr McIntosh."

13 A. Yes.

14 Q. Can we just go back to the first page of this letter,
15 please? Can we just go to the bottom because I think we
16 can see that this is a bit of a device.

17 A. Yes.

18 Q. We can see that from the reference to the public reason
19 for this phase, and "public" being shown in inverted
20 commas suggests that there is a presented reason and
21 a real reason, which does rather smack of a device.
22 I take it you would accept that?

23 A. Yes, I think the use of devices is common across all
24 homo sapiens' activities and I don't have a problem with
25 that. The fact of the matter is that in the initial

1 discussions I had had with Harold Gunson, there were
2 a number of options that would be taken and the last one
3 that I suggested, which is what emerged to be the most
4 acceptable to Dr Gunson, no doubt colleagues in the
5 Department of Health, was this one, and it was a device.
6 There is no doubt whatsoever.

7 Q. I agree with you about devices, a tin opener is
8 a device. The use of devices is indeed common across
9 the activities of homo sapiens, but a device in this
10 sort of context smacks of a degree of deception or
11 something a little less than the whole truth, does it
12 not?

13 A. I wouldn't disagree with that.

14 Q. Yes. Right.

15 A. What I couldn't get them to do was to -- as I have said
16 in my other statement -- was to abandon -- to give up
17 hope once Newcastle had gone and let's get on with it.
18 I couldn't get them to do that, which would have been,
19 in my view, the obvious -- the one -- the option
20 I preferred.

21 Q. Yes. So your preferred option was to say --

22 A. Capitulate.

23 Q. -- "the dam is cracked --

24 A. Yes.

25 Q. -- let's dismantle the whole thing immediately and

1 everybody start testing." That was your preferred
2 option?

3 A. Well, we need to do it in an orderly way, but, yes. To
4 sit there saying, "No, no, no, September, September,
5 September", my preferred option was exactly what you
6 say.

7 Q. Right. That would have worked, would it not, with the
8 whole of Scotland being in the first wave?

9 A. Yes.

10 Q. We are always coming back to the same point.

11 A. Yes, no.

12 Q. Could you not have advocated, "Well, Newcastle has
13 started testing. We are funded, we are ready. Scotland
14 can be in the first phase. We will start testing too,
15 not just the West but all of us". Why did you not
16 advocate that?

17 A. I'm repeating myself. What I wanted to get to, as
18 I recall at that time, was to get the Scottish Office to
19 say, "Hey, we have a major problem here. Let's review
20 it," and do we in fact go it alone or do we go down to
21 London, recognise that we should throw in the sponge
22 and, yes, indeed, the Scots can be the first part of
23 a UK programme, after the Newcastle problems, in which
24 implementation starts and the Scots in fact will go
25 first because they are funded and they can do it

1 quickly. I have no problem with that. But this,
2 I argued, was a matter -- that it was a policy decision
3 that had to be made by ministers.

4 Q. You see, what's missing seems to be the communication of
5 that to the decision-makers, to SHHD and for these
6 purposes also the health minister, that this is an
7 acceptable way of handling the situation as it had
8 developed by May.

9 A. I completely agree with that. I do have a problem about
10 missing documents but I do. And I have no recollection
11 of putting this in writing but that is a fundamental
12 problem. But I agree with that. This was very much the
13 topics that David and I discussed.

14 Q. Right. You see, Dr McClelland said that in his
15 evidence. He said he thought the best response would
16 have been a phased introduction of screening. So it
17 seems strange --

18 A. I agree.

19 Q. We will come to June in a moment but it seems strange
20 then that the two-day meeting in June seems to have
21 involved a dispute.

22 A. Well, I'm happy to come to that in due course.

23 Q. We will come to that.

24 A. If I may.

25 Q. Yes. Let's just stick for a moment with your

1 encouragement to Mr McIntosh to go to SHHD. You have
2 told us you have a clear recollection but you are not
3 sure whether it's one conversation or more than one.
4 I wondered also, did you ask him every so often if he
5 had done it?

6 A. Do you know, I have thought about this very recently and
7 I have no recollection. I suspect -- I wouldn't wish to
8 bore you -- that the overriding, major hassle we had at
9 that time had nothing to do with this; it had to do with
10 introducing a major new technology for high purity
11 Factor VIII, and there were a lot of us who were very
12 busy doing other things. But I think you make a very
13 good point and I have no recollection, I am afraid,
14 whether I did that or not.

15 Q. You see, it seems like the sort of thing, if you thought
16 it was important enough that contact be made with SHHD
17 to ascertain their position, you would be nagging him to
18 make sure he did it and wanting to find out when it was
19 happening and what the outcome had been.

20 A. I think that's a very fair point.

21 Q. Right. Okay. I think we should look at what
22 Mr McIntosh says about all this, Professor Cash.

23 A. Hm-mm.

24 Q. Can we look at the transcript for 29 November, please.
25 Can we go to page 102? We had better get the context.

1 I think we need to go up a tiny bit. This is Mr McIntosh
2 being asked about your supplementary statement,
3 Professor Cash.

4 A. Yes.

5 Q. That's the one that you did directly in response to
6 Mr McIntosh's account. I took Mr McIntosh to parts of
7 the document where he was mentioned by name:

8 "[Professor Cash] says on many occasions he briefed
9 you on your understanding of the position and that is
10 that I think you were not being held back [I think there
11 may be an extra "not" in there] by conforming to an
12 English norm. On many occasions Professor Cash briefed
13 you on his understanding of the position and also on his
14 feeling that in some political circles there was overt
15 antagonism to the Scots doing anything their way, and
16 that on many occasions he advised you that if [you] felt
17 that the HCV donation testing position was intolerable,
18 as he did, then you should go to Mr Donald and be
19 prepared to join Mr Donald and petition senior SHHD
20 officials and ministers to change their position."

21 And Mr McIntosh says that that does not accord with
22 his recollection, and I think we should just read his
23 answer for ourselves.

24 THE CHAIRMAN: Can we go forward, please?

25 MS DUNLOP: Then on to the next page as well, please.

1 We can see at line 6 I'm asking Mr McIntosh about
2 your statement in this supplementary document, that
3 Mr McIntosh got jittery when the news of Dr Lloyd's
4 action became known. You, Professor Cash, say in your
5 statement that the two of you discussed it at some
6 length and that:

7 "Mr McIntosh regretted he had taken no earlier
8 action to alert SHHD of our concerns at the way the kit
9 evaluation process was being handled."

10 And that didn't ring a bell for Mr McIntosh either.
11 So he says he was jittery and increasingly so from April
12 onwards because:

13 "We ..."

14 Which I assume is SNBTS:

15 "... were not doing what we had set out to do and
16 what we were encouraged to do, which was to introduce as
17 soon as is reasonably practicable."

18 If we go a little bit further down, please. And he
19 is saying that he would have thought, if this was what
20 happened, the two of you would have been doing joint
21 jitteriness. Right. And a little bit further down,
22 I think, and on to page 106. We appear to have
23 a difference of recollection, Professor Cash.

24 A. No question. Would you like me to respond, not
25 necessarily to specifics.

1 Q. I think I would prefer specifics, actually. I have no
2 difficulty with you responding --

3 A. Sorry, relating specifics to David. But this is very
4 specific.

5 Q. Right.

6 A. On 13 April -- you remember I had said I briefed him
7 soon after the 27 March?

8 Q. Yes.

9 A. And whether or not I kept briefing him on a number of
10 occasions on this topic, I can't remember. Whether
11 I chased him up, I can't remember. I think it's
12 probable but I can't remember. But the point I'm trying
13 to make is less than 30 days later of this first
14 briefing, or there or thereabouts for David, there was
15 a meeting between Harold Gunson, myself, David and
16 Dr Moore, this liaison meeting; where Harold, for the
17 first time, formally reported to all of us the events
18 that were going on in Newcastle. It's minuted.

19 One of the great problems that I alluded to of my
20 briefing meetings with David, there was never any
21 minutes at all or notes. And I take responsibility --
22 part responsibility for that.

23 On 13 April David McIntosh agreed to report the
24 serious situation to SHHD and urgently seek
25 clarification of policy. I think I'm quoting the

1 minute.

2 Q. Yes:

3 "It was agreed that a firm clarification of policy
4 was urgently required from DOH/SHHD within seven to ten
5 days."

6 I'm sorry, it's not on the list but can we just have
7 a look at the actual document, please, [\[SNB0101108\]](#).
8 That's 8 May. Mr McIntosh, yourself, Mrs Porterfield,
9 Dr Gunson, Dr Moore and then on to the next page,
10 please. Anti-HCV testing.

11 So we need, of course, to be very clear that what
12 this is about is the news from Newcastle?

13 A. Absolutely right.

14 Q. And you have mentioned this already. We can see that
15 Mr McIntosh informed SHHD officials of what had
16 happened. So Dr Gunson had already advised the
17 Department of Health. No one, it seems, had told SHHD;
18 Mr McIntosh tells SHHD. That certainly bears out your
19 evidence, Professor Cash, that Mr McIntosh liked to be
20 the person to liaise directly with SHHD.

21 A. Yes.

22 Q. So he is passing on a piece of information to them. We
23 can see that.

24 A. It was not only passing on information; the idea was to
25 get them to consider their policy in the light of that

1 information.

2 Q. Right.

3 A. That policy changed.

4 Q. All right. Let's read on. If we look on to the next

5 page.

6 A. Yes:

7 "It was agreed that firm clarification of policy was

8 urgently required."

9 Q. Yes. But it doesn't actually say by Mr McIntosh, that

10 this was Mr McIntosh's responsibility.

11 A. I'm absolutely certain, if the minute taker, Elizabeth

12 Porterfield, had known 20-odd years later that this

13 would -- she would have put it in. She was his PA.

14 Q. Yes, but there is nothing in this, Professor Cash, to

15 suggest that you couldn't have spoken to SHHD.

16 A. No.

17 Q. Right.

18 A. Nothing at all.

19 Q. Right.

20 A. But there was an agreement that David McIntosh would.

21 Q. At the meeting? Are you saying that this was an

22 agreement at the meeting that that clarification --

23 A. David McIntosh was going to inform --

24 Q. -- of policy?

25 A. Yes, it is very clear to me that he would be looking to

1 find out what was the policy. What is not clear to me,
2 because I do not know, but I challenged him in June, did
3 he do it.

4 Q. All right. Let's not confuse ourselves. You say that
5 the meeting agreed that Mr McIntosh would clarify with
6 SHHD what policy was. Policy, of course, is in response
7 to the news from Newcastle?

8 A. Absolutely correct.

9 Q. So it doesn't provide an illustration of Mr McIntosh
10 going to SHHD to ascertain policy in relation to
11 Scotland being held back. It's not that; it's
12 a different development?

13 A. I think that's a close-run thing. If you are talking
14 about Newcastle, as we agree, it was a centre saying,
15 "We are not prepared to be held back; we are going to do
16 it".

17 THE CHAIRMAN: I just want to see the whole sentence that
18 ends in the first two lines.

19 MS DUNLOP: "Finalise arrangements"?

20 THE CHAIRMAN: Yes.

21 MS DUNLOP: Yes. Can we go back to the previous page,
22 please?

23 THE CHAIRMAN: Yes. I get the context.

24 MS DUNLOP: Yes, and indeed, we have gone slightly back in
25 time. That probably leads naturally to the letter of

1 8 May, in which Professor Cash was proposing some of the
2 arrangements for the UK-wide study.

3 THE CHAIRMAN: Yes.

4 MS DUNLOP: You didn't include in your supplementary
5 statement, Professor Cash, any reference to the chain of
6 communication only being between Mr McIntosh and SHHD.

7 A. I accept what you say and apologise if that in any way
8 is a problem.

9 Q. Yes. Well, I mean, it has been evident for some time
10 that these matters are controversial, and why Scotland
11 didn't start screening before September 1991 is an issue
12 for us. Are you saying you can't really explain why you
13 didn't put in your supplementary statement that you
14 couldn't have been expected to do anything about it
15 because Mr McIntosh was the one who preferred to make
16 contact?

17 A. I didn't like to see it, to be honest, in those terms.
18 I was Mr McIntosh's colleague. He insisted that he
19 would play that lead role and I repeatedly advised him
20 that I would be very happy to come and support him, if
21 he so wished.

22 Q. Right. The two-day meeting in June, your introduction
23 to that, I think, should be to look at Dr McClelland's
24 letter, [\[SNB0027902\]](#).

25 A. This is the one dated on the day the meeting took place.

1 Q. Yes.

2 A. Yes.

3 Q. You do refer to that in your supplementary statement,
4 Professor Cash, and do you want to tell us what exactly
5 you are suggesting about Dr McClelland's penning of this
6 letter? I can certainly see it's dated 11 June and
7 I think the meeting was the 1st and the 11th. Is that
8 right?

9 A. I think it was the 11th and 12th.

10 Q. It's not always easy to work that out.

11 A. Okay.

12 Q. What point is it you want to make about the --

13 A. I think none other than the point I have made and you
14 have noted and that was that, as we sat down at the
15 meeting, a board meeting, I'm fairly sure I was not
16 aware of this letter. Right?

17 Q. Right.

18 A. And that led to a feeling among a number of the
19 colleagues, it transpired, which I have already
20 described in one of my statements, that we had been
21 a bit hijacked -- you know, as the thing, as the debate
22 began to emerge.

23 There is another letter -- which is hugely important
24 in my view, and I should have drawn your attention to it
25 before -- on the same day, which is curious because we

1 were all in Stirling. David McIntosh writes a letter to
2 all the board members to draw their attention to events
3 in Paris, which, as I'm sure you know, led ultimately to
4 the imprisonment of the director of the transfusion
5 service and his deputy, Pierre Allain.

6 David's letter is to express his grave concern and
7 to suggest a position paper and advice, if the media
8 start asking questions.

9 So there is no doubt that 11 June, whether it was --
10 these were written before or after this meeting, as we
11 assembled at that time in Stirling, there was a lot of
12 anxiety and all of us, in fact, share the anxieties.
13 I don't think that was ever an issue at all. But there
14 was another event, reporting Paris, that David had taken
15 action. Whether it was before the meeting or in fact
16 after, I don't know. But it revealed, clearly, that
17 David, quite rightly, was very anxious indeed.

18 Q. Right. Well, from the documents of the day,
19 Professor Cash, it seems to have been, if not the
20 burning issue, at least a burning issue around about
21 this time. Why did you feel ambushed? You had two days
22 of discussions. Would you not have expected to have
23 been discussing HCV testing?

24 A. Yes, I think my -- we have not got round yet. What was
25 actually discussed -- what was the proposition, and the

1 proposition was -- and this I have seen in no documents
2 at all, because the meeting minutes were just -- the
3 original ones, I was led to believe by Morag Corrie, did
4 refer to this, albeit no doubt, knowing Morag, not in
5 great detail, but the debate was: should we, as
6 directors, get on and do a Newcastle? And "doing
7 a Newcastle" means you just start it, you don't tell
8 anybody and then in due course you inform people, but
9 it's a force majeure, you can't do anything about it.
10 You just have to continue. That was what was on offer.

11 I must say -- and I may be quite wrong and you can
12 guide me -- when I look at Brian's oral hearing, I got
13 the distinct impression -- and I may be quite wrong --
14 that actually Brian may well have instructed his team in
15 the Edinburgh centre to press on and introduce testing
16 as soon as they possibly could, and that was
17 a background and the question then arises whether David
18 knew about that, and so on and so forth.

19 But there is no doubt that the hijack was that we
20 didn't know about Brian's letter. When we discussed the
21 whole business of Newcastle, we were very sympathetic to
22 this view and where we all fell out was -- and I must
23 take major responsibility for this -- I was saying, "No
24 Newcastle; if we are going to go it alone, we touch base
25 with the Scottish Office and our colleagues in the

1 Scottish Office and ministers agree that that's
2 justified".

3 And we all fell out as a consequence of this, and
4 David got challenged: had he been into the
5 Scottish Office on these occasions? Had he looked at
6 the -- with them at clarification of policy? So the
7 debate -- this particular bit of the debate was about
8 doing a Newcastle. You did it, as they did in April,
9 and informed people in early May.

10 That was the basis of the debate and we all fell out
11 about it.

12 MS DUNLOP: All right.

13 It's not a particularly good point, sir, because
14 I do want to ask some more questions about this two-day
15 meeting, but it's one o'clock and I think in all the
16 circumstances, it would be a good idea to rise.

17 (1.03 pm)

18 (The short adjournment)

19 (2.00 pm)

20 THE CHAIRMAN: Yes, Ms Dunlop?

21 MS DUNLOP: Thank you, sir.

22 Professor Cash, we did have a look for Mr McIntosh's
23 letter of 11 June 1991 and we don't appear to have it in
24 fact, in Signature, which is our main database. I'm not
25 sure that it matters. I think there is enough other

1 material to show that litigation, possible litigation
2 was in everyone's minds, certainly by the summer of
3 1991, and there are a newspaper articles and so on as
4 well, to show that being discussed in the UK, and I'm
5 inferring from what you are telling us that this is
6 really on the same theme, this letter. Mr McIntosh is
7 saying, "Look at what has happened to a transfusion
8 director in France," or in a transfusion service in
9 France in connection with the supply of blood in
10 connection with HIV.

11 Is that right, that that's really the point you are
12 making, that the letter made people nervous?

13 A. It was in connection -- may I say, I'm very happy to
14 provide you with a copy, if you wish me to bother, but
15 it was in connection with the accusation that the
16 individuals that eventually went to court, I think they
17 were charged -- very French -- clinical negligence.
18 I don't know whether that can apply here. But they had
19 not done what it was believed they should have done in
20 the context of the safety -- actually it was of
21 Factor VIII, it was heat treatment.

22 Q. Yes.

23 A. And I must say that there was nothing -- that was very
24 specific. It was a sister transfusion service, so
25 sisterly that we were heavily engaged in a major

1 exercise with the same organisation in Lille. So, you
2 know, it cut very close to us.

3 Q. Right.

4 A. That's the only point I was trying make.

5 Q. We will be very happy to receive a copy if you would
6 like to send us a copy. Thank you --

7 A. Thank you very much.

8 Q. That would make our records, I'm sure not complete, but
9 more complete.

10 Can we just go back to Dr McClelland's letter,
11 [\[SNB0027902\]](#). I think you would accept, Professor Cash,
12 that the very specific sort of suggestion, namely that
13 some or all of the other Scottish regions could emulate
14 Newcastle, isn't made in this letter?

15 A. No, absolutely correct.

16 Q. It's a much more general suggestion, that the whole
17 issue needs to be discussed?

18 A. Yes, and we all read it and said "hear, hear," very
19 important point.

20 Q. There wasn't anything inappropriate about suggesting
21 that the issue needed to be discussed?

22 A. Absolutely not.

23 Q. Indeed, he could have raised it at the meeting even as
24 AOB or something like that?

25 A. In fact that's in fact what actually happened. I don't

1 think we had seen this before the meeting. But that's
2 fine.

3 Q. Right. We do have from Dr McClelland his notes of the
4 meeting, and no doubt you have had a look at those, have
5 you?

6 A. Hm-mm.

7 Q. Yes. He provided us with his handwritten notes and then
8 he also very kindly typed out the parts of the notes
9 which relate to this issue. We have looked at them
10 before but perhaps if we can look at them again,
11 [\[PEN0172774\]](#).

12 THE CHAIRMAN: Ms Dunlop, I wonder if I could get my hard
13 copies. I find it easier.

14 MS DUNLOP: Yes. (Handed)

15 THE CHAIRMAN: I have been looking at them, so I would like
16 to have the bit of paper. (Pause)

17 Thank you. Yes?

18 MS DUNLOP: Yes. I think actually can we keep that open and
19 just glance at the actual minutes as well. The minutes
20 are very short, as we have been saying, and don't offer
21 much elucidation but just to remind ourselves of what
22 they say. It's [\[SNB0027666\]](#).

23 We know that this is the two-day meeting, the 11th
24 and 12th. I just wanted to confirm that as well, 11 and
25 12 June 1991. We know that it took place at

1 Stirling University and the actual decision -- I can't
2 remember if it's on the next page. Can we look at the
3 next page, please? -- is recorded extremely succinctly.

4 No, further on.

5 Sorry, I have probably got a separate copy of it
6 somewhere. Yes, 3.1.2, "Anti-HCV testing":

7 "Agreed. Routine donation testing to begin on
8 1 September 1991."

9 So not much to it but can we go back to
10 Dr McClelland's notes, please? Just to work our way
11 through them:

12 "HCV testing Glasgow has started. Data from all
13 centres end of July/early August ... start
14 date September 1st stands."

15 Then on the next page he has written -- sorry,
16 I just meant it's his own page break, not our page
17 break, so if we go back to page 2, it says:

18 "Page break."

19 Can we go up? Sorry, can we go back to page 1?
20 There we are. It was that reference to the page break.
21 He has then got some boxes. There is not really
22 a flowchart but different issues in the box:

23 "Medico-legal issues.

24 "PI issues.

25 "Long-term relations.

1 "Compromise.

2 "No publicity.

3 "Allow us if pushed to say the programme has
4 started.

5 "Avoid hassle with clinicians which may lead to more
6 publicity ... September 1st-announcement."

7 Does any of this ring bells for you, Professor Cash?

8 A. To be honest, it doesn't, and weeks ago I asked Brian if
9 he had a moment to just, you know, fill it in for me,
10 and we just haven't got down to it, I am afraid. But,
11 no, I could imagine some of these topics being included
12 in the debate but not in this particular format, that
13 doesn't mean it didn't take place.

14 Q. Right. Can we turn over now, please:

15 "How fast can we institute//report back (a) starting
16 date possible (b) can we hit (?)September 1st as."

17 Then in block capitals:

18 "The UK pack is still a pack."

19 With your initials beside it. That very much looks
20 like something you have said?

21 A. Yes, I must have reported to them in the debate at some
22 point and as I have said, we were talking about
23 Newcastle. I was reporting back that at that moment,
24 with the exception of Newcastle, the position was being
25 held. That, I think, is what is meant by that.

1 Q. What about the bit that we see to the right of that:

2 "Can we make a strength of this by demonstrating
3 that we have considered the early start option and
4 rejected it in the interest of support/buttressing
5 a co-ordinated national service."

6 Do you think that that is you speaking?

7 A. It could be. I honestly do not know, I am afraid, but
8 it's on the same line as my initial -- as the debate on
9 the Newcastle option emerged, it was, as I have said
10 already this morning, it was about involving urgently
11 the Scottish Office in these matters.

12 Q. Well, it does look as though SHHD in the months --
13 I suppose the first half of 1991 -- may not have been
14 entirely au fait with what was happening at the
15 coalface, in terms of the administration, the
16 arrangements, to commence testing. It could also have
17 been said that perhaps from the end of March onwards,
18 testing was not being commenced in Scotland as soon as
19 reasonably practicable.

20 A. Yes.

21 Q. So the ACVSB, having said in November 1990 that testing
22 should begin as soon as reasonably practicable, at least
23 as far as Scotland was concerned, that wasn't happening,
24 was it the case that you felt contact should be made
25 with SHHD so that they knew that?

1 A. You mean are we talking about --

2 Q. No, I'm thinking more generally --

3 A. Yes, I'm with you.

4 Q. -- this encouragement to Mr McIntosh to make contact
5 with SHHD, and I think what we are all trying to find
6 out is quite what your expectation or hope or wish was
7 behind that contact. You know, what would you want to
8 have resulted from that. And we have discussed various
9 possibilities, that this was on your part a lobbying for
10 Scotland to start screening now. It was perhaps
11 something rather lesser, you finding out what is the
12 SHHD. I suppose here I'm canvassing with you what is
13 a third option, which is that you were uneasy
14 that a situation which you were tolerating, of Scotland
15 not introducing screening, was actually not known to
16 SHHD.

17 A. Gosh, that's an option and that's a possibility. My gut
18 reaction is that that's highly unlikely because I had
19 the distinct impression that Archie McIntyre was a very
20 regular and committed member of the advisory committee
21 and my impression was -- and I knew Archibald quite
22 well -- that he would be pretty industrious in terms of
23 linking up with the likes of Dr Rejman, Hilary Pickles
24 and so on. So what you suggest is a possibility.
25 I wouldn't deny that and I think -- but I would doubt it

1 for the reasons that --

2 Q. Right. You will remember, I'm sure, that that copy of
3 the letter to Mr McIntosh that went to SHHD has written
4 on it in Mr Panton's writing "this is worrying"?

5 A. This is worrying, surprise.

6 Q. Yes.

7 A. And my reaction when I read that -- and I hadn't seen
8 that copy before -- was -- Rab was a hell of a nice guy
9 and a very honest guy -- that he was clearly saying
10 something which was a fact and I just wondered, because
11 I had discovered this on previous occasions, that not
12 everybody in the loop in the Scottish office at any one
13 time was necessarily up to speed with what on earth was
14 going on.

15 So I wondered whether -- I think you have already
16 ascertained from the likes of Iain Macdonald and
17 Graham Scott and Archibald, that the medics regularly
18 put little weekly or bi-weekly briefs up and around so
19 that people were properly informed, and I just wondered
20 whether we had hit this at a time when Rab didn't happen
21 to be in the loop.

22 And it's interesting, Rab's concern was not the
23 medical ones, it was that he had a job of briefing
24 ministers and so he was concerned that he didn't know
25 quite what was going on.

1 Q. You see, why would they, Professor Cash, because you say
2 Dr McIntyre was a very committed member of ACVSB and so
3 on and a regular attendee, but the discussion about the
4 postponement of the starting date has taken place not at
5 ACVSB but at ACTTD and there is nobody from the
6 Scottish Office there.

7 A. But, I mean, I can't speculate but I cannot imagine
8 Harold Gunson not briefing carefully his colleagues in
9 DHSS with regard to this and I have assumed -- and you
10 make the point that they may not be up to -- I have made
11 the assumption that that would have been passed on to
12 Archie.

13 Q. But you see the difficulty, of course, with it is the
14 tone as well. I mean, the way the Scots see it -- and
15 I'm including you as a Scot.

16 A. Absolutely.

17 Q. If you don't mind.

18 A. Please do.

19 Q. The way the thing is being seen from Scotland is that
20 the Scots are having to wait for the English to get
21 things organised. There are all sorts of practical
22 difficulties and also this evaluation exercise is going
23 to be responsible for delay and so on, and the situation
24 may be, to some extent unsatisfactory, so I think in
25 your own words there is a sort of independent

1 requirement for reporting to SHHD and telling them that.
2 But no one is really doing that. No one is going.
3 A. I think we -- that may be a right conclusion. Yes.
4 Q. Right. You see -- I mean, another way of looking at it,
5 and I suppose here I'm being devil's advocate, but if
6 perhaps you were actually prioritising UK solidarity,
7 you personally thought that UK solidarity was the
8 primary goal and so --
9 A. No, I didn't.
10 Q. So everyone should move together, then the need to
11 report to SHHD might be just much more formal, might
12 just be this is what's happening, that we are all still
13 moving together on this.
14 A. No, I would simply comment -- I made it very clear in my
15 statement -- this obsession with UK solidarity, which
16 David has made very clear I had, I don't accept that at
17 all.
18 Q. What about:
19 "The UK pack is still a pack."
20 A. I'm simply reporting --
21 Q. It's quite eloquent, Professor Cash.
22 A. That's very kind.
23 Q. Well it's eloquent --
24 A. I'm simply reporting to the guys that I have no -- let's
25 face it, I have no evidence, when we get into that

1 debate that any of the other English regions are moving
2 or wobbling in the direction that our mates in Newcastle
3 did. That's really all I'm saying, and I knew -- at
4 least I thought I knew -- that that also applied to
5 Scotland. So, I'm saying the UK pack --

6 Q. What I think it's eloquent of -- and you will no doubt
7 correct me -- it's eloquent of a man wiping the sweat
8 from his brow and saying, "Phew, we are all still
9 together."

10 It doesn't sound like someone saying "Scotland
11 should be taking its own steps."

12 A. That I think, if I may say, is a pejorative
13 interpretation of the five words you see on this piece
14 of paper.

15 Q. Seven. It depends what you count "UK" as?

16 A. Two, four, six. I didn't count "a" as a word.

17 Q. All right.

18 A. I think you are adopting, quite rightly, if I may say
19 so, a view that actually is just a little wide of the
20 mark. I wasn't going, "Phew, thank God." I was simply
21 reporting to my colleagues, as they began to debate the
22 notion of doing a Newcastle, the Scots doing
23 a Newcastle, that at the present time the UK was
24 operating, with the exception of our friends in
25 Newcastle, as a single unit in respect of this topic.

1 Q. Right, and that is a good thing, though?

2 A. Yes, I think I have explained in some detail in my
3 statement. I certainly believed that in principle, as
4 many others have done, Brian talked about post codes and
5 all this sort of thing -- as many others have done -- if
6 in fact we could stay together in a lot of these areas,
7 particularly relating to blood safety, that was a good
8 thing.

9 Q. Right. You see, it's not an isolated comment, it fits
10 with the tone of the letter to Dr Lloyd and indeed
11 further --

12 A. I think that's a fair point, oh yes.

13 Q. There is a lot of sporting-type metaphors about the team
14 and so on.

15 A. I don't remember any recollection of the "phew", that
16 was all.

17 Q. Does the "phew" come at the next point? Can we look at
18 [\[SNB0118178\]](#)?

19 THE CHAIRMAN: Can I just ask a question before we leave
20 this?

21 MS DUNLOP: Yes.

22 THE CHAIRMAN: Going to the page with a little non-flow
23 diagram on it -- that's back one, I think -- sorry, it's
24 further down this page.

25 MS DUNLOP: No, it's back one.

1 THE CHAIRMAN: Is it back one?

2 MS DUNLOP: Yes.

3 THE CHAIRMAN: Oh right. Does "avoid hassle with
4 clinicians" mean anything to you in this context?

5 A. No, it doesn't, sir.

6 THE CHAIRMAN: It doesn't seem to have any context that
7 would tell one much unless it's explained.

8 A. Yes.

9 THE CHAIRMAN: Which is why I ask.

10 A. I can only suggest that Brian might be able to help.

11 THE CHAIRMAN: Did you have contact with the haemophilia
12 clinicians?

13 A. Did I?

14 Q. Yes.

15 A. I had quite close contact with Christopher Ludlam, yes,
16 sir.

17 THE CHAIRMAN: Would you know that they were seriously
18 exercised about litigation at this period?

19 A. Well, I can't -- I'm sure there is some concern there.
20 I think we get it not from Christopher but from the UK
21 haemophilia directors' minutes of one of their meetings.

22 THE CHAIRMAN: That's correct.

23 A. What we do know is, and this, as you know, exercised me
24 considerably, when we came to this stage at HIV and we
25 reached somewhere pretty similar but it was a much

1 shorter timescale, it was a haemophilia director that
2 blew the whistle and, in my view, precipitated the very
3 quick introduction of the testing. This is HIV. So it
4 may be, sir, that that box there is conveying that sort
5 of message.

6 THE CHAIRMAN: But that's purely speculation on your part?

7 A. Absolutely.

8 THE CHAIRMAN: Yes, I just wanted to know --

9 MS DUNLOP: Sorry, sir, I was leaving it prematurely,
10 I should have completed it.

11 I suppose also, Professor Cash, must there not have
12 been concern around about this point from the whole run
13 of clinicians who are involved in the use of blood for
14 transfusion?

15 A. I have to say, that would make immense sense but I have
16 no recollection of that. I really don't.

17 Q. Right.

18 A. But I do have this recollection that in a minute in the
19 UK haemophilia directors' meeting individual directors,
20 not Christopher Ludlam particularly, individual
21 directors were raising concerns, as they had done for
22 several years, this related to product licences and so
23 on and so forth, when we got into surrogate testing, the
24 clinicians wanted to see surrogate testing in, so that
25 the products that they were using from NHS were

1 similarly manufactured in terms of safety and so on.

2 So -- and I have this recollection about Hepatitis C
3 but I am afraid I can't recall it in any gate detail at
4 all. Certainly there was nobody banging us on the head
5 in any direction in Scotland.

6 Q. Right. Let's just go to the next page and just confirm
7 that under the reference to the pack, there is some more
8 practical information. There is a wee timeline and
9 I think perhaps some incomplete notes really:

10 "Data for trial commencement on the basis that
11 national director ..."

12 A. I don't know what that means. Brian, I hope, could
13 help.

14 Q. I think he finds it difficult -- he is nervous of going
15 beyond the notes. But we do see there is a reference to
16 France, which I think we might understand against the
17 information you have given us about the letter?

18 A. I should add with France, Bahman Habibi -- I know you
19 have heard this name before -- was constantly telling me
20 on the phone that they started HCV testing I think
21 in March 1990. I think I have got it right.

22 Q. Yes, they were one of the early ones.

23 A. And this, you know, was a source of some concern.

24 Q. Let's look at the last page as well, just to see it.

25 A. I mean, it's only in the light of what I have read from

1 Brian, the commencements evaluation testing,
2 7 July 1991.

3 Q. 15 July?

4 A. Sorry, 15th, I beg your pardon, which is interesting.

5 Q. Yes. Can we just look back at Professor Cash's
6 statement, please, because we need to look at the last
7 page on this topic, which is the statement [\[PEN0172094\]](#)
8 at 2105. We have been over the territory covered by
9 most of what's on this page in great detail but I'm
10 wanting to focus on the man wiping sweat from his brow,
11 who you are telling me is a figment of my imagination.

12 A. No, no, occasionally he did that.

13 Q. Right. The relevant letter is [\[SNB0118178\]](#).

14 A. Yes.

15 Q. That's where you would be expecting to be taken,
16 Professor Cash, I'm sure. You are writing to Dr Gunson
17 on 17 June 1991 on the subject of HCV donation testing:
18 "Picking up the pieces after last week's near
19 disaster up here."
20 I suppose the first thing that strikes a reader
21 about that is that there has been some kind of
22 communication between the two of you before this letter;
23 otherwise, Dr Gunson would be a bit puzzled as to what
24 you are getting at.

25 A. Yes, I daren't draw your attention -- this is another

1 Manchester -- this is about the fifth Manchester
2 document we have seen today.

3 Q. All right.

4 A. Yes, I can only presume so, yes.

5 Q. You can't remember what happened? Did you pick up the
6 phone and report on the board meeting to him or ...?

7 A. No, no, no.

8 Q. No?

9 A. No, I was wondering whether you were asking before the
10 board meeting we had been in contact.

11 Q. No, no, I am wondering how, between 12 and 17 June 1991,
12 Dr Gunson has come to know about the proceedings of the
13 meeting in Stirling.

14 A. Fair point. I must have, I have no recollection.

15 Q. Right. So what was last week's "near disaster"?

16 A. Doing a Newcastle.

17 Q. That's your position, that what Dr McClelland was
18 mooting was --

19 A. That's what --

20 Q. -- immediate start of testing without telling the common
21 services --

22 A. That's what emerged as a proposition.

23 Q. And the --

24 A. In front of that was Brian in a sense addressing his
25 letter, and everybody shared the anxiety that he rightly

1 had raised but the proposition -- to be honest, I don't
2 remember whether it was Brian that made -- or in fact
3 David that -- but I do remember that one of the problems
4 we had at the meeting was David giving us a lecture on
5 medical ethics.

6 Q. Now, professor, your suggestion that that was the
7 proposal that was put forward, that the SNBTS should
8 follow Dr Lloyd's lead and commence HCV donation testing
9 immediately and without informing the
10 Common Services Agency or SHHD, you have that in your
11 supplementary statement, which I did not have when
12 Dr McClelland gave evidence. So I think we will have to
13 go back to Dr McClelland and ask him for his position on
14 that.

15 A. Sure.

16 Q. But I need to press you on what actually the disaster
17 would have been? What would be the disastrous part of
18 that?

19 A. First and foremost I believe we had a trust, a
20 professional trust, between our relations and the
21 Scottish Office, which were hugely important and which
22 really, in my view, we may not have agreed on many
23 occasions with our friends in the Scottish Office but in
24 my view we had a professional -- there was a trust that
25 was needed to in fact operate effectively.

1 I took the view that if we did something of this
2 magnitude, bearing in mind the Scottish Office's
3 declared position, policy position, this would be
4 a breaking of that trust. That's the first thing.

5 I already knew by June, mid June, what was going to
6 happen, I wasn't certain, to Huw Lloyd, and I was very
7 distressed by this and at a personal level
8 I envisaged -- and I think at some point in
9 a statement -- I envisaged that there would be great
10 retribution and in some respect I think there was
11 later -- retribution if the directors unilaterally went
12 down this line. So all these things for me I put
13 together a disaster. I mean, the notion that we should
14 break that trust with or colleagues in the
15 Scottish Office, I found unacceptable. So that's --
16 that's about as much as I can think on the hoof of the
17 definition of "disaster".

18 Q. Might it not have been better for patients?

19 A. Yes.

20 Q. It wouldn't have been a disaster for patients?

21 A. No.

22 Q. Right. So the disastrous element would have been,
23 according to you, the somewhat covert introduction of
24 screening. What about a decision from the board meeting
25 on 11 and 12 June that Scotland needed to introduce

1 screening immediately and that that recommendation would
2 have to be put to SHHD?

3 A. I don't think we -- absolutely, and my -- I mean, I was
4 astonished eventually to see the minute of the meeting
5 because we didn't actually, in my view -- my
6 recollection -- agree that it should stay at September.
7 We in fact, having had this awful fallout, came together
8 and said, "Look, David, for God's sake would you please
9 get into the department, with me or anybody you like,"
10 to begin to argue the case that I outlined this morning,
11 which included exactly what you were saying.

12 Q. So the minute is actually wrong, that almost one
13 sentence minute is wrong?

14 A. Absolutely wrong, and I think I said it in my statement.
15 I do not believe, have no recollection that we just sat
16 there and said we stay at 1 September. What we said was
17 in the light of what has gone in Newcastle, we have
18 a duty to get into the department and start moving, as
19 in fact I thought we had done at the liaison committee
20 that I just talked about on 30 April.

21 Q. So why have we not found any record of you correcting
22 that minute?

23 A. Well, I think that's a very fair point and I can't
24 answer that. Genuinely. I think -- I have to tell you
25 that the fallout at the June meeting was really very

1 substantial and I think a lot of us lost heart in
2 arguing the toss with David and asking him, for
3 instance, "Have you been to the department?" and so on
4 and so forth, or asking him, "Where is the copy of this
5 mysterious letter," that he now says is the most
6 important letter he wrote in his life -- I wouldn't make
7 that judgment, but he doesn't know if it was sent. We
8 are remiss and I take huge responsibility that I think
9 at the August, the next meeting, we didn't actually say
10 "Where is it, David?" And I think that's a very fair
11 criticism.

12 Q. You see, no doubt, Professor Cash, you never
13 in June 1991, even in your worst nightmares, imagined
14 today.

15 A. No.

16 Q. But some sort of look back --

17 A. Not in my worst, worst nightmares, yes.

18 Q. But some sort of retrospective examination of these
19 events was conceivable. Everyone is thinking about
20 litigation.

21 A. Yes.

22 Q. And about blame and liability.

23 A. Yes.

24 Q. It does seem surprising that if the board on 11 and
25 12 June 1991 had decided not to stick to

1 1 September 1991 date.

2 A. No, I didn't say that. Please, it's so important. We
3 did not decide not to stick to it.

4 Q. You didn't decide to stick to it. Sorry, you didn't
5 decide not to stick to it?

6 A. We decided that the option of doing a Newcastle was not
7 acceptable, for the reasons I have given, but we are
8 very concerned in principle with what had gone in
9 Brian's letter, and we therefore needed to go to the
10 department and say, "Your policy isn't working. It's
11 beginning to hurt us, the SNBTS. Can we get this
12 reviewed in some way?" That was our position.

13 Q. So your position was Newcastle but orderly?

14 A. My position was -- please -- my position was: can we in
15 fact get the thing relooked at. If in fact the answer
16 was yes -- I said this this morning -- indeed, mine
17 would have been -- talking to the people in London,
18 getting an agreement on that and then phasing in, and
19 there is no doubt we would have been very quick indeed.

20 Q. Right.

21 A. But that would have been something that both
22 departments, both ministers, accepted was acceptable.

23 Q. So we have a position where you are telling us that you
24 were not in favour of simply sticking, without further
25 discussion, to a simultaneous starting date of

1 1 September 1991?

2 A. That is correct.

3 Q. You were not in favour of that. That is what happened.

4 We know from other people that they were uneasy about

5 it. Dr McClelland has told us he was. Mr McIntosh.

6 There was discussion. Who then carries the

7 responsibility for the fact that that is what happened,

8 that there wasn't some kind of alternative canvassed for

9 Scotland or some sort of discussion or some kind of

10 recommendation for Scotland?

11 A. The answer to that question is the same as I had this

12 morning: the view was that was the general -- the

13 general manager was asked to do something.

14 Q. Is it not you? Do you not carry at least part of the

15 responsibility?

16 A. Yes, indeed, yes indeed, yes, indeed. But the letter

17 going to the department -- if he had said to me, "Here

18 is a draft, John, what do you think of it?" delighted to

19 have contributed.

20 Q. Right. So these other possibilities, going to SHHD,

21 telling them that the position had become unsustainable

22 or perhaps even expanding the device, deciding at the

23 meeting in June that the trial, which at that point

24 included only Glasgow for the purposes of Scotland --

25 A. Which was being funded from London.

1 Q. Sorry?

2 A. The Glasgow trial was being funded from London.

3 Q. Right.

4 A. That's quite an important point to make if you weren't
5 aware of it.

6 THE CHAIRMAN: We have seen it in the earlier
7 correspondence.

8 MS DUNLOP: Right. So you are saying that that was not an
9 option because there wouldn't have been money to include
10 the rest of Scotland. Could you not have asked SHHD?

11 A. Yes, no, no, no, no.

12 Q. In terms of how it could have been presented, it could
13 have been presented that this trial which was involving
14 Glasgow was to involve the whole of Scotland and SHHD,
15 once they had been told that that was the right decision
16 to make for Scotland, could have funded that part of it?

17 A. They could have, if they decided to break away from
18 their commitment to supporting DHSS. Yes, absolutely.

19 Q. Right. But none of that seems to have been taken to
20 SHHD.

21 A. I honestly don't know. All I know is I hear what David
22 says, that that letter, which he wrote -- the most
23 important letter of his life -- didn't go. I never saw
24 that, I have to say, I didn't see that letter.

25 If we do -- before we move on. If we do get

1 a chance, I would like to draw your attention to
2 a letter that I did write to Gunson, copied into
3 Sir Kenneth Calman and Jeremy Metters, and it's in your
4 list here, but I only quote the first paragraph, which
5 is so anaemic, it's not worth almost reading it. But if
6 you go down below that level, you will see I'm being
7 very critical of the situation. This is on 13 May, sir.
8 And it's [\[SNB0051721\]](#).

9 Q. We have this in our extended narrative?

10 A. Yes, you do, and I'm fairly sure that that's the letter
11 that I wrote to Harold saying -- having set out -- we
12 were supposed to be all going along together, expressing
13 my deep concern that we weren't. And alerting
14 Sir Kenneth Calman to this fact. I don't think he was
15 a knight then, Ken Calman then, the CMO in Scotland.
16 I'm not offering this as evidence that I have done
17 something but we didn't do absolutely nothing.

18 Q. Can we look at it? Yes, please.

19 A. "Just in the past month we have witnessed the two
20 happenings in which the policy referred to above may be
21 seriously flawed."

22 I think you asked me earlier when I stopped
23 communicating directly with the Scottish Office and to
24 the best of my knowledge, unless I was asked to comment
25 on something, I would say I had. And this is a letter

1 to Harold, copied, however, to the chief medical officer
2 in Scotland and to Dr Jeremy Metters.

3 Q. Yes.

4 A. I just offer it ...

5 Q. I must say, Professor Cash, that when I saw this letter,
6 in a nutshell, what I thought you were saying was UK
7 policy has been for a simultaneous start date for HCV
8 screening, this bloke in Newcastle has broken away and
9 started testing and nobody has done anything to him?

10 A. That's correct. And do you want us then to hang in with
11 this policy.

12 Q. Well, this is to Dr Gunson.

13 A. Yes, yes.

14 Q. Can we go on to the next page, please? Are you
15 suggesting to us that this letter is evidence of your
16 attitude that Scotland needed to consider breaking away
17 from the simultaneous starting date?

18 A. I'm simply saying that -- not directly. I'm simply
19 saying that in my view the current arrangements that we
20 had had in this particular area were flawed.

21 THE CHAIRMAN: Ms Dunlop, I think that, although it's
22 inconvenient, I have to break at this stage because
23 there is the trial contact at three o'clock.

24 MS DUNLOP: Oh, yes.

25 THE CHAIRMAN: I think perhaps everybody might just benefit

1 from reading the whole letter anyway.

2 MS DUNLOP: Thank you, sir. I had forgotten it was three.

3 (2.57 pm)

4 (Short break)

5 (3.23 pm)

6 THE CHAIRMAN: Yes, Ms Dunlop?

7 MS DUNLOP: I think, Professor Cash, we have had a chance to

8 look at the letter and perhaps in a nutshell, what do

9 you think this letter illustrates?

10 A. I think in a nutshell it illustrates that the notion

11 that the UK is made up of transfusion people in terms of

12 departments that are working closely together, this is

13 not so. And that we need to actually look to the future

14 to see how this could be improved.

15 Q. Right.

16 A. I think I offer it only -- the notion that I was totally

17 passive in this particular period may be a little of an

18 exaggeration.

19 Q. I don't think anyone is suggesting to you that you were

20 totally passive, Professor Cash.

21 A. Really?

22 Q. No.

23 A. I'm beginning to get seriously paranoid.

24 Q. Or even without the "totally", I don't think anyone is

25 suggesting to you that you were passive.

1 I really did just want to look at what happened over
2 the summer as testing was implemented. Can we have
3 a look, please, at [\[SGH0027802\]](#)?

4 This seems to be the formal chain of communication.
5 This is a letter from Mr Panton to Mr Donald at the
6 Common Services Agency, dated 8 August 1991:

7 "I am writing to formally advise you that the
8 Minister of State has agreed to the routine testing of
9 blood donations for the antibody to the Hepatitis C
10 virus (HCV) from 1 September 1991."

11 And a reference to funding already being in place
12 and the need to make the necessary arrangements. And
13 the letter is copied to Mr McIntosh and then --

14 A. Could I draw your attention to the word "allow"?

15 Q. Yes.

16 A. I'm simply saying that that message from Rab Panton to
17 Jim Donald is what we had anticipated would be the route
18 that would permit us to begin testing at the date
19 specified by the department. Sorry, I'm ...

20 Q. Well, you told me last time, Professor Cash, that you
21 didn't find it profitable to nitpick over words.

22 I suppose I might suggest to you that all that means is
23 to facilitate the commencement of testing from the
24 beginning of 1 September. Isn't that all it means?

25 A. Yes.

1 Q. Right.

2 A. But I think the word "allow" is well chosen. That's all
3 I'm saying.

4 Q. All right. Let's just look further down the letter, if
5 we could, please, if there is any reference to copying.
6 It doesn't seem to be, on its face, a letter copied to
7 others but let's have a look at the next letter, which
8 seems to be a sort of reply. [\[SNB0083956\]](#).

9 This is a letter dated 12 August 1991 to Mr Donald
10 and there has obviously been an intermediate
11 communication of the facts from Mr Donald, dated
12 9 August 1991, to the writer of this letter. Let's just
13 look to the second page. That's you. So you are
14 writing to Mr Donald on 12 August 1991 saying that the
15 communication from Mr Panton has triggered off the final
16 phase of a programme agreed at the board meeting
17 in June. And the details of that are set out.

18 Then you are telling Mr Donald that -- and this is
19 quoting from the bottom of the first page:

20 "West BTS as part of the UK BTS major evaluation
21 exercise has been undertaking full [\[underlined\]](#)
22 screening since early July 1991. This programme ..."

23 Can we read over, please:

24 "... apart from providing valuable data for the
25 UKBTS, has enabled the SNBTS to consolidate its

1 arrangements for the HCV confirmatory (reference)
2 service based in Dr Follett's laboratory at
3 Ruchill Hospital."

4 A. May I say, I imagine David was on holiday.

5 Q. That would be the only explanation for you coming into
6 the sort of administrative role?

7 A. I think so, yes. Just back-up, yes.

8 Q. Right. It wasn't that arrangements between the two of
9 you were flexible? No. You were taking responsibility
10 for this because it pertained directly --

11 A. What he was on holiday or occasionally actually when
12 I was on holiday or away. We had no problems with this
13 but I would have thought now that that would be a letter
14 that had been done by David to Jim, in line with what we
15 have said before. And the fact that I have done it
16 suggests, when I look at it -- it's August some time --
17 I suspect he was on holiday.

18 Q. The other explanation would be that because it was to do
19 with the introduction of donation screening, it was more
20 in the patch of the national and medical scientific
21 director. It's conceivable, isn't it?

22 A. Yes.

23 Q. Right. There is slightly more of a critical analysis of
24 the process contained in further letters from the end
25 of August onwards. Can we look at [\[SNB0020457\]](#),

1 please? And this is a letter which you sent to
2 Mr McIntosh on 29 August 1991. You have recently had
3 access to minutes of ACVSB and you have noted that the
4 chairman is recorded as stating that. And then an
5 underlined passage:

6 "The policy for a uniform starting date has been
7 endorsed by all UK health ministers.

8 "I think we made the right decision at our board
9 meeting on 11/12 June 1991."

10 So is this you looking back on the decision not to
11 emulate Newcastle?

12 A. Absolutely.

13 Q. Right. And being --

14 A. There is no -- you are absolutely right -- and bear no
15 relation to actually the minute of the meeting.

16 Q. Right. So by the "right decision" you are just meaning
17 not to proceed with the suggestion that someone was
18 making at the meeting of emulating Newcastle?

19 A. Yes.

20 Q. Right.

21 A. That's all.

22 Q. But there is no further thinking about whether the other
23 options, you know, the ones that we have discussed at
24 length, could have been pursued?

25 A. Not at this point.

1 Q. And you are not picking that up with Mr McIntosh in this
2 letter?

3 A. No, I'm not, as far as this is concerned. I think
4 later, beyond here, we start talking, "How could we get
5 it better next time?" I have a vague memory.

6 Q. Yes. Okay. He wrote back to you extremely quickly.
7 [\[SNB0054822\]](#). It's actually dated the following day.
8 We put this letter to everybody really.

9 A. Including Harold Gunson, as I recall.

10 Q. Sorry -- no, I'm saying we, in our researches, we put
11 this letter to all our prospective witnesses and asked
12 to what extent they agreed with what Mr McIntosh said.
13 We even asked Mr McIntosh.

14 A. Yes.

15 Q. And we can see for ourselves what he is saying, as he
16 looks back on the preceding months. And we have his
17 evidence about what he meant by saying that under the
18 circumstances, the best decision available had been
19 taken.

20 If we perhaps just read to the end of that and then
21 on to the next page, please.

22 A. May I say that I didn't think Huw got just a mild
23 admonishment, Huw Lloyd.

24 Q. Right.

25 A. That's not relevant to the Inquiry.

1 Q. So at least parts of what he is talking about appears to
2 be a bit of a lack of clarity about policy. And that
3 comment in the final paragraph about a certain amount of
4 inherent ambiguity being required by civil servants has
5 also been discussed on a number of occasions at this
6 Inquiry.

7 If we keep that letter open and go back to
8 Professor Cash's statement, please, you give us a very
9 crisp answer, Professor Cash, to your question 37, when
10 we said:

11 "Did you agree with Mr McIntosh's views?"

12 And you said:

13 "Yes indeed, but a good deal more than failings."

14 I just wondered if you wanted to expand that answer
15 at all.

16 A. I'm not inclined to. Again it's the word "failings".
17 I would simply say "serious failings". I think, as
18 I wrote to Ken Calman and Harold Gunson and
19 Jeremy Metters, that the system in place for managing
20 this particular bit of blood transfusion was flawed and
21 not least, for instance, from the Scottish point of
22 view, we had no way of putting in an SNBTS view into the
23 Jeremy Metters committee, and when we tried, we were
24 either ignored or, you know, nothing happened.

25 I actually would only add to "failings", "severe

1 failings". That's really -- that's all -- in response
2 to your question.

3 Q. Failings of what type?

4 A. Of communication, of very important transparency.

5 I mean, I might go on and say goodwill but, you know --
6 but certainly transparency and just management
7 efficiency. Failing to -- it's about communications --
8 to keep the service people briefed on the difficulties,
9 the political difficulties and so on and so on and so
10 forth.

11 Q. And those failings, not naming names, but in terms of
12 groups of people or organisations or bodies, are
13 attributable to whom, do you think?

14 A. I'm disinclined -- I mean, nobody is innocent and that
15 certainly applies to me. But I was reading the other
16 night, the result of the Inquiry, a memo -- I am almost
17 certain it was Ed Harris, it's in your book -- Ed Harris
18 made to, in fact, Graham Hart, and it looks as though
19 that memo is the first serious seeds from which emerged
20 the advisory committee on safety of blood.

21 I wasn't aware of Mr Hart other than the odd comment
22 that Harold made, until he arrived up here, and I have
23 since had a look and done a bit more research. But
24 I think there is a failing of the central team down in
25 London -- I get very twitchy about the using the word

1 "territorials", which is all about Scotland and Wales
2 and so on, but I mean, I think that's just a problem
3 I have that doesn't need to be shared.

4 I think that we -- the medics in the transfusion
5 service -- I still regret deeply, when I went in to see
6 Archie McIntyre, I think it was in late 1989, saying
7 "Archibald, HCV, Ruthven and the gang have done some kit
8 test, Ortho, it looks pretty satisfactory to us, it's
9 not perfect. It looks pretty satisfactory. We want to
10 go with it." And I deeply regret that when Archibald
11 said, "You are going nowhere. This is going to a new
12 committee that has been formed. They will in fact be
13 advising the department, and we are going to take advice
14 in the department," I deeply regret that I didn't stand
15 up at that point -- never mind the point you are making
16 with poor old David McIntosh, because then I was on my
17 own and I regret that. So when we talk about
18 "failings", I think there was a pretty widespread
19 corporate failing.

20 Q. Right.

21 A. Could have done better.

22 Q. You didn't actually reply to Mr McIntosh for some time.

23 A. Yes.

24 Q. If we can keep the statement open, please, but look at
25 [\[SNB0140418\]](#).

1 A. I think it was in December, wasn't it?

2 Q. It was, yes. You wrote back to him on 16 December 1991
3 and you have obviously found it difficult to compose
4 your response. That's what you seem to be saying.

5 A. "Calm down", I think, probably.

6 Q. Oh, to calm down?

7 A. Maybe.

8 Q. Did the letter provoke you?

9 A. David's? No, not at all.

10 Q. No?

11 A. I mean -- no, I have no recollection of that. And if
12 I went line by-line, I would probably be saying, "Hear
13 hear, absolutely right".

14 So, no, it didn't provoke me. I suspect the delay
15 was me trying to think what are we going to do about it,
16 because I have always argued, and still do, that the
17 interface with very important people whose primary job
18 is to look after the backs of ministers at an
19 operational level, that's very difficult and far from
20 clear to me how we would do it better next time. And
21 I'm told by the current managers that they anticipate
22 Lord Penrose's successor to be doing an Inquiry with
23 CJD, because they tell me it hasn't moved on.

24 THE CHAIRMAN: I think "successor" is not the right way to
25 put it.

1 A. I think that's the wrong word completely, sir. I nearly
2 said "replacement".

3 THE CHAIRMAN: That may yet happen.

4 A. I think there is a fundamental problem -- I'm told by
5 the current team -- that exists today. And I have
6 a great sympathy for them. Despite the fact that there
7 is now what's known as the blood transfusion forum. So
8 this committee that I was asking Ken Calman and people
9 to set up in some respects has been established, and
10 I believe it's very productive indeed. Those on it tell
11 me, when we come to CJD, there could well be a rerun of
12 the whole issue. Thank goodness I'm a long way away
13 from it.

14 THE CHAIRMAN: Likewise, I think CJD is certainly not within
15 my remit.

16 A. No, I appreciate that, sir.

17 MS DUNLOP: I think perhaps we would all keep to ourselves
18 what we might hope or where we all might be if an
19 Inquiry on that were to eventuate.

20 THE CHAIRMAN: We could all just have a wee move, couldn't
21 we? We could have Ms Dunlop up here and Mr Mackenzie
22 moving one to the right, and no doubt the others would
23 be willing to come along, and I could watch from the
24 sidelines along with yourself.

25 A. You may, sir, and I would be happy to sit with you.

1 MS DUNLOP: Right. There was some further discussion,
2 I think. Could we look at [\[SNB0047207\]](#). Here we are.
3 That's again Mr McIntosh writing back to you quite
4 promptly, the following day. And interestingly in the
5 third paragraph commenting that he agrees entirely with
6 you and with Dr Gunson about the high desirability of UK
7 solidarity, but he believes that SNBTS support for it
8 should be based on informed consent, not blind
9 allegiance.

10 A. Absolutely right.

11 Q. Right. Does that not seem to suggest that, as he saw it
12 in December 1991, there had been a degree of blind
13 allegiance to UK solidarity?

14 A. It depends again how you interpret this but certainly
15 I was conscious that there was a heavy scarf put over my
16 eyes in this period, and this is all about the Scottish
17 Transfusion Service having a clear -- as a service --
18 involvement -- stakeholder I think is the right word --
19 in these UK decisions.

20 Q. Right. I think we have seen already that there was some
21 discussion, I think, at a joint Scottish and English
22 liaison meeting in early 1992 of these issues but not
23 really very conclusively. I'm not intending to revisit
24 that. I should, however, take you to your supplementary
25 statement, which is [\[PEN0172779\]](#).

1 Professor Cash, this is a document which you sent to
2 us at the end of November, I think actually a couple of
3 days before Mr McIntosh was going to be coming to give
4 evidence on the 29th, and he did have it the night
5 before he came and I put it to him.

6 It's obvious from this and from his evidence and
7 your evidence that there are some conflicts between you,
8 conflicts of testimony, conflicts of recollection.

9 I wonder if, given that the hour is late and we have
10 been over the ground pretty thoroughly today, sir, we
11 could simply take this statement as read. We can look
12 through it but I'm not convinced that there is anything
13 very much to be gained from opening up some of the
14 conflicts again.

15 THE CHAIRMAN: I think the dispute is fairly fully set out
16 and we can't just rehearse it unless Professor Cash has
17 got anything he wants specifically to add, I would be
18 happy to take it as it stands.

19 MS DUNLOP: Yes. Perhaps we could just look at it briefly
20 page by page and check that Professor Cash doesn't wish
21 to supplement it in any way today.

22 THE CHAIRMAN: Or if you have got any other documents that
23 you might want us to see.

24 MS DUNLOP: Yes. So we can see from page 1 that you set
25 yourself the task of commenting on some specific points

1 Mr McIntosh had raised. The first of those was that you
2 were a loud and aggressive advocate of the UK solidarity
3 camp. Can we take all that as read?

4 A. Yes, I have nothing to add and wouldn't wish to withdraw
5 some.

6 Q. Right. Page 2. You do mention other issues where you
7 say you pursued a distinctive Scottish policy approach.
8 Anything to add there?

9 A. No, but I hope that's taken quite seriously because it
10 involved some quite tough work and I might add, just in
11 passing, looking at David's trip up here, I had a great
12 high regard for Jim Donald, before David arrived, as my
13 next line manager. In the context, in a lot of these
14 areas that I have just highlighted, Jim did a fantastic
15 job of interfacing very productively with senior civil
16 servants on our behalf, and so if there is any credit in
17 this, it goes to many other people than myself.

18 Q. Right. Then on to the next page. I think we have
19 examined that paragraph numbered (c), or at least its
20 general thrust, very thoroughly, including the reference
21 there to "intolerability", and we have already looked
22 today at what Mr McIntosh said in response to that.

23 Anything further that you would wish to add or
24 anything indeed that you would wish to depart from?

25 A. No, but I had hoped, when you saw it, you would have

1 been beavering in the Scottish Office and discovered for
2 us that David had in fact had regular meetings and there
3 were notes and so on and so forth. I have to say,
4 I have not seen anything and was not aware that much had
5 taken place. I'm now talking in relation to the
6 Hepatitis C story.

7 Q. Yes. Yes, we have looked very thoroughly at the
8 communings between Mr McIntosh and SHHD in 1991 on the
9 topic of Hepatitis C.

10 A. Yes.

11 Q. Then on to the following page, back to another reference
12 to UK solidarity.

13 A. Yes.

14 Q. And --

15 A. Can I just add something which might interest you? If
16 you take the City of London, Greater London. As you
17 know I did this major study down there. You talk about
18 people going alone, Marcela in the North London, vast
19 amounts of money relatively speaking, could have
20 complemented anything at any time but the Essex lot and,
21 worse, South London, were appallingly badly funded by
22 the RHAs. So you could have had a situation for
23 instance in London in which Marcela and John Barbara
24 with her could have introduced Hepatitis C testing
25 without any problems and would have been funded by RHA,

1 whereas the poorer RHAs wouldn't have had that.

2 So you would have had people in London going to the
3 Kings College Hospital south of the Thames getting
4 hepatitis contaminated blood, whereas wow, if you were
5 a little further north -- so I saw the potential and got
6 heavily involved in their problems -- nothing to do with
7 hepatitis -- of the need -- ultimately I proposed in my
8 report -- you may have bothered to look at it -- that
9 they should all be working together and moving blood
10 around. This was about blood shortage and severe blood
11 shortages, and with a very heavy private sector as well.
12 So these had major impacts on my views, not about the
13 sacredness of UK solidarity but it was sensible.

14 Q. Of course, each of the principles has much to commend
15 it, namely the idea of UK solidarity and also the idea
16 of a particular unit thinking for itself and setting out
17 a distinctive policy when circumstances require. The
18 definite part is in detecting when one applies or the
19 other.

20 A. Absolutely right.

21 Q. Yes. If we look on to the next page, and plainly you
22 have wanted to respond and have responded to some of
23 what Mr McIntosh has said, and we can read for ourselves
24 your position on some of the more personal comments.

25 Again, is there anything that you want to add to

1 this section of the statement?

2 A. No, all I would add on that page is -- not add but just
3 emphasise -- is that I really found it quite difficult
4 for Dave to claim that all was going harmoniously, it
5 had been a struggle from the word go and I was satisfied
6 that David knew about that. But I don't think it alters
7 anything to over emphasise that.

8 Q. Right. Then on to the next page. This is reference
9 to May and June 1991.

10 A. Yes.

11 Q. To events in Newcastle.

12 A. Yes, I don't have anything to add.

13 Q. Right, and then the following page, back to the
14 suggestion that SNBTS should follow Dr Lloyd's lead and
15 commence HCV donation testing immediately and without
16 informing CSA and SHHD.

17 A. I don't have anything to add. I think we have covered
18 that.

19 Q. Yes, we have covered it and we have covered the
20 questions you are posing about the drafting of the
21 letter.

22 A. Yes.

23 Q. The notion of hijacking. Then on to the last two pages,
24 please.

25 A. Yes, I don't have anything to add. I don't think there

1 is anything we haven't touched.

2 Q. Perhaps I should just say for the record that
3 Mr McIntosh did say that Ms Corrie retired around about
4 this time, that's why Mrs Porterfield took over.

5 A. Yes, I think that's a very good point. I should say
6 that the plan -- and we have got documented evidence of
7 this, which is nice -- the plan for Morag to retire was
8 in the autumn of 1991. If you ask, as I have done, did
9 this actually happen, nobody can give me any information
10 at all, which I find very sad, in the HR records of the
11 organisations. There is no evidence whatsoever.

12 All I know is I was alerted to the fact that Morag
13 was in difficulty with regard to this particular minute
14 and I went to, I thought, rescue her and she told me to
15 clear off. It was a matter between her and David and
16 that must strictly be absolutely right.

17 Q. Then the last page, there is some information from
18 you -- or perhaps not information but some discussion of
19 the mysterious letter, and we have obviously had
20 evidence from Mr McIntosh about that as well.

21 A. Yes, I don't have anything to add.

22 Q. And then finally this discussion of what's meant by
23 "disaster".

24 Finally -- I hope you are pleased to hear that --
25 something else that I think perhaps we should take as

1 read, if we go back to the main statement, please and
2 can we go to page 2106? We, probably I, was under,
3 I think, a bit of a misconception that the establishment
4 of the microbiology department had something to do with
5 Hepatitis C testing, and we asked you about this and you
6 said, no, that really this is to do with the quality of
7 HIV confirmatory services.

8 A. I think initially, yes.

9 Q. And you have given a lot of information about the
10 circumstances surrounding the establishment of the
11 laboratory and a number of documentary references which
12 we do have.

13 And I wonder, sir, if we can just take this as read
14 also because I don't think it really bears on the
15 questions which are raised by this topic.

16 THE CHAIRMAN: None of this is terribly controversial. It's
17 just a straightforward narrative.

18 MS DUNLOP: It's not controversial at all. Yes. Excuse me
19 a moment.

20 Thank you very much, Professor Cash.

21 A. Thank you.

22 THE CHAIRMAN: Mr Di Rollo?

23 MR DI ROLLO: Sir, I do not require to ask any questions,
24 thank you.

25 THE CHAIRMAN: I note how you say what you say, yes.

1 Mr Anderson?

2 Questions by MR ANDERSON

3 MR ANDERSON: Yes, I'm obliged. I just have some questions
4 for you.

5 Good afternoon. Ms Dunlop has covered the vast
6 majority of the issues that I wish to discuss with you
7 but there are one or two matters remaining, if I may.
8 Could we have up on the screen, please, the letter of
9 5 April. That's [\[SNB0063958\]](#).

10 We have looked at this just recently. This is your
11 letter to Harold Gunson, which, as Ms Dunlop suggested
12 to you, has, on the face of it, quite unequivocal
13 support, being presented; that is to say the SNBTS
14 directors full support. Do you see that?

15 What was being suggested to you was that essentially
16 there is no hint whatever within that letter, or any
17 other letters to Harold Gunson, of any private
18 reservation that you may have about the desirability of
19 the September 1991 start date. Do you understand that?

20 A. Yes.

21 Q. Is this letter, I wonder, an example of some sort of
22 presentation of a united front, as far as SNBTS
23 directors are concerned?

24 A. Yes, yes, indeed. I'm claiming now -- but I can't
25 imagine I would have written it without ringing the gang

1 just to find out their views. I think the problem
2 I have with that is that there is always the danger,
3 when you are ringing people, of explaining something
4 and -- you are asking them, "Do you agree?" And you
5 have actually not given them an opportunity to sit and
6 think about the thing properly.

7 But, yes, I'm absolutely certain that Harold was
8 very anxious that whether the Scots or one of the Scots
9 was going to break, and whether they would support what
10 in fact was being proposed.

11 Q. But, as I understand it, the position in reality was
12 that notwithstanding the expression of support, a number
13 of individuals within the SNBTS directors had their
14 reservations.

15 A. Oh, never any doubt about that, sir; as I did.

16 Q. Do I take it that although you were seeking to present
17 a united front to Harold Gunson and the English, you did
18 not see that as precluding the SNBTS approaching the
19 SHHD with suggestions of alternatives?

20 A. Oh, absolutely. Absolutely.

21 Q. Can we turn now to this discussion that you had with
22 David McIntosh about approaching the SHHD with a view to
23 their reconsidering their policy? I just wonder, do you
24 feel that you had put yourself in a difficult position
25 with Harold Gunson, given that you have apparently

1 committed yourself to supporting his position and yet at
2 the same time you have private doubt? Did you find
3 yourself in some sort of a cleft stick about this?

4 A. Not that I can recall, sir. I felt on the day -- this
5 is the Monday of this TTD meeting -- I had a duty, after
6 this awful phone call, to not rock the boat and allow
7 the decision to proceed. But I also felt I had another
8 duty to the SNBTS to -- rather than duty for me and
9 Harold in our personal -- you know, that we fell out,
10 I had a greater duty to the SNBTS to ask the question:
11 is this whole process now flawed and we need to get into
12 the department to begin to look at it objectively, with
13 either changing the process or Scotland pulling out or
14 whatever?

15 Q. I just --

16 A. And in that sense, you know, you may say I was running
17 contrary to what I had agreed with Harold. I accept
18 that.

19 Q. I just wonder if there may have been an element of
20 convenience, notwithstanding the change in regime that
21 the arrival of David McIntosh brought in February 1990,
22 that there may have been an element of convenience in
23 having David McIntosh approach the SHHD rather than you
24 doing it, given your --

25 A. Sir, I can assure you, after ten years or 12 years at

1 the mast, in which I had been threatened with the sack
2 from the Department of Health -- and I actually -- there
3 is a record in files of me writing to David and the
4 first paragraph is to say how absolutely delighted that
5 he is here, and how at a personal level he has taken
6 great weights off my shoulders and, you know, thanking
7 him.

8 So, yes, when I have suggested that he took over all
9 the interactions, my query about that was whether that
10 was a wise decision. When Jim Donald said, "Yes, that's
11 okay," I was greatly relieved. That sounds very selfish
12 but I was very greatly relieved that David would
13 shoulder these, I thought, pretty heavy
14 responsibilities.

15 Q. We can all understand that. Can we look together,
16 please, at another document, [\[SNB0024627\]](#)? These are
17 the minutes of SNBTS directors' meeting held on
18 13 February 1990, and I think we heard from
19 David McIntosh that this is more or less as soon as he
20 was in the door, as it were. Is that right?

21 A. I think David sat in on it, didn't he?

22 Q. I think we see him being present in the third line.

23 A. Yes, absolutely.

24 Q. I think we know that he started in February 1990. So
25 this was very early on in his tenure. Is that correct?

1 A. I think this would in effect be the last of the
2 directors' meetings. We then moved to a board.

3 Q. Right. Can we look at page 9, please, which I think
4 will be page 4635, I think. Can we see at paragraph 6
5 a heading "ALT donation testing"? Do you see that?

6 A. Yes.

7 Q. It's recorded there:

8 "It was noted that there would be a problem if ALT
9 testing commenced in England and Wales and not in
10 Scotland. Mr McIntosh reported that Dr McIntyre of SHHD
11 had reported to him by telephone the reasons why ALT
12 testing should not be commenced in Scotland.
13 Dr McIntyre had undertaken to contact the Department of
14 Health for a corporate British stance."

15 It then states:

16 "Mr McIntosh to ask Dr McIntyre for written
17 confirmation of this telephone call."

18 Do you see that? Is this the beginning of the
19 change in the regime?

20 A. Yes, I think so, and in a sense why not? I mean -- and
21 there you are, that's within days of David arriving.
22 I should add that the change in the regime had been made
23 very -- I think I said this this morning -- evident to
24 me because David came and saw me. We had a long, long
25 chat the night before he was interviewed and got the

1 job, and he was very up front and honest and said,
2 "Look, this is what's going to happen, if I'm appointed
3 tomorrow, John. This is what's going to happen in terms
4 of your reporting lines and so on and so forth."

5 So yes, this is David picking up the ball pretty
6 quickly. I did not have a problem with that by then.

7 Q. Can we look at a much later set of minutes,
8 [\[SNB0101108\]](#), which we have looked at already this
9 afternoon.

10 These are the minutes of the SNBTS/NBTS liaison
11 committee, held on 13 April 1990, and it's on the next
12 page at paragraph 2.4. I know you have been taken to
13 this already but I wonder if you can help me with this.
14 In the second paragraph it says:

15 "In view of the implications for the rest of the UK
16 Blood Transfusion Services, David McIntosh immediately
17 informed Scottish Home and Health Department officials."

18 I'm just interested in the use of the past tense.
19 Can you remember this or not, or do you just infer from
20 what is written here what happened?

21 A. Yes, I certainly recall -- but the trouble is, when you
22 see the thing written down there, you have to be very
23 careful. I recall that David signalled this is very
24 important, this is very serious, once he had been
25 briefed by Harold Gunson. "I must immediately inform

1 the Scottish Home and Health". And as we discussed it
2 was, you know, we need to look and see whether the
3 whole -- there needs to be clarification policy. So
4 that's my understanding of it.

5 Q. Well, if we come on to the last paragraph, over the
6 page, you will see that it says:

7 "It was agreed that a firm clarification of policy
8 was urgently required from DOH/SHHD within seven/ten
9 days."

10 Now, would I be right in thinking that what that
11 envisages is different individuals writing to different
12 departments?

13 A. Yes, Harold would have gone back to -- because he was
14 the DHSS adviser -- he would have gone back there and
15 the plan was that David would go to the Scottish Office.
16 Looking at seven to ten days, that's miraculous timing.

17 Q. I just want to be sure I understand your evidence on
18 this. Do you remember this meeting and do you remember
19 David McIntosh being tasked, as they say nowadays, to go
20 and do this or do you simply infer this from what you
21 see in front of you?

22 A. I wouldn't imagine David would be tasked. He in fact
23 volunteered. I have a very clear memory. He would
24 volunteer and get in there and make the moves necessary.

25 Q. I know that matters changed rather rapidly during this

1 period and there was, of course, the news had just
2 arrived from Newcastle, as Ms Dunlop put it. But this
3 was an attempt at least to get clarification from the
4 SHHD of a policy within a certain period. Did that ever
5 happen? Did you ever get a clarification of policy?

6 A. No, not to my knowledge but -- not to my memory and my
7 knowledge, sir, no. The real question is -- and this
8 begs the question again: did David go steaming into the
9 Scottish Office? And I honestly, genuinely don't know.

10 Q. David McIntosh was at all SNBTS board meetings, was he
11 not, from February 1990 onwards?

12 A. Absolutely, he was the chairman.

13 Q. And he also attended the SNBTS/NBTS liaison committee
14 meetings. Is that correct?

15 A. Indeed, he was the senior Scottish person.

16 Q. And I think you have already told us today that he had
17 fairly frequent contact with Archie McIntyre. Is that
18 right?

19 A. He did and I don't want to use the word "boast". He
20 often told me he had frequent contact with
21 Donald Cruickshank, who was then chairman of the CSA and
22 chief executive to the Scottish Health Service. So we
23 did take the view in the service that we were very lucky
24 we had a general manager who was very well connected.

25 Q. You see, I don't want to go into the differences between

1 you and Mr McIntosh too deeply but he did say in his
2 evidence that he essentially had no knowledge of the
3 SHHD policy, that it was all rumours and gossip was the
4 way he put it.

5 A. I saw all that and I prefer not to get into -- it gets
6 pretty messy. I was just astonished. I mean, the thing
7 that's haunting me with all this with David was that he
8 was sacked. Now I was told by a very distinguished
9 lawyer that you don't sack senior health service
10 ministers and he was eventually sent down the road with
11 a hefty package with strings attached, and I just do not
12 know today, not that he is not telling the truth but
13 what in fact he is able to say. All I know is when
14 I read that, I just couldn't believe it.

15 Q. Well, let's just try and make this as confined as we
16 can. I take it you simply don't accept the assertion
17 that he did not know what the SHHD policy was?

18 A. No.

19 THE CHAIRMAN: Could I ask: was there an SHHD policy as far
20 as you were concerned, as far as you knew?

21 A. If I understand -- the answer to that is yes, sir, but
22 I need to check what I'm saying yes to, and
23 unequivocally, and it was in writing, from
24 Archie McIntyre, that in terms of donation testing --
25 new donation testing -- you will defer in terms of the

1 clinical trials and field trials and so on, to the
2 Advisory Committee On the Safety of Blood that we have
3 established, and that Archie McIntyre is on and in due
4 course, which is the point I was trying to make to
5 Ms Dunlop -- in due course, if all goes well, you will
6 receive an instruction to start and with it a cheque.

7 THE CHAIRMAN: Which is what you say you eventually got
8 in August?

9 A. Yes, I don't know whether that's a policy. But that was
10 my understanding of the nature of the beast and I made
11 that terribly clear to David because we discussed soon
12 after he was appointed, my anxiety that we had got the
13 Ortho kitted running in late 1989 and we could have run
14 it.

15 THE CHAIRMAN: Yes. I didn't intend to take you into that
16 sort of area.

17 A. I'm sorry.

18 THE CHAIRMAN: Mr Anderson, I think my only concern is that
19 when we talk about a policy, we try to have some
20 definition of what it is that's in mind, but on you go.

21 MR ANDERSON: Yes.

22 A. I'm sorry, I hope that helps.

23 MR ANDERSON: I do accept that, sir.

24 Yes. The policy that I refer to, of course,
25 Professor Cash, is the policy of adherence to a DHSS

1 lead in relation to the introduction of screening.

2 A. Well, that's the message I got from -- unequivocal
3 message I got from -- and he copied that letter -- you
4 are maybe not aware. He copied that letter to me, which
5 confirmed what he had said to me to Jeremy Metters.
6 Which is very right and proper, but I think it made it
7 very clear as to both parties' departments were clear in
8 what they were thinking of.

9 Q. Right. Can we turn now to the meeting on 11 and
10 12 June 1991 in Stirling. I know that this has been
11 ventilated already today but I would like to ask you
12 some questions about this. You say that the very terse
13 minute that we see, strictly sneaking is not a correct
14 resume of the decision that was taken?

15 A. We never actually said we are going to stay with
16 the September -- I'm sure if we had said -- if we had
17 discussed it, that would have been an outcome, it was
18 all about the Newcastle ...

19 Q. The situation in Newcastle and the situation in Scotland
20 were different from a funding point of view, were they?

21 A. Absolutely.

22 Q. You told us already, I think, today, that the discussion
23 on 11 and 12 June was essentially whether Scotland
24 should do some sort of unilateral declaration of
25 independence, a la Newcastle. Is that right?

1 I just want to discuss that because the protagonists
2 for an earlier start, if I can put it in the most
3 general of terms at the moment -- the protagonists for
4 an earlier start we understand to be Dr McClelland and
5 Dr Perry and Mr McIntosh. Is that fair?

6 A. Yes, I'm very interested you introduced Dr Perry. You
7 may well be right. For other reasons I say that. But
8 it's very interesting that you say this, that that could
9 well be so, yes.

10 Q. Well, if we look at the minutes of that meeting, which
11 are [\[SNB0027666\]](#), we can see set out there those who are
12 present.

13 A. Yes.

14 Q. We see there is Mr McIntosh, who is chairing it, we see
15 you there and then we see Dr Whitrow. I think he was
16 the north of Scotland --

17 A. Inverness, sir, yes.

18 Q. Dr Urbaniak was?

19 A. Aberdeen.

20 Q. Dr Brookes was?

21 A. Dundee.

22 Q. Dr McClelland at SNBTS. Dr Mitchell from the
23 West of Scotland?

24 A. Glasgow.

25 Q. Dr Perry --

1 A. Bob, PFC.

2 Q. Remind us, who is Dr Prowse?

3 A. Christopher was -- he is a very senior distinguished
4 scientist and I think at that stage was still in the
5 Edinburgh centre. He eventually became director of the
6 National Science Laboratory.

7 Q. The Edinburgh centre, what we have been calling the
8 headquarters laboratory?

9 A. Yes, southeast, Prowse.

10 Q. I think Mr Francis was the director of finance. Is that
11 right?

12 A. Yes, he was, sir.

13 Q. And Mrs Thornton?

14 A. Was the national donor manager.

15 Q. And Ms Corrie was the secretary?

16 A. She was the national administrator and was the secretary
17 for the meeting.

18 Q. Can you help us with getting some feel as to -- if the
19 proposal was, "This is what Newcastle has done, what do
20 you think about it, should we contemplate something the
21 same?" Can you remember what contributions, if any,
22 those attending the meeting made to that debate? Do you
23 have a recollection of that or not?

24 A. My best recollection -- and I'm not sure it's a very
25 good one -- is that we initially got into a general

1 debate with Brian in a sense responding to the points he
2 was making in his letter saying, look, this is a very
3 difficult situation and we need to get into the
4 department initially and talk about it and then -- and
5 so Bill Whitrow, Stan Urbaniak and all of us said this
6 is an important debate that we are going to have. And
7 at some point -- and the proposition was made then, why
8 don't we follow the Newcastle team, and it was then --
9 I'm sure I take full responsibility -- then the meeting
10 deteriorated because I got into the whole business which
11 I have already referred to. And I do not know, to be
12 absolutely honest, whether it was Brian or David. It
13 certainly wasn't Bob Perry. He may have been very
14 supportive. But it was either Brian or David McIntosh
15 that made the move, that triggered off the sad
16 deterioration in the meeting.

17 Q. All right. You described earlier today a rejection of
18 that proposal on the basis that many of the members felt
19 it would be a breach of trust as far as the SHHD was
20 concerned. Do you remember that?

21 A. Yes, I do.

22 Q. Do you remember who might have voiced that sort of
23 concern?

24 A. Yes, I remember vividly. Bill Whitrow is an
25 ex-lieutenant commander in the navy, and he had a very

1 strict view of discipline and doing as you are told, and
2 so on. Stan Urbaniak was again very supportive.
3 Mitchell, of course, you could expect it because he was
4 already on board. I do not recall, to be honest,
5 Chris Prowse or John Francis, Marie Thornton being
6 involved. But there is no doubt -- being involved in
7 the debate, but it was pretty evident that a number of
8 them, when they heard Bill Whitrow and myself,
9 Stan Urbaniak. Ewa Brookes is a very gentle, super lady
10 who wouldn't say boo to a goose, but I remember her
11 vividly being strongly supportive of the point that
12 I was trying to make.

13 Q. What was the point you were trying to make?

14 A. The point that I was trying to make was that we -- that
15 any move for us to do something independent a la -- do
16 our own thing, we should touch base first and get
17 clearance from the Scottish Office for the policy
18 decisions that had already been made.

19 Q. You will no doubt have read David McIntosh's testimony?

20 A. Yes.

21 Q. Part of the gravamen of his complaint seems to be this
22 decision ignored the central question of patient safety.
23 You have seen that. Was the question of patient safety
24 either expressly mentioned at this meeting or do you
25 think it was simply a given that the medical individuals

1 involved would realise that that is what the other side
2 of the equation might be?

3 A. I think it was a given and the reason I raised the issue
4 of the letter about what was going on in Paris, okay,
5 because that was a very orientated issue about patients
6 and so -- I don't mean "given", I think it was discussed
7 in the background of Brian's general debate, that -- so,
8 yes, it was included in the discussion.

9 Q. So --

10 A. And the view was, if we get into the department quickly,
11 we might be able to move quickly.

12 Q. Simply to play the devil's advocate again, it seems
13 strange that if the decision was there are undoubtedly
14 good principal reasons for a UK-wide starting date but
15 we are able to go ahead but we can't do a Newcastle
16 because that would be a breach of trust with SHHD, let's
17 go to the SHHD and see what they say about it, can you
18 help us with why that relatively straightforward
19 decision isn't minuted in the minutes?

20 A. Well, I can't, and I have already explained that the
21 original draft minute had to be amended and I received
22 advice that this was the area that the amending took
23 place, that the original -- the original draft submitted
24 to David as chairman, quite rightly, before it went on
25 its way, did include some of the stuff that you have

1 alluded to and I have to say, to this day I do not for
2 the life of me know how we got that one-liner or, as
3 I said earlier, that we put up with it, that when we all
4 met in August -- we are all -- by August, I should point
5 out -- I think it was 20 something of August -- we were
6 nearly into the 1 September, and really the view of all
7 falling out again really didn't turn us on, to be
8 honest.

9 Q. It may simply be an example of people not being terribly
10 interested in the minutes of the previous meeting when
11 they have got a forthcoming meeting to deal with --

12 A. I honestly -- it would be speculation --

13 Q. All right --

14 THE CHAIRMAN: Mr Anderson, can I interrupt you. It's now
15 20 past four and I think I have to find out how long you
16 and Mr Johnston are likely to take.

17 Mr Johnston, it seems to me that you do have an
18 interest in some of the matters that are being raised.

19 MR JOHNSTON: I do, sir, but I would like to say that
20 Ms Dunlop has covered a great deal of the ground so
21 thoroughly that I would be surprised if I really want to
22 explore it further.

23 THE CHAIRMAN: Well, I can understand that but of course,
24 one knows that as soon as one question is asked, the
25 ripples continue to extend to the outer edges of the

1 pond, if not beyond.

2 Mr Anderson, I can't go on beyond half past four and
3 I'm sure I don't want to put the stenographer to the
4 difficulty of continuing. She has already gone beyond
5 the time we would normally break.

6 MR ANDERSON: I'm reasonably confident I might make half
7 past four.

8 THE CHAIRMAN: I'll throw you out at half past four.

9 MR ANDERSON: I would welcome that.

10 A. So would I.

11 THE CHAIRMAN: Again, it depends how you interpret the
12 comment.

13 MR ANDERSON: Let's deal with this as quickly as we can,
14 professor. Can we look again at the letter

15 [\[SNB0083956\]](#)? This is a letter by you to Jim Donald of
16 the CSA:

17 "The communication from Rab Panton has triggered off
18 the final phase."

19 Can you help us with that, can you help us with what
20 that means:

21 "The letter from Rab Panton has triggered off the
22 final phase."

23 A. No, I can't. "Phase 3, see below". Commencing -- yes,
24 phase 3 is commencing Monday, 2 September. I make that
25 assumption. Does that help?

1 Q. I'm just wonder what the communication from Rab Panton
2 was?

3 A. This was his allowing us -- his letter to Jim Donald
4 saying:

5 "I hereby declare that you are allowed now to start
6 on 1 September."

7 Q. I'm much obliged to you. That letter, which I don't
8 think we need to go to in view of the time, was one
9 which was copied not to you but to David McIntosh. Am I
10 right?

11 A. I presume it was just photostatted in Jim's office and
12 sent up to David, presumably.

13 Q. What we see here in the letter of 12 August 1991 is
14 three phrases:

15 "1. Commencing 15 July 1991 ... arrangements to
16 purchase kits ...

17 "2. Commencing mid August 1991 ... 'dummy runs' ...
18 [and then] commencing Monday, 2 September ..."

19 You have told us earlier that the decision at
20 the June meeting was not to stick to the September date.
21 But just taking this as quickly as I can, do I take it
22 that this is the plan if any communication or approach
23 to the SHHD did not bring about the change?

24 A. Yes. I mean, the instruction we had had for months
25 actually, it's going to be 1 September. The view

1 after June was, could we in fact get that -- in other
2 words, was the department prepared to change that, if
3 necessary? But otherwise it was 1 September; yes.

4 Q. This is a hypothesis, professor: if the decision at
5 the June meeting had been to not simply voice concerns
6 with the SHHD or to say, "Look, we are in a position,"
7 but to make some sort of forceful recommendation, if you
8 like, a submission, that Scotland should start ahead of
9 the rest of the UK; can you help us with how you think
10 such a submission is likely to have been received? Do
11 you think such a submission would have been successful?

12 A. It has to be speculation.

13 Q. Of course.

14 A. But through all the interactions I had previously with
15 Dr McIntyre, with Rab Panton, with George Tucker, with
16 Harold Gunson, I don't think I had any interactions
17 directly with Jeremy Metters at all -- my view had
18 been -- this is speculation -- that it would have been
19 rejected.

20 Q. Even if those making the submission were or might
21 perhaps be thought to be those with the greatest
22 expertise in the matter?

23 A. Yes, but this is speculation.

24 Q. I accept that.

25 A. This is very much speculation but I mean, the -- and you

1 know, for me -- bizarre episode in which the deputy
2 chief medical officer in London felt he needed to
3 reiterate after the Newcastle debacle the need for
4 solidarity UK, as I say, I would speculate that we
5 wouldn't have shifted them, and time was rapidly running
6 out.

7 Q. Well, it would require, wouldn't it, the SHHD to
8 persuade their minister to go separately from the rest
9 of the UK?

10 A. Yes, and no doubt consult with colleagues in London, you
11 know, which would be the normal, courteous thing.

12 Q. Let's hypothesise further, if we may; and think about
13 a situation where such a submission had been successful.

14 A. Yes.

15 Q. In other words, you had persuaded the SHHD to persuade
16 their minister to go ahead in Scotland before the rest
17 of the UK. When do you think realistically testing was
18 likely to have started in Scotland?

19 A. This would have been in June. I have a feeling I would
20 need notice of that to talk to the boys again. But
21 I would have thought, you know, there we were earlier
22 saying -- the Edinburgh set saying, "We will go
23 for February". I would have thought we could have moved
24 pretty quickly.

25 An accurate answer to your question is a little

1 difficult and if I'm right that already by the
2 11/12 June Brian had decided Edinburgh were going to go
3 and that would mean 15 July, which appears on bits of
4 paper we have looked at, so it looked like a month, but
5 in terms of testing, I have a gut feeling we could have
6 been up and running really within three/four weeks. The
7 question of counselling donors is another issue, as
8 Glasgow were not doing that.

9 Q. We still have in front of us this letter of
10 12 August 1991. Would the phases that we see there not
11 have to have been gone through? Am I wrong in that?

12 A. Yes, I think in principle, I think -- yes, but I think
13 this was -- this was our best option of starting -- for
14 starting at 2 December, and so we were saying, "Well,
15 mid-July we would commence talking in terms of contracts
16 for kit purchases".

17 Now, that was done by Mr John Francis the director
18 of finance. I think the familiarisation with staff with
19 associated technology would have been quite quick
20 actually. They are pretty sharp characters, and then
21 actually doing a few dummy runs, you know, this is
22 a leisurely thing but I think the idea that we needed to
23 get this right and take our time and do it properly,
24 that's the basis of these phases, I think.

25 Q. Does it come to this -- and I'm not trying to put words

1 in your mouth but the difference is essentially a matter
2 of weeks between --

3 A. Oh, yes -- no, no. We were running out of time by the
4 time the June debate happened, we were rapidly running
5 out of time, but I say that -- I think we need to be
6 sensitive in saying that, to the extreme concern of the
7 directors about their patient responsibility, about what
8 was going on down in Paris, the great sensitivity. And
9 for them I sense it wasn't just the process, it was
10 comfort, it was knowing that we were doing the right
11 thing, and it may have made no great differences in
12 terms of weeks but, you know, that's, I sensed, how they
13 felt.

14 Q. Thank you very much, professor, I'm obliged to you.

15 THE CHAIRMAN: Mr Johnston?

16 MR JOHNSTON: Sir, thank you. In the circumstances, I'm
17 content to rely on the examination that the Inquiry
18 counsel have carried out and I'm grateful to her, and
19 I therefore would not wish to ask any questions.

20 THE CHAIRMAN: Thank you very much.

21 Well, thank you very much. Au revoir, I think, is
22 the best I can say.

23 (4.31 pm)

24 (The Inquiry adjourned until 9.30 am the following day)

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