Tuesday, 29 November 2011

(9.30 am)

MR DAVID MCINTOSH (sworn)

Questions by MS DUNLOP

THE CHAIRMAN: Good morning. Yes, Ms Dunlop?

MS DUNLOP: Thank you, sir. I'm obliged to you for allowing some extra time just to clarify one or two last minute points. I'm sorry for the late start today. We have Mr David McIntosh to give evidence on our topic C4.

Mr McIntosh has provided a statement and we also have a brief CV for him. I would ask that we have a look at the CV first. That's PEN0172195.

Mr McIntosh, we note that you spent approximately ten years in the National Health Service in Scotland. Is that correct?

A. Yes, just over nine.

Q. Right. At both ends, so before and after -- you come from the world of business. Is that correct?

A. Yes, I do, I am afraid.

Q. Nothing for which to apologise.

THE CHAIRMAN: It's quite a comfort to get someone who is not a medic.

MS DUNLOP: I think you are a graduate of Oxford. Is that right? What did you study at Oxford?

A. Psychology and philosophy and high jumping and amateur

acting.

Q. And if we could go a little bit further down, thank you, I'm going right back here obviously, to your higher education. Yes, and you went to the LSE. What did you study at the LSE?

A. I did postgraduate work at the LSE to become a fellow of the Institute of Personnel Management as it was then, which led to chartered membership of the Chartered Institute of Personnel & Development. It was a course under Lady Sear at the LSE in human resource management, which is now an MSC. In those days it was a postgraduate diploma.

Q. Just roughly speaking, when did "personnel" become "human resources"?

A. It is a branding issue. It's nonsense. I much prefer the word "personnel" myself.

Q. Has much of your working life been spent in personnel-related issues?

A. I would say yes to that but I would have to qualify it by saying it is only yes because I think as general manager, as a line manager, as a factory manager and as a CEO, one is always in personnel management. The people really are the most important part of what you have got. But as a specialist -- I think I practised personnel management as a specialist for ten years.

I was an industrial relations adviser to Coats Patons UK, when we had 150 companies in the UK and 40,000 employees, and was responsible for the implementation of the Industrial Relations Act 1971. I then went to the LSE. I then became personnel manager, a job which nowadays would have been known as HR director in the Paisley Mills. So that was 5,000 employees. I did that job until I became group personnel manager of Coats Worldwide but then I went back into line management.

Q. Yes.

A. So I haven't been a specialist in personnel management since 1981.

Q. And in terms of length of employment, the longest period you have spent with one body has been with Coats Patons, hasn't it?

A. Yes, I was 19 years with Coats Patons.

Q. You went from there into the NHS?

A. I did.

Q. Which must have been quite a stark change going from the private sector into, what, the biggest public sector employer in Britain?

A. It was intended to be a stark change because at that time the government of the day -- I think it was Malcolm Rifkind who said, "It's not a business but it can be

more business-like," and we were recruiting into the NHS people who could bring business skills to it. I became head of a thing called the "Management Development Group". So I was deliberately brought in to bring industry/commercial/line management common sense and help the NHS to deploy that.

Q. We can see that. That's the third of the paragraphs under "career history", that's 1987 to 1990?

A. Yes.

Q. Then 1990, you moved to become chairman and general manager of the Scottish National Blood Transfusion Service?

A. That wasn't quite as sudden a change as it looks. I spent a lot of time in the BTS when I was director of the Management Development Group doing management consultancy for them, doing a thing called "The Mission Project". The BTS was just about to celebrate its 50th anniversary at that time and had never been managed ever by anybody. It had had a national medical director, it had committees coming out of its ears, but it had never been managed. And I recommended that what it needed was central leadership of some sort and they ought to recruit a general manager.

Q. And then --

A. Which may or may not have been wise because they

recruited me. So that's how I got into blood.

Q. I thought perhaps the penultimate line in the second paragraph could provoke debate because you talk about the establishment of national self-sufficiency, and that's a matter on which we spent quite a long time and there is a case to be made that that was achieved around 1983?

A. Indeed, but subsequently lost again.

Q. Right, so re-establishment even of national self-sufficiency; would that be fair?

A. Indeed, I accept -- I think I accept the amendment but I would need to do my research. I would doubt, looking back, that actually all the blood products that should have been available for patients throughout Scotland were available in sufficient supply in 1983. They may have been and if they were, I would certainly agree.

Q. We have had a number of interesting exchanges about even something as basic as what is meant by "self-sufficiency", but I think we have moved on from that and I certainly don't propose to get into that debate this morning.

Can we just pan back up, please, to the top and see what you are doing just now and I take it that the description we see in the first paragraph is still accurate. Is that right?

A. It's still accurate but I am now also chairman of a company called Third Forensic Limited. These are very small companies but I get pulled in to help and advise and monitor. I'm only non-executive chairman, so there's that one addition but the rest is the same.

Q. You are based in the Home Counties?

A. No, Hampshire doesn't quite count as a Home County.

Q. My apologies. You are based in Hampshire.

A. Next tier down. Mid Hampshire, Petersfield.

Q. Thank you. Can we move and look at your statement, please, which is [PEN0172126].

We can see the front sheet and we are familiar now with the words you quote. We heard from Mr Tucker on Thursday. Can we turn over and look at the first page, please, the first page in? You have orientated us by explaining how you have prepared your statement and you say under a heading, "Matters Included", that you have, as requested, only answered questions about matters in which you were directly involved or of which you had knowledge at the time.

Then you sound a further note of caution that you have answered some other points where they relate to material that we have uncovered, essentially. Then you said you were available if there were any supplementary questions and indeed, as a consequence of that

availability, you find yourself here today.

So can we look on to the next page, please? You took over as chairman and general manager in 1990 at SNBTS. I noted that you say later in your statement "February 1990". Is that correct?

A. That's my memory of it off the top of my head but the records may be slightly different. I think it was February.

Q. Certainly I have seen a letter from you dated March 1990. So you were there in the first quarter of 1990?

A. I should, I think, just for clarity correct one point. I was not appointed chairman in February 1990. I was appointed general manager.

Q. I see.

A. The device of the management board and my chairmanship of it and Professor Cash's deputy chairmanship of it was entirely an organisational contrivance to make it quite clear that the medical director was responsible to the general manager and not vice versa.

Q. When did that occur?

A. A little later, and I cannot tell you exactly when but the record will show that the management board started to be referred to quite early. It was one of my first things but I was not actually appointed as chairman.

I made myself chairman for those reasons.

Q. I feel sure that we could date that precisely. We will have the documents in our database.

When you started in the first quarter of 1990, was the testing of donated blood for Hepatitis C a live issue as far as you were concerned?

A. Do you know, I have to be honest and say I absolutely can't remember. I have no idea. If you ask me to force myself to try and think what I knew at that time, I would say I was probably more focused on shortages of Factor VIII, on cost pressures on donation because we were not self-sufficient, we were having empty shelves in Glasgow hospitals, that kind of thing.

I suspect I was much more concerned with day-to-day operational urgent matters than I was with Hep C testing, particularly whether Hep C was, as I think I have said somewhere in here, a matter very specifically for the medics and the scientists in the MSC.

Q. You no doubt became aware, and I'm sure you are aware now of the existence of two different committees, the Advisory Committee on the Virological Safety of Blood and the Advisory Committee on Transfusion-transmitted Diseases. Am I right in thinking that these names are familiar to you?

A. I would have to be honest with you and say I think they are more familiar to me from your good work and documentation than they were at the time. I think I have described in my statement what they were to me, which was basically a fog far south of where I was and the relevance of which it was very hard to see.

Q. Well, we have looked in some detail at the genesis of both these bodies. It could be suggested that there was an element of the accidental in the establishment of ACTTD, which was the blood transfusion services' -- and that's "s'" because it related to the service in Scotland and the service in England -- own committee, which appears to have been established against a background where there had been mention of an official committee to advise ministers, but an appearance that not much was happening. So whether the ACTTD was established in the face of what was perceived as a need without a realisation that the need was being met by the formation of ACVSB, one can speculate on, but the two committees certainly did both begin meeting in the first part of 1989.

I thought it might be helpful just to show you the terms of reference of the two bodies. You have perhaps looked at these recently too. Can we start with the VSB, so that would be the committee set up by the

Department of Health with the agreement of the health departments in the other, smaller countries --

A. Is this the one that we would describe, I think, loosely as the "Metters committee", Jeremy Metters --

Q. Indeed. I think it started out with Ed Harris, who was the DCMO in England and Wales in 1988, but Jeremy Metters took over fairly early in the sequence of events.

If we look at [SNB0019366], this is the VSB committee and there we have its own term of reference at the very top?

A. I pulled these from your document. I have to say, I don't remember seeing them at the time and I probably should have asked for them.

Q. Perhaps all we need to note from looking at that this morning is that this committee, the "Metters Committee" as you are calling it, was to advise the health departments of the UK on measures to ensure the virological safety of blood whilst maintaining adequate supplies of appropriate quality.

To a lawyer, the use of the word "ensure" is interesting because it tends to suggest that everything else will be secondary to that aim and it tends to connote an absolute duty, which again, to a lawyer, I suppose, might be thought to be slightly contradicted

by the reference to the balancing point, as it were, that adequate supplies are to be maintained.

A. I take your point on that. I think I should say again for clarity that I think I'm right in saying -- I'm pretty certain that I'm right in saying that at no point in my appointment, in my job description, in my performance appraisal, in my target setting or in any work that I ever did in my role as general manager, I don't think this committee was ever mentioned. And I don't think that anybody in the SNBTS, certainly on the management side, you know, we who had the responsibility of spending the money wisely in the interests of patients in Scotland -- I don't think any of us felt that this committee had any locus whatever.

It might advise and we might be told that it had advised away to itself and finally my MSC wanted to recommend something on the basis of that advice, but it never became clear to me that it was what it says on the tin. And it didn't do any ensuring, as far as I can remember.

Q. Well, this was a committee on which, from Scotland, Dr Perry and Dr Mitchell both sat and --

A. We are allowed to know that but not what was said when they sat there.

Q. We have had that flagged up to us as an issue as well,

and there is certainly documentation showing efforts to establish the ground rules for how far the Scottish members could relay the proceedings back to those at home, as it were. Dr McIntyre from SHHD also attended as an observer.

The other committee, the TTD committee, is [SNB0061923]. These are draft terms of reference, which the committee adopted for itself and we are familiar with these also. I think in crude terms there is plainly a degree of overlap between the document we just looked at and the terms of reference that we can see now.

A. Do you want any comments from me on this?

Q. I'm really working up to asking you, Mr McIntosh, about a distinction which other witnesses have drawn. They have said that the former committee, the VSB committee, was policy, it was responsible for the setting of policy, whereas this committee, perhaps not initially but within about a year or so, was restricted to operational matters. And that's a distinction which has been described in other areas of government, that you have bodies which are responsible for the formulation of policy and those people who are responsible for implementing the policy thus formulated.

Do you recognise that as being an understanding that

you had at the time?

A. I think it's enormously difficult for Inquiries of this kind not to fall into the main trap here. The main trap here is to use logic and common sense and an understanding and a reasonableness to try to find how this might have been, how we might have had two committees, both of which said they were responsible for policy.

Now, of course, it would be nice to think that of course it was always very rational and very sensible. There was policy at one level and there was operation at the other. I think it's fair to say -- and I get this more now from reading your notes than from my memory, but I think it's fair to say that the second committee was set up because the blood transfusion services did not feel they were getting any kind of input to Metters's committee, which they saw basically as a kind of manipulative political animal in Whitehall, and they wanted more practical people on the ground to have some say in what the hell was going on in this space, and they therefore set up their own committee. And of course there's overlap, but not only was there overlap, there was tension and there was unhappiness, and John Cash himself has given us a witness statement in which he makes it clear there was unhappiness. So

I think it would be too neat to just reclassify them as "policy" on the one hand and "operations" on the other. I don't think that's the way it was.

Q. I take your point and indeed so to explain them would suggest that someone looking at the overall situation had designed a forward plan that involved having both committees, one with responsibility for an area discrete from the other, and when you look at the documents, that doesn't look to be how they both evolved. So I accept the point you make.

Perhaps asking a slightly different question, did you have any understanding at the time that this committee, the Transfusion-transmitted Diseases Committee, had some sort of responsibility for operational matters of SNBTS?

A. Absolutely not, no. Quite the contrary. It was quite clear that they didn't, and if anyone had suggested to my medical director that Harold Gunson was responsible for anything he did, he would have been absolutely outraged.

No, there was tension and conflict there and the simplest way of dealing with that was quite simply to deal with Scottish matters as best we could and take account of anything we heard from England if we felt it was helpful, but no, I would absolutely deny -- it may

have been true but I would deny that I knew that this committee had any locus whatever in Scotland.

Q. Let's go back to your statement, to the page we were on, please. You have really said much of this in your section 2, Mr McIntosh, particularly 2.2.1, where you say:

"Working jointly would, I think, imply a more methodically coordinated approach than appeared to be the case."

You say in 2.2.2 you do not believe the departments were so much working on the decision as helping the decision to emerge.

Of course, it would be fair to recognise that in the first part of 1989, when these two committees started meeting, no one had identified that there was a specific decision to be made. Both these committees at least purported to be looking at the overall topic of the safety of blood and no doubt making such recommendations or advising on such policy as came to seem necessary. So it wasn't that they were formed or sat down specifically to consider the screening of blood for Hepatitis C?

A. No, indeed.

Q. The section you have, 2.3, makes mention of a topic we are obviously going to return to. That is the

commencement of screening by the northern region, the Newcastle region, in the spring of 1991. You say:

"Newcastle was allowed to go it alone."

I just wondered about that use of language. Did you think at the time that there was a mechanism for stopping Newcastle from doing what they did?

A. No, I think -- I'm sorry, this is sloppy drafting by me, here. What I think I'm trying to suggest here is that the fact that Newcastle went alone meant that there was no such control. If there had been, it would have been exercised presumably. The only other evidence that I'm aware of that we now have on this is John Cash's recent note, which I got last night, in which he talks about -- and this I did not know at the time, but he talks in that note -- I don't know if everybody has got his note that came last night.

Q. I hope so.

A. But he makes the point there there were some choices: either you could sack the man from Newcastle and reprimand the whole panoply, or you could do X, Y and Z. Now, in answer to your question, I don't believe that it was within the power of the people involved to sack the man in Newcastle. He worked for the regional health authority. He had got approval at all levels in the authority and he did what was right. So the notion that

you would sack him for doing what was right was absolutely appalling, but what they did instead of course was send him to Coventry and destroy his career.

I adduce this here not for that reason but because it seems to me to be evidence that the two health departments were not exactly in the most sweet co-ordination getting the right results.

Q. Can we move to the next page, please?

We are still at this point looking at a bumper question, which we sent, which related to the whole decision-making process from a political point of view, whether the health departments for Scotland, Northern Ireland and England and Wales were working jointly on the decision, whether it was an issue on which Scotland would follow whatever decision was taken in England and what the formal position was.

In the answer to the second part of question 13A, you are, I think, referring to that particular question, which runs:

"Was the formal position that the decision for Scotland would be taken in Scotland independently from the decision in England?"

A. Sorry, no, that's question 13B. The second part of 13A is: or was it that Scotland would follow whatever decision was taken in England?

Q. Yes. You say you think the answer to that is an emphatic "no"?

A. This is all from my memory and from my speculation. I have tried to be helpful here. I think actually you already know more about this than I do and I think it's all fairly obvious stuff.

Q. I just wanted to show you one or two other documents to see if they cast any bearing or had any bearing on your answer in paragraph 2.6. You say that you think the Inquiry team has caught the sense of the position very well in paragraph 9.251. This is in the preliminary report where it is stated that:

"Testing was to start simultaneously in RTCs in England and Wales and was to be coordinated with the commencement of testing in Scotland."

You make the point that a policy to coordinate with doesn't seem to you necessarily to imply a decision to move simultaneously with.

Just to look at a couple of documents from quite early in the story, first of all [SNB0061574]. This is, if you like, at the operational level, accepting what you say about the policy operational distinction being possibly slightly ex post facto. If we regard the services as being in the operational camp, we can see in this letter and the next letter an exchange involving

the directors of the English and Scottish services. This is Dr Gunson writing to Professor Cash, talking about early evaluation of the new Chiron test, and then saying in the third paragraph that:

"It is important that the SNBTS and the NBTS act in close collaboration, since I can foresee difficulties if one of us introduced the test unilaterally."

Then the other letter is [SNB0082606]. This is Professor Cash's reply. This has the letter (a) beside it:

"We will not move unilaterally unless instructed to do so by SHHD, thus close collaboration seems certain."

So that is a snapshot of the position, at least at the end of July 1989 as far as the two services are concerned.

A. Sorry, can I interrupt at that point?

Q. Yes.

A. It's clear as to what two chums, two medics, Harold and John, felt about this. Now at that point, John was in fact, as medical director, loosely speaking, responsible for the SNBTS but he wasn't in a position to commit the SNBTS, and as he makes quite clear in (a), he thinks that they wouldn't move unilaterally unless of course they are instructed. So in other words they might. And he opines that a close collaboration seems certain. I'm

sorry but I don't think that is in any way a statement of a clear position that ministers had said that these two would move together.

Q. Well, we are going to look at what ministers have said, starting with the directors of the services. So there is that exchange about not moving unilaterally and then can we look at [SGH0031242]?

This is a letter dated 13 January 1989 from the Parliamentary Undersecretary of State for Health, Roger Freeman, to Michael Forsyth, then Scottish Health Minister, sending a submission relating to the formation of the Advisory Committee on the Virological Safety of Blood. And referring at the end of the second paragraph to the blood transfusion services acting in unison. And if we look at the reply --

A. Sorry, again it seems timely, yes, it does, and his last point -- "and I would be grateful for your agreement" -- now to me this conclusively proves the point which I think is already clear to us all, that these matters were diplomacy between DOH and SHHD and requests for agreement had to be sent, instructions could not be sent. It could not be assumed that we would act in unison, it was timely that we should and we do ask that you do, but again I think all of this is confirming the point that I'm making, which is that it was open to

Scotland to move separately. I think we have other evidence that it was open to Scotland to move separately, in Peter -- the minister's letter in relation to look-back, in which he says quite clearly in terms to his English counterpart, "I'm sorry but we now have to move because we believe it's our duty so to do."

It is important to make a distinction between that which is operationally preferable and would be done if possible on the one hand, and what was the actual responsibility at law of the ministers in Scotland for Scottish affairs on the other, and I'm sorry if I have belaboured that point.

Q. Not at all. Just to complete this exchange, can we look at [SGH0031232]? Just to show that that expression "act in unison" was also contained in the reply, which is Michael Forsyth's letter back, dated 8 February 1989?

A. He is therefore agreeing to the proposals, and surely we must therefore understand that had it been otherwise, he might have chosen not to agree, and my only point is he was free not to choose to agree if he so wished.

Q. I think I'm simply referring you to this material and asking you whether, if we go back to your statement and look at the end of 2.6, you still think that it's enough to say that there was to be co-ordination or whether the position goes a little bit further than that and there

was essentially an agreement -- one which could be departed from but an agreement -- that testing would be introduced at the same time in Scotland and England?

A. I have no doubt whatever that all the civil servants in SHHD at the time were clear in their own minds that this would be a simultaneous introduction.

Q. Yes.

A. I'm quite clear about that. What I'm not clear about is that Michael Forsyth would have been sufficiently briefed to have taken a view on the matter to the point where he too was absolutely clear he was going to move simultaneously and indeed, I think in this context it is fair to point out, and stop me if I'm wasting time, but it is fair to point out that actually in May 1991 certainly around 50 per cent of the Scottish population was already covered by HCV because we had introduced it in Glasgow and the West of Scotland, and therefore "coordinating" and "unison" and "acting in harmony" were very flexible terms.

The fact that Newcastle went alone was dealt with. It became a trial instead of an implementation. All sorts of flexibilities were actually indulged under this apparent agreement that there would be absolutely clear simultaneous implementation. So therefore I think it's very, very hard to sustain the notion that there was

a tight rule that everything would be absolutely uniform on the day in question. Partly because it didn't actually happen that way and partly because we know that the legal position was not in fact that.

Q. Indeed. All I'm seeking to do is to set the discussion which is going to follow against the backdrop of the agreement such as it was that was reached in 1989 and thereabouts, as to the level of cooperation, co-ordination --

A. I appreciate --

Q. -- which would occur?

A. I appreciate that but if we are to set it as background, I think we have to be clear about it. It's not a fixed, hard background, it's a very flexible curtain.

Q. Let's look at something you yourself said. Can we look at [SGH0027958]. This is actually a letter to Dr McIntyre in March 1990, so you are there by then, talking really about ALT testing but there is a reference to "going together". If we look at the second page of this --

A. Sorry, can I just stay on page 1 for a minute?

Q. Yes, sorry?

A. I'm sorry to go on and please shut me up if I'm going on. Could I just have a look at page 1 again, third paragraph:

"As I understand it we are quite clear that neither we nor the English will be introducing ALT testing for the time being. Neither yourselves nor DOH recommend that we should."

So in other words, I'm assuming that because I have two sources for making that assumption. I'm not assuming that one is enough.

Q. Yes.

A. Sorry, do I make my point?

Q. Yes. I think you do but if we look on to the next page, we can see that there is another reference to "moving together", that there should be very careful and well timed co-ordination of the introduction of new testing and counselling so that all blood transfusion services in the UK take a unified approach?

A. Absolutely, but I do make a very, very clear distinction here between what I call on the one hand "consistency" and on the other "uniformity". When I say "a unified approach" there, that was probably slightly sloppy because what I mean by it in this context is a well timed co-ordination of the introduction. That includes advance introduction of testing, it may well include, as Mr Tucker's letter implied, a succession of introductions. It need not necessarily be a gun goes off and everybody goes on the same day. I agree, my

language here is sloppy in the sense that when I say "all blood transfusion services in UK take a unified approach", I probably should have said "a coordinated approach", but even at that, an unified approach is not a simultaneous introduction, it's just healthy co-ordination between like-minded colleagues.

Q. I think, Mr McIntosh, there are really two points that we are going to need to bear in mind as we look at subsequent events. The first is, given this agreement, quite how one describes it, and one sees different wording used in different letters, but given this agreement, what would it take for one of the services to depart from the agreement. That's one issue. And the other issue is whether at some point the notion of co-ordination became elevated into more of a fixed kind of rule. And you are familiar with both of these issues, if you like, but I'm looking at these to see just how exactly it was pitched at the outset of this process.

So equipped with that knowledge, can we go back to the statement, please and just conclude that answer, which is now on to page 2130. We can obviously read all of this for ourselves, Mr McIntosh, but you refer at the top of this page to:

"... the Scottish Office Home and Health Department

being prey to a whole host of tugs and influences coming from a cat's cradle of largely informal ties between Westminster and St Andrew's House. The background to Scottish decision making was therefore far from straightforward."

You refer also to Mr Tucker's letter from January 1991, and we have looked at that ourselves. You think it has some useful points in it. You make in writing the points you have made this morning, that it would have been open to the department -- that is SHHD -- not to maintain a UK approach.

Can we move on to the next page, please? We asked about the tying of introduction of the test in the United Kingdom to approval by the Food and Drugs Administration in the United States and you said, it would, you think have been regarded as poor practice to introduce a foreign test brought in from a country where its own regulatory authorities had not yet approved it for use.

There were just two questions I wanted to ask you. Firstly, whether you are aware of the issuing of an export permit for the test in advance of full licensing for use in the United States?

A. I saw that in your notes. My mother was from New York and I have a lot of America relatives, but I was ashamed

of us at that point. That was odd. No, I was not aware of that at the time, but it wasn't relevant to me because we weren't going to use that test until it was approved by the FDA.

Q. The other point was that the test was introduced in other countries. Just so that we can remind ourselves of where, can we look at [PEN0170302] and go to page 86, please?

This is the decision of Mr Justice Burton in the case of A v The National Blood Authority and others. You are probably familiar with the existence of this court case, if not perhaps with all the terms of the judgment. Would that be reasonable?

A. Yes, absolutely.

Q. Right. There is a timeline given here of introduction by other countries of the screening tests and we can see November 1989, Japan, February 1990, Australia, and then in March, France, Luxembourg for new donors only, and Finland. All introducing screening tests before approval by the FDA. So I just wondered if you would still want to suggest that it was poor practice to introduce a foreign test brought in from a country where its own regulatory authorities had not yet approved it for use or is that perhaps something which is not directly in the area for which you were responsible?

A. I mean, I think had this been brought to me in those terms and said, "Look, there is only one test available. It hasn't been approved by the FDA but it is being used all over the world and it is having a very beneficial effect on healthcare," I might have taken a different line, but one has also to remember that in the UK we were very, very sensitised at that time to the terrible consequences of imported American blood products, which had infected many, many people with haemophilia, particularly in England, less so in Scotland, but even here it was fatal in many cases.

So HIV infection in London of the haemophilia population was something of the order of 50 per cent of all patients with haemophilia. So we weren't incredibly pro-US at that time and I think we would have been particularly twitchy about -- you know, I mean, giving themselves an export licence for a product that they hadn't actually allowed them to use on their own population, I think it would have been just too much for us.

Q. Well, of course, it was the Americans who had authorised the export of the test to other countries, which obviously facilitated its introduction in these countries we can see on the screen. At the time do you remember having an awareness that this issue of full

regulatory authority by the FDA was seen as vital?

A. I think I do remember that this was an issue but it wasn't the issue. If we are talking about critical path analysis here, it was not on the critical path. There were other issues being dealt with in parallel.

Q. Can we go back to the statement, please, and on to page 2132? We asked about the availability of funding to introduce screening and it seemed to me that what you were saying -- possibly subject to adjustment of the figures slightly, although, as you point out, these figures are from memory -- was consistent with what Mr Tucker has told us. Can we just look at his answer, please, [PEN0172060]?

A. He is in the pack, isn't he? I think I remember this.

Q. Yes, he is an assistant secretary in SHHD. This is his area. Can we just look at his answer to this question as well, please? So question 28. I'll give you the reference to where that is. Page 2065.

A. Yes, I remember reading this.

Q. In essence he told us, when he gave evidence, that had it been a priority to introduce screening for Hepatitis C, money would have been found?

A. I'm glad he admitted that. The flexibility of these budgets is not something that we were ever encouraged to recognise, because we were told we had to live on what

we got, but I do have personal experience of having found serious sums of money out of this kind of flexible arrangement when the need arose.

Q. Yes.

A. The key point here I think, being, if I may, that I do not believe that finance was in fact an obstacle in Scotland.

Q. Good. That's certainly an impression that we had formed but I'm glad that that is your view also.

Can we go back to the statement, please, and now on to page 2133? We are coming more into the period from November 1990 to the introduction of screening in September 1991, a period which, as a team we didn't find particularly easy to understand. When one poses the question why did it take from November 1990 until September 1991 for screening to begin in Scotland, the question doesn't really admit of an obvious answer.

We asked whether there was consideration of Scotland going ahead more quickly, similarly to Newcastle, and you say that there was such consideration and we can read your answer for ourselves. I think you are telling us, because you use the word "insistent", that it became a more focused enquiry, as 1991 wore on, to ask whether Scotland could introduce screening ahead of introduction in England and Wales. You then take us into an analysis

of the background and the timing.

5.3.1. You say that there was an initial period of genuine debate about the necessity or otherwise of Hep C testing and that in your view that was almost certainly completed, at least to the satisfaction of the vast majority of professionals, by the fourth quarter of 1990 and probably earlier.

It would really be for others, I think, Mr McIntosh, to scrutinise the workings of the committees, in particular the VSB committee, and try to assess whether all the reservations they had about the test were reasonable reservations or not. I guess, that's not really your field of operation?

A. Well, no, it's not if I get dragged down into their level of detail but at a policy level -- and this is -- I think, my key point in all of this is that the questions were never asked. The tests were sub-optimal. Life is sub-optimal. But, you know, a group of microbiologists talking about whether a test is perfect enough yet to be implemented is not an answer to the issue of a public service that is already funded to do something that will improve patient care in Scotland and ready to go and being held back. So I tried on my page 8 of 20, in my own mind, to rationalise the periods as I saw them, and I call that first period a "genuine

period" because I think, looking back and studying your papers as well as my own memory, it's clear that there were significant enough issues in that period for it at least to be reasonable for professionals to deem it not yet appropriate to go forward.

Thereafter, I think that defence disappears and that's the distinction I'm trying to make here between what I call the "genuine period" and the kind of "phoney period" afterwards. Nor, to be fair -- and you may wish me to expand on this or you may not. Nor to be fair do I think that actually those committees were making scientific or medical decisions by then at all; they were being guided to make decisions which were politically convenient.

Q. When do you think that change occurred?

A. I'm saying at 5.3.3, on your page 2133, from March onwards.

Q. Right. You thought that Lady Hooper's comment in January 1991, summed the position up well. Let's just have a look at that. [PEN0160259].

A. While that's coming up, if I may, the elision I'm trying to make here between my paragraph 5.3.1 and 5.3.2 is this: the policy decision as evinced by Lady Hooper seems to me to have been a done deal by quarter 4, 1990. However, its implementation and all the implications on

the number of blood donors you are being to get, the number of donations you are going to have to exclude, the impact that that has on blood supply, on supply of blood to emergency surgery, for instance -- I mean, were we going to lose lives because didn't have enough blood? All of that operational stuff is in my period in 5.3.2.

Q. Yes.

A. But that's after the decision that, yes, we must do this as soon as possible.

Q. Yes. We will come shortly to look in a little more detail at the political decision-making, but just so that everyone can see the document to which you are alluding, this is the response to the submission for England and Wales, which we can see was issued on 16 January 1991, and just to translate it, it is telling us that the Parliamentary Secretary in the Lords -- I'm not sure if there is a heading on this. No, nothing terribly helpful. But the Parliamentary secretary in the Lords, in other words, the Parliamentary Undersecretary for Health in the Lords, who was Baroness Hooper, has seen your submission of 21 December and the CMO's comments, and Lady Hooper, the minister, has commented:

"I don't see that we have any option."

And that is other than to introduce -- I think that

should be screening tests for HCV antibodies as soon as is practicable.

So that is the political backdrop as far as England and Wales is concerned, that in January 1991 the minister is taking that decision. The position for Scotland I'll come to.

Can we go back to the statement, please, and in 5.3.3, you go on to address the period from March 1991 onwards and you say that:

"For Scotland that was a period of successive delays."

You do not think that the UK solidarity approach was necessarily wrong. With hindsight you feel quite strongly that it was indeed wrong.

A. I'm not suggesting that it was wrong necessarily.

Q. You mean wrong at the time?

A. I mean, with hindsight, I believe it was entirely wrong, absolutely wrong, but that's only because I don't have any evidence or explanation as to why it might have been right. You know, I simply can't understand it. At the time I could see the desirability of it but there came a point when its desirability was overruled by other desirabilities in relation to the patient care in Scotland.

Q. All right. Using the retrospectoscope, as people say,

do you think it was wrong from the outset or that it became wrong?

A. Well, it depends what "it" is. I think that George Tucker's letter describes the right policy and indeed, I have tried to argue that in fact that was the policy -- the policy was co-ordination, it was not uniformity -- and that had we followed that original policy, all would have been well. So either the policy itself got twisted into becoming this kind of iron curtain or its implementation became misinterpreted or whatever. I don't know. What I do know is that we were funded to do it in April -- Glasgow did it in May, Newcastle did it in April, I think, or perhaps earlier. So there was no uniformity. So why was anybody still shouting "uniformity" at me, and with hindsight it just seems completely absurd but if you ask me what did I feel at the time, I felt uncomfortable, I felt uneasy. I felt -- it was certainly uncomfortable and probably wrong and I tried to do something about it.

Q. And your discomfort, what, increased as 1991 wore on?

A. It did, but you know -- I'm sorry, forgive me. This is not intended to be frivolous but you know this thing about you put a frog in water and if it's cold and then you slowly bring it up to boiling point, the frog will never jump out, it will just die in the hot water? What

they did with us in Scotland at this time, they said, "April 1, good," we were all ready, and then they said, "Oh well, no, it won't be April, it might be May," or then June, "Ah, well, perhaps July".

It was always going to be tomorrow. So they very gently kind of bamboozled along until finally it was September and looking back, I agree with your opening remark, I cannot understand why it took us so long. I don't think it should have taken us so long and I would like to help the Inquiry find out why it did.

Q. Is it possible that a series of small delays added up to a big delay?

A. That certainly is a very sound interpretation, I think, of the documentation, but we can't be certain. We can't be certain. If you want me to speculate on what I think might also have been going on, I will. I have tried to keep out of speculation. I have tried to stick to really what I believe are the facts.

Q. Let's stick to the facts just now. We might have time for a bit of speculation at the end.

Can we move on through this answer, please, and that involves looking at the next page. You say that as you remember it, the successive delays from 1 April to 1 September were not made necessary by any considerations as to what would be best for patients in

Scotland or indeed by any Scottish issues. You think that they can be attributed to the UK solidarity argument?

A. Absolutely. I think some very helpful notes that we have had since I wrote this, from Professor Cash in particular, further underline this point.

Q. Can we have a look, please, at a set of minutes? Can we look at [SNB0019054]. I don't think we directed you to this particularly, Mr McIntosh, when you were answering the questions. This is the VSB meeting, the Metters committee, if you will.

A. Yes.

Q. Of 21 May 1991, and if we look at page 7.

A. Yes, I would never have seen this, of course, because these were secret.

Q. There we are. Just under "AOB" in fact:

"The chairman voiced the concern of the committee that northern region had unilaterally begun routine testing for HCV antibody. He said that the policy for a uniform starting date had been endorsed by all UK health ministers and despite northern region's action, this policy remained firm."

This comment crops up later as well, Mr McIntosh, but just when we see it there, we are heading more in the direction of a rule now, aren't we?

A. I think I made the point to John Cash in writing at the time, and you have that letter and you have put it in your evidence, that what Jeremy Metters may have said to his secret committee, which was never published and never passed on to anybody, hardly seems relevant to me as an operational general manager trying to do a job in Scotland.

The policy may have become firmer, who knows? For me it was just off in some glade with the fairies. This was never passed to me by Scottish ministers or by Scottish civil servants. What Jeremy Metters did in his own home was entirely up to him. I'm sorry, I don't want to get over-dramatic about this but it's just on the face of it absurd. If you look at the top of this document you have just shown me, it says:

"Confidential. To members only. Not for publication."

Holy Moses. What way is that to run things?

Q. I suppose it does seem rather obvious that if it's relevant to SNBTS as the people who will have to implement routine testing, then it should be known to them, and if it's not known to them, it can hardly be influencing their activities.

A. This is why I say somewhere in my statement that I don't think the departments were working on this. I think

they were helping it to emerge.

The reason there is no clear statement of the policy is because civil servants would have worked very hard that there should not be, because if there was a policy in Scotland written down firmly that, "You will follow England"; that would have been politically unacceptable, and Scottish ministers wouldn't have been happy with it even from their own point of view, let alone any kind of public politics.

So this is all the ambiguity area of the way civil servants -- you mustn't think of Jeremy Metters as a doctor in this concept. Jeremy was a very, very influential civil servant operating at a very high level at the interface between government and the service, and what he got up to is nobody's business, but it did not influence what I was trying to do in Scotland.

Q. I think in looking at the documents from 1989, it is perhaps hard to detect the setting of a policy for a uniform starting date. So I'm wondering if that understanding about co-ordination or even acting in unison had perhaps by this point grown into something which sounds a lot firmer, the policy for a uniform starting date endorsed by all ministers.

A. The moment when it became firmer -- let me get this right, yes. I think it clearly became a lot firmer in

Scotland after the Newcastle incident, and indeed you have shown me evidence that John Cash was writing to Harold Gunson saying, "Do not worry, Harold. We won't let you down". John in his most recent statement has said that the English thanked him and were surprised that Scotland had been so solid. I think you will remember the note I'm referring to.

Q. Yes, I do.

A. So it became important. Having lost the whole of the north of England, it became important that they didn't also get betrayed by the Scots, but the one word that is nowhere in any of this documentation is the word "patients". What on earth were doctors supposed to be doing administering blood in Scotland which was less safe than the blood being issued in Newcastle? You know?

The issues here are not about the politics of these committees; the issues here are about patient care. That's really where I do get critical. I think there was a lack of focus, not on the answers, all these clever answers, but on the key questions: what are we doing? Why aren't we doing it? Who is suffering as a result? What are we going to do about it next?

Q. Well, let's go back to Glasgow, which you have covered in your answer as well. Can we go back to 2134 at

paragraph 5.7, please?

You make the point about the advance guard test centres, as you call them, and you say they accounted for a majority of donors and patients in Scotland.

A. I say that because my recollection is that the Glasgow and West of Scotland region, covering the whole of Strathclyde and parts of Argyll --

Q. Yes, I think we have been told about 50 per cent but that seems good enough as a sort of working understanding.

To understand a little more clearly the position as far as Glasgow is concerned, can we look at [SNB0051723]?

This is a letter from Professor Cash to Dr Gunson in the immediate aftermath of the Newcastle decision. So 8 May 1991. We can see that he has been trying to work out what should happen, and he calls this the "second option":

"A national large-scale validation study."

A. I haven't seen this before so I would be grateful if I could have time to --

Q. Take a moment.

A. Yes. (Pause)

I say I haven't seen this before, I don't recall John having shown this to me before he sent it.

Q. He says:

"We should make every effort to maximise this disaster to our corporate advantage."

A. Very interesting.

Q. The first point is that all participants other than Newcastle are to start at the same time.

A. That's John suggesting that it would be important that they should --

Q. Yes.

A. -- for reasons best known to himself, but there it is.

Q. And that what will be portrayed is that there is this further study, phase 1 of which will run until 15 July 1991, and this is to be described as:

"... an exercise to assess of efficacy of the two different screening second generation kits."

And then from 15 July until 31 August there is to be a phase 2, and I think, as I understand the letter, this is to be described as:

"... in order to collect more screen test positives to allow more extensive studies."

He describes this as the "public" reason?

A. Yes, this is very troubling because actually this is precisely the kind of thing we should have done. We should have done it earlier but it was always open to us. John's points about going disequally, being

a damaging fragmentation of health services -- I think you will remember the note I'm referring to. This concept of damaging fragmentation and the disaster that he adverted in Stirling in June can be easily dealt with in this way.

Our learned friend representing the Haemophilia Society will know perfectly well that for years in Scotland we were issuing product to haemophilia patients in Scotland as one great big national trial, every single patient in Scotland was getting a clinical trial. So there is plenty of evidence that we could have done this very diplomatically in the way that John is describing here, and we could have gone a lot earlier, without breaching the UK solidarity, without causing a fuss. So why we didn't I cannot imagine, but I didn't see this letter at the time.

Q. It's just that you would have done it Scotland-wide?

A. I would have participated and cooperated with my colleagues in doing it in whatever way seemed most diplomatically appropriate provided that it gave patients the protection they needed as early as possible.

Q. Let's look at the second page. We find a reference to the word "jittery" which crops up quite a lot in the correspondence of the time. One of the advantages that

Professor Cash sees is that this approach will also ensure that non-participating centres don't get jittery on grounds of product liability in the month of August. Then he goes on to talk about the practicalities that four participating centres will be needed, two using Abbott and two using Ortho?

A. If I had seen this at the time I would simply have said to him, "Why should there be any non-participating centres?" Jittery or otherwise. This is a nice plan. It's a good idea, but why not do it everywhere?

Q. We see how Glasgow came in in paragraph 45. He thinks that Edinburgh, Glasgow and Aberdeen are likely to opt for Abbott when full screening begins. So it seems to him that Glasgow should be offered into the national UK study and the NBTS in England will have to find two Ortho centres.

So Glasgow and Newcastle will be the Abbott centres and two English centres will be the Ortho centres. He says Dundee and Inverness using Ortho would be happy to pitch in but their donation collections are relatively small and this could be viewed as a disadvantage to Ortho. So that seems to explain why testing wasn't going to begin in May in Dundee and Inverness.

A. He mentions the disadvantage to Ortho but not the disadvantage to patients. It's a bit horrifying. Can

I be reminded of the date of this?
Q. This is 8 May 1991. Then he goes on to talk about confirmatory testing and then on to the final page. Funding seems to be a problem, and this is being copied to Dr Mitchell because Professor Cash is going to be on leave and he wants to establish "a wee bit of continuity in SNBTS managerial support for you".
A. And he did copy it to me apparently.
Q. He did, yes.
A. I just absolutely don't remember it.
Q. Right. "SC", silent copy. Is that what that means?
A. I was just going to ask you the same question.
Q. I think it means a blind copy --
A. Yes, bless him, that would have been the right thing to do. I absolutely have no recollection of it.
Q. So you are given a copy of the letter but that's not shown to the other recipients?
A. Exactly, yes.
THE CHAIRMAN: It allows you to deny ever seeing it.
A. Well, I don't, my Lord. I simply say I cannot remember. I couldn't be emphatic.
MS DUNLOP: Right.
A. But it's interesting, "a wee bit of continuity in SNBTS managerial support for you". This is the centre of my argument. Why were we offering the English services

managerial support which was damaging to Scottish patients? It's very simple: why were we doing that? And I cannot recall, I'm sorry. It wasn't a matter of managerial support. It should have been a matter of healthcare.

Q. I think we understand the point you make, Mr McIntosh. Obviously, what happens in Glasgow and what didn't happen in the rest of Scotland is of great interest to us so just to return to the minutes that we looked at a moment ago, [SNB0019054]. That's the Metters committee on 21 May. And this time looking at page 3. There we are.

This takes the story on a little bit. Dr Gunson said that northern regional transfusion centre had begun routine testing of donated blood for HCV antibody in April. While this unilateral action was regretted, it could be used as an extension of the trial and he presented a paper giving details of the proposed extended trial. Work in Glasgow was underway.

So there is to be an examination of a RIBA and PCR supplementary tests on positive donations as well as, obviously, this comparison between Ortho and Abbott second generation kits.

A. I think, if I may -- I think there are two points about this paragraph which are of importance to us. One is

the point that he makes, that there is going to have to be some funding found, and I think the fact that funding had to be found is a critical issue in all of this that perhaps hasn't yet come as much to light as it should, but the other is -- and I think you already have this well documented, so forgive me if this is redundant, but the point has been made: all of these examinations and tests and interesting data collections could have been done after full implementation. One is always trying to improve one's testing. There was no need to wait until it was better before one introduced it.

I think there is ample evidence that it would have been beneficial, maybe not beautifully, microbiologically perfect but it would have been a lot better than nothing, at an early stage. And all of this testing was actually just a way of salving certain consciences, while at the same time spending less money, as far as I can tell.

Q. So that we are aware of all the documents that bear on the commencement of testing in Glasgow, we should look also at Dr Gunson's paper. We can see that he presented a paper to the meeting and the paper is [SNB0019108]. This is a paper relating to the extended trial of anti-HCV tests on blood donations. The background is obviously that the multi-centre trial using the first

generation kits had been completed some weeks ago. It had been agreed that the second generation kits would also be evaluated, using the same samples, indeed. And then there is the reference to Newcastle at the end of paragraph 1.

Then we can read for ourselves -- have you seen this recently?

A. No.

Q. I'll let you have a look at it. (Pause)

A. It's inconceivable that we would have done this in Glasgow without the whole of the SNBTS management board having agreed it and the other RTCs being comfortable. So one has to assume that Edinburgh, Aberdeen, Inverness, Glasgow, Dundee would have known and were content at this time that -- the question is whether, as time wore on beyond that, further delays made this more and more untenable, and I think that's really where we are probably going to be going in further discussion.

Q. Your position is that before this initiative was agreed, the directors of the other four areas in Scotland should have been asked if they agreed to it.

A. They must have been. John wouldn't have done this without their knowing. It must have been an MSC issue. It may even indeed have come to the board although I don't recall that it did. Is there any minute that it

did?

Q. Well, we haven't found a minute to that effect but we will have another look.

A. I'm not making a controversial point here. I'm sure John must have cleared this with other RTC directors. There is no way that he wouldn't have done. That Ruthven was testing for Hep C when Edinburgh wasn't would have to have been known to Brian McClelland, and that would have been acceptable had the gap in time only been short.

Q. I think we need to come back to the issue of the paper trail demonstrating that particular agreement.

I'm sorry, this is slightly out of -- can we finish looking at this paper? If we look on to the following page, please. Nuts and bolts, really, Mr McIntosh. 2.2:

"The donations used for the trial will be those that are collected currently."

So that makes clear that it was all the donations in the particular geographical area and it was also going to be looking at PCR tests and RIBA tests. And then on to the final page, please.

A. Have you taken evidence on this from medical folk?

Q. Yes.

A. I mean, what's crossing my mind as I look at this is

simply, yes, fine but all of -- was any of this designed around the need for a go, no-go decision about Hep C testing? Is it conceivable that having done all these tests, one might have decided not to go ahead? I'm sure the answer is no. So then the question is: why not just do these in parallel having done general implementation? Why does this have to be a trial?

Q. Mr McIntosh, we have looked at a lot of sets of minutes and a lot of correspondence. I obviously can't say we have looked at everything but we haven't found any suggestion that one possible outcome of this would be a decision not to screen for anti-HCV.

A. So the word "trial" in that context has to be seen --

Q. My understand is that it is to issue information about which is better of Ortho and Abbott.

A. So were Abbott to turn out to be better and had you been using Ortho, you could change. You know, why would that be a need to not introduce it until we had finished that test process? I suggest to you that actually it was that we didn't have the money to actually introduce it everywhere. So we had better just go on delaying and using the trials as a cover, but that's again speculation, so I'll shut up.

Q. Well ...?

A. It's speculation but it's deduction. What other

interpretation could there be? I cannot see that these trials were anywhere a go-no decision on testing.

Q. But the money was in the budget for the financial year from 1991 to 1992.

A. Not in England it wasn't.

Q. Right.

A. Nowhere in England I think was it ever. I think they just had to scrape around somewhere.

Q. To clarify the point you are making, you are not suggesting that the reason why testing was not begun in the other four centres in Scotland was financial?

A. No, but I suggested it might have been financial indirectly, in that the pressure that was put on them not to go, because England hadn't gone, was itself created by the fact that England couldn't afford it. And not just the testing, remember; there are huge follow-on costs for the healthcare organisations that we were serving, in terms of cancelling of people with hepatitis and treatment and so on and so on and so forth. There were serious financial consequences which we in Scotland had addressed and were ready for, which as I understand it and I think the evidence shows, the English had not yet properly organised themselves to cover.

Q. My understanding is that the funding in England involved

cross-charging?

A. For the tests itself it did, yes, and then there were the subsequent extra costs to the healthcare organisations involved.

Q. Can we just finish looking at this paper? The date of that is 17 May 1991. He has given an estimate of the cost of confirmatory testing.

Mr McIntosh, I missed a letter which I wanted to show you, which is back to Professor Cash. It's [SNB0051707], please. I'm sorry, it's not on the list?

THE CHAIRMAN: Would this be a suitable time to stop?

MS DUNLOP: After the letter, yes, thank you, sir.

So this is actually just two days before that paper. This is all May 1991 but I'm sorry, this is Professor Cash to Dr Gunson and it's about the actual protocol for this extended trial. He is congratulating Dr Gunson on the protocol and thanking him for it. And then we have the reference to jitteriness again and this time it relates specifically to you.

A. Yes, I recall this.

Q. So he is wanting encouragement of the participants to keep going after mid-July. That would have been the phase 2 as suggested in the paper:

"This will obviously happen in Newcastle. I know that some people, notably David McIntosh, may get very

jittery."

A. Yes, I have seen this and I have referred to it in my statement.

Q. Yes.

A. "Jittery" was not the word I would have used myself but certainly very concerned, but again in May -- you know, the temperature had not yet risen that much because we were still hoping to go very soon. Was it, by the time of this letter, clear that we were aiming for 1 September? Sorry, when is the date of this letter? It would be May time some time?

Q. Yes. This is 15 May.

THE CHAIRMAN: Paragraph 5.8 --

A. My memory is that we didn't actually make the decision, the formal decision, to go in September until a wee bit later.

MS DUNLOP: Well, the formal decision -- there is a letter from Dr Gunson to all directors in England announcing 1 September date, which I can take you to.

A. Was that -- what was the date of that?

Q. Let's go back to your statement because you have some of this material in your statement. I don't think you have that, though.

A. Sorry, I mean -- this may not be relevant. I shouldn't have interrupted you.

Q. No, it's all right. Certainly there is a phase where the date has moved not specifically to being 1 September but being no earlier than 1 September. But you refer to this letter, yes, at 5.8.1. You are not completely at ease with the use of the term "jittery" and you have given a slightly different impression at the end of 5.8.1.

A. Yes, I mean, I'm still grateful that we have got this letter from John because it makes the point. The question you ask, question 35, is did we give consideration to going more quickly, and I think the fact that he is recording that I was jittery is, yes, indeed, we did give consideration to going earlier.

Q. That was the jitteriness?

A. That was the jitteriness.

Q. After the break I will have, I hope, harder information about when the September date was announced but, yes, sir, I think that would be a good point to stop.

(11.10 am)

(Short break)

(11.32 am)

THE CHAIRMAN: Yes?

MS DUNLOP: Having said I did not have the date, I can see it seems to be the next document on the list. If we look at [SNB0044883], please. This is another exchange

between Dr Gunson and Professor -- well, it's not an exchange specifically because this is a circular letter that was sent by Dr Gunson to all the directors in England and Wales but it was copied to Professor Cash. I think it says that at the end. Let's just check the end of it, please.

There we are, Professor JD Cash and we can see that that's ticked. So that's this copy. Then just to flip back to the first page, please, that's the letter that moves the date from 1 July -- 3 April 1991 -- writing to say that 1 July is too soon and that the aim is now to commence by 1 September.

Then just to look at the reply, so we see these together, [SNB00639958].

A. Yes, this was not the September date being fixed; it was simply the July date being unfixed and 1 September becoming the new expected, probable ...

Q. Right.

A. This is John Cash's note saying that it has the fullest support.

Q. Yes:

"... start date in September 1991 has the SNBTS directors' fullest support."

A. Which it didn't, but nonetheless that was a solidarity move, yes.

Q. As we have become accustomed to seeing, a two-day turnaround, so the letter of 3 April answered on 5 April.

A. Sorry, can I just -- at the bottom of this letter, was this copied to anybody?

Q. Can we go right down, please?

A. No, classic. So his colleagues would wish him to know but his colleagues never knew he had said it. Hm-mm.

Q. Let's explore a little further the position in Scotland.

Can we go back to your statement at 2134, please?

We have already looked at all the material from May about setting up the extended trial and the Metters committee being informed about that. The involvement of Glasgow. Then at 5.8.2 you refer to a letter Dr McClelland sent Professor Cash, dated 11 June, and we have already looked at that and you have quoted the salient point from it:

"I would like to be reassured that we are taking the correct decision, both professionally and [I think that's probably medico-legally] to stay in line with the positions of the majority of English RHAs. Dr McClelland was not alone in seeking that reassurance."

On to the next page, please. We know that there was a board meeting -- it was a two-day meeting. You have said 11 and 12 July. It's actually 11 and 12 June.

A. I'm sorry, that's a misprint.
Q. It's a simple typo.
A. Yes, it is.
Q. And it took place in Stirling. Is that correct?
A. To be honest with you, that is a detail that John has reminded me of. I had forgotten that it took place in Stirling but I'm quite prepared to accept his word for that.
Q. Okay. And we can see for ourselves your comments on another letter to Dr Gunson in which Professor Cash describes himself as:

"... picking up the pieces after last week's near disaster up here."

There seems to be a bit of debate opening up as to what the disaster might have been. So perhaps we should just have you tell us what in your view the disaster would have been? What was the disaster which had been averted?
A. Well, I think that what I have said on my page 10 of 20 remains my view, but I would add that since then I have read both of John's two submissions, both of which absolutely confirm me in the view that what he was proud of having averted was the disaster of Scotland considering going it alone. I think he has made it quite clear. His reasons for wanting to stop it are not

as clear as they might be, but he has accepted and agreed with my view that he was proud of having averted a disaster. Now that I have seen his letter to Harold Gunson, of course, I can understand why more clearly why, because he had already promised full support.

So if his colleagues, the first time they heard about it, were doubting full support, it was very much up to him to hold the line. So I think I would stick to what I say in my statement. And I think it is further supported by the evidence John Cash himself has presented us with, for which I'm grateful.

Q. So just to record clearly, as far as you are concerned, the disaster would have been the other four parts of Scotland also commencing screening in advance of the English areas?

A. As I understand it, that was what he meant, and I think with hindsight it is now clear that that was indeed what he meant.

Q. Right. You say that in particular Dr McClelland and you had become seriously concerned. There was possibly some difficulty, you think, in having the issue debated in Scotland. This is 5.9. But the issue was discussed at this meeting of 11 and 12 June.

A. Well, I was sure that it had been but when I saw the

minutes, I was beginning to doubt my memory but then I saw John's statement and he has made it quite clear. I think it would be of help to the Inquiry if I just make the point, the reason we were at Stirling Management Centre is because we used to go there for away days to really let our hair down and get to the bottom of things, and we did that on a number of occasions. And because it was a two-day event, I can imagine that a lot of discussion went on both in-agenda and off-agenda, as it were, but I'm still very surprised that there weren't --

Q. So did you all stay the night in Stirling?

A. We did, yes, a very low cost facility.

Q. Part of Stirling University?

A. Yes.

Q. Thank you.

THE CHAIRMAN: Quite a nice campus, though.

A. It is a lovely campus, and we used to have our annual Scotblood event there, a sort of big conference. It was a home for home for us.

MS DUNLOP: Can we just move down your statement, please? You say you chaired a debate in which Dr McClelland put his case as outlined in his letter and some others shared his concern:

> "Professor Cash and others argued strongly for

continued blind adherence to the September 1 date set by the English."

A. In retrospect, "blind" is probably not the right word. I'm sure he took his position in good faith but it seemed to me to be blind adherence to something that was not relevant.

Q. Right. Then you were arguing, with Dr McClelland, that SNBTS was in an untenable position:

"... that with funding already in place, ministerial approval in principle already achieved and all operational matters now fully ironed out, SNBTS was in a position to move immediately on the implementation of full testing throughout Scotland."

I take it you stick to all of this narrative, Mr McIntosh?

A. Yes, I mean, I have given it a great deal of thought. It may be of help to the Inquiry to understand the extent to which it is with the benefit of hindsight or not. This one I have the vividest memories of. Sadly I didn't get them into context. I didn't remember it was Stirling but I remember this debate very, very clearly. And I have had occasion in the years in between to discuss it with Brian McClelland, and we both have the same memory of it as far as I know.

Q. Bad or good tempered?

A. It's always a little difficult to -- I mean, a lot of our gatherings were quite robust and those of you who have taken evidence from John will probably know he is quite assertive. So the line between assertion and aggression can sometimes be a little blurred. But I don't remember we had a fight. I think we had a very robust discussion.

Q. Was anyone inhibited from putting forward his or her views?

A. I don't want to be controversial but anybody who has worked with John Cash will know that anybody in the room who didn't agree entirely with him felt inhibited. He was that sort of man. He has a very powerful personality. So, yes, there will certainly have been people in that room who absolutely kept their mouths shut because they knew that if they spoke they would not be agreeing with him and they did not wish to disagree with him.

Q. At any rate however, both points of view were articulated?

A. Yes.

Q. The point about sticking to the September start date or starting before that, these were both articulated and discussed?

A. They were both tabled. It's very interesting, reading

John's statements now, all these years on, he explains his reasons for taking the position he took much more clearly now than he ever did then. So when you say both points of view were put, I think Brian's point of view was well documented in his letter. He was concerned about the medico-legal issues; he was concerned both about the morals, the ethics and indeed the law.

As I recall, John did not bring forward arguments in support of his position, he simply defended his position furiously. If I make my point.

So the notion that fragmentation of services in Scotland would be damaging to patients, that therefore the damage that we were going to do to patients by not testing was overweighed by this damage that we would apparently do due to fragmentation was not brought forward. Nor indeed did he bring forward this notion that is now in his statement, which is that he was very fearful for the careers and for the employment of his dear colleagues who were somehow going to suffer the wrath of an angry department if we moved. None of that was voiced. As I remember, sorry. I do not recall it.

Q. There then arises, Mr McIntosh, the question of a letter, and if we go on to the next page, we can see what you tell us about the letter. I think we should be at 5.12.

A compromise was reached. And the plan, you think, was that you should write to SHHD on behalf of the service seeking clarification, that is clarification from ministers through SHHD so that a clear common position could be forged for all the people and bodies responsible, and a clear record established for future reference. You would not be seeking or encouraging an early implementation date. You would explain the position that you were in and that you were ready for immediate implementation, record understanding that ministers would wish you to wait until 1 September because of this co-ordination point, and you say your letter was duly sent. And it was a compromise between the UK solidarity approach and the more proactive approach favoured by Dr McClelland, yourself and others.

Then you say, just reading down, and this is 5.15:

"It has been impossible for a copy of this important letter to be found, neither at the sending end nor at the recipient end."

I should tell you, Mr McIntosh, that we have made our own efforts. I know a lot of other efforts have been made but we have searched backwards, forwards and sideways. We have searched for the letter, we have searched for copies of it, for responses to it, for memos or minutes commenting on it, and we have drawn

a complete blank. So do you still think that the letter was sent?

A. Well, now, as I said earlier, there are aspects of this case which I remember vividly even 21 years on and this letter is one of them, not only in content but in layout. I gave a lot of thought to this letter because it seemed to me to be medico-legally very, very important. It seemed to me managerially and organisationally very important, and I therefore wrote it with great care and I can remember doing that.

What I cannot tell you for certain is that I recall signing it. I don't. And I certainly can't tell you I posted it because that's not the way it works. My secretary would have sent it in the internal mail.

So and obviously, like your good selves, having been encouraging the CLO to look for this letter for over a year now and giving them all sorts of tips and hints and suggestions and knowing, for instance, that John, bless him, has the most copious filing system at home -- he never destroys anything and he doesn't seem to have a copy -- I'm forced to one of two conclusions: either that it was indeed written but never sent or that very stringent steps have been taken to remove all trace of it.

In relation to my own office, I know that after

I left the service at a time when heavy reorganisations were going on and new brooms were sweeping clean all up and down the country, Jim Donald's successor, as general manager of the CSA, took steps apparently to expunge the records of a certain amount of bumpf that he regarded as unnecessary, and a lot of my files were destroyed. That being so -- and having the negative doesn't prove anything, but the absence of it and the parallel absence of a large number of other files might lead us to believe that the file copy that we need was destroyed in that exercise.

However, to be honest, I think it's unlikely because I must have copied it to all the RTCs and if there are no copies at the RTCs but there are copies of other documentation from the same period -- I don't know this but if there are copies of other documentation and this isn't there, then one is beginning to draw the conclusion that having been drafted, somehow or another, for reasons I cannot imagine, that letter was never sent.

However, since all it did was formally put on record, I hoped, a matter that was entirely known to everybody already, both sender and recipient, all I was trying to do was get it on the record, I don't think it has much material bearing except on my central point,

which was who was actually responsible for what.

Q. Just so that I fullly understand your position, you have clear memories of some parts of this story and given that it's 20 years ago, we can all understand how difficult it must be to recall everything, some bits, for example, the discussion at the board meeting and so on, are clear and are actual recollections, you have a memory of the letter and its layout and composing it but when you search in your memory for an understanding of what happened next, there is nothing there. Is that right?

A. Yes, that makes me sound a little bit sort of pathological.

Q. Sorry, it wasn't meant to. I was just trying to be accurate. You have no actual recollection of signing and sending the letter?

A. No, I cannot swear -- for instance, if I had put it in the car and gone and given it to Rab Panton or Archibald McIntyre, I would have remembered doing that. So if I sent it at all, I sent it via Elizabeth Porterfield, my secretary, and it went in the internal mail. It is therefore perfectly possible that one way or another, the most important letter I probably ever wrote as SNBTS general manager somehow or another failed to get sent. But it's not as plausible as

I would like it to be. I'm still uncomfortable about the absence of that letter.

Q. But looking at matters in the round, you don't feel that it's utterly central?

A. Well, it was central to part of my thinking in a long, long -- I was in a process here of changing the whole culture of the SNBTS. I was reorganising it physically and organisationally and I was trying to change the culture, and that kind of very, very clear, "Here is the issue, here are the things that are the facts, here are the people that are responsible, ministers should know," that kind of managerial clarity was something that I was trying to achieve. So for me it was a very central part of that process but for this Inquiry I would probably suggest that it's not central to your findings.

THE CHAIRMAN: I'm not sure at the moment if that's so. If the letter wasn't sent, what mechanism was available to instruct ministers as to the view of the management board?

A. It seems clear to me, my Lord, that even if it was sent, civil servants probably never put it anywhere near ministers.

THE CHAIRMAN: That, with respect, is quite a different problem.

A. Yes. Having sent it, short of phoning the department to

say, "You did get it, didn't you? Please acknowledge," what else would I have done? And I think silence denoted assent in this matter. And silence denoting assent was very much, as you will know yourself, a way in which civil servants operated. That is the way they operate. It is not a criticism. That's just the way it is.

I'm sorry, does that answer your question, my Lord.

THE CHAIRMAN: Not quite. All sorts of other questions arise out of it and I think your recollection is that it would have gone to a variety of other people.

A. Yes.

THE CHAIRMAN: And not only is there no record of their having received it, so far as I'm aware so far, there is no record of any response from anyone at all.

A. It was written without a response in mind, my Lord, as all of such things were.

THE CHAIRMAN: Right.

MS DUNLOP: Even an acknowledgment or anything like that, we haven't been able to find anything even of that character.

A. Again, if you want me to animadvert on my theories about this, I will, but perhaps there is no point.

THE CHAIRMAN: Speculation, as you appreciate, would not really take me terribly far without hard evidence of

some kind.

MS DUNLOP: We do have other letters, which date from the autumn of 1991 and which we will look at in a moment.

THE CHAIRMAN: But none of them can so far qualify as the most important letter that Mr McIntosh had ever written. That naturally gives me an interest in it.

MS DUNLOP: Yes, indeed, and that's why we have done -- not me personally. Somebody who is much better at searching than I am has done a lot of research in this area but we too have drawn a blank, and the Central Legal Office have been looking for it too.

A. All I can say is that, conscious of what I felt was the central nature of this document, when I first volunteered to be a witness to the Penrose Inquiry, which I did direct to the Inquiry, not through the CLO, and when I first made contact with the CLO, this was the letter I said, "Well, you really ought to try and find this". And I gave them various clues as to where they might look.

Q. Right. Let's move on to the next page, you complete your description of the letter and what you were communicating in it. Actually, there is an element of the parallel universe here, Mr McIntosh, because you are saying in 5.17 that the tone of the letter, which we now know may not even have been sent, you think it was the

wrong tone anyway.

A. I suppose in hindsight -- and although I was very proud of it at the time -- I think that looking back, the reason why it doesn't matter that it wasn't sent was that it was so neutral as to be anodyne.

Q. Right. In the next question we asked about ministerial approval. You thought that there was a fundamental error in the metadata behind the question. So I wanted simply to have a look at the political process for obtaining approval, both in England and in Scotland.

The first document to look at in that connection is [SGH0027893]. This is the English submission, if we just call it that. We know that the VSB meeting of 2 November 1990 had decided to introduce testing -- I think "as soon as practicable" is the wording -- and that a submission would go to ministers, and this for England and Wales is the submission. It's quite a lengthy submission. We can see in the handwritten part at the top that a copy was sent to Mr Panton at SHHD. Just to get a general impression of the content of the submission, there is identification of a problem, there is a recommendation:

"The other UK health ministers are also being asked to approve the introduction of screening."

Then some factual and scientific background. Then

on to the next page, "ACVSB recommendations". And in fact, going back to the July 1990 VSB meeting, that sentence at the end:

"They [that is VSB] firmly recommended the introduction of screening as soon as practicable."

Then "Financial Implications", "Value for Money Funding". Then on to the next page, there is the case for and the case against.

I'm not quite sure what the hieroglyphics signify. It looks as though there was a paper apart or something but I don't think we have that. Or this copy at any rate has had a paper apart. So the case for, the case against, and then on to the final page of the actual submission. There is a paragraph that deals with timing:

"In view of the operational matter, it is unlikely routine screening could be introduced before 1 April."

A. Yes, this was the critical background to the whole business. Up until 1 April.

Q. This is, let's remember, 21 December 1990. This is a submission going in England and Wales in the Department of Health. And then there are annexes, which deal with Hepatitis C -- well, different types of hepatitis, in fact -- and then different types of test and annex B is an economic appraisal. And just to

follow the chain, that submission was approved -- and we have seen this already -- by Lady Hooper for England and Wales as the Minister for Health in the Lords. And it was also copied to SHHD for their information. Can we look at [SGH0027828].

There is, Mr McIntosh, a small sheaf of internal documents from SHHD from the first part of 1991, addressing the question of should we send our submission to our minister, and in fact the submission in Scotland didn't go until July 1991. Mr Tucker explained that to us last week as being because the Scottish submission couldn't go until a date had been set. So the SHHD wouldn't have sent a submission which, in relation to date only, included a recommendation to test as soon as practicable. Although in fact that looks rather to be what was said in the English submission.

A. Sorry, could I ask you just to screen up so I can see the date of this?

Q. It actually comes at the end. If we look at the end, then we can see the date. We can see the same sort of format "Case For Screening", "Case Against".

24 July 1991.

A. So from December 1990, this didn't get sent until July 1991? Though by then long since. Something must have gone to ministers because it was in our public

expenditure survey budget from April onwards. We would never have had the money authorised if the ministers hadn't signed it off. So there must be some much earlier document. Maybe the civil servants just did it without telling the ministers.

Q. There isn't, that we can find, a submission before this submission. There are many references to the need to draft and send a submission but nothing actually sent until 24 July 1991.

A. This is really the point I make in my own submission here, that ministerial approval in England and Wales was not granted when Lady Hooper said, "Oh, yes, that sounds like a good idea". It was authorised when people were finally released from the starting trap and told they could go in September 1991.

So the implied distinction in question 35 between England and Wales having evinced a desire to do it in 1991, January, and Scotland having not moved until much later, is a false impression. It just simply isn't a true impression of the facts.

Q. Are you saying there must be a submission going to ministers earlier than 24 July 1991?

A. What I'm saying is that as the general manager and budget holder at the SNBTS, I knew as the year 1991/2 started on 1 April 1991 that I was already fully

financed to do Hepatitis C testing, and that being so, I must assume that civil servants got a clearance from ministers for my PES. If they did so highlighting specifically the HCV to ministers, I don't know but it must have been approved long before July 1991.

Q. We understand that, that the money was in the budget, so it must have been in the PES because otherwise it wouldn't have been in the budget for the financial year 1991 to 1992. So we understand that point about the approval of the funding. But with respect, I don't think there is anything of this character going to ministers before 24 July 1991 in Scotland.

A. That cheers me up because they have lost some documents too, not just my letter.

Q. Right.

THE CHAIRMAN: When would the PES have been submitted?

A. This is difficult, my Lord, because sometimes it was done post facto, but my memory is that we knew, as we entered that year, that we were already set up to do this from April 1 onwards. So one would expect the budget to be built in the autumn of the year before. The details sometimes did not come until after the beginning of next year, which I know is very unbusiness-like but that used to happen. But in this case I don't think there was a long delay. The PES was

already fixed and we knew we had the money. I think the evidence makes that clear, there is no doubt or ambiguity expressed at this point as to whether Scotland had the money to do this.

MS DUNLOP: We have seen, Mr McIntosh, in connection with the screening tests for HIV, the bid coming up through the CSA and then going forward to SHHD. We have seen that. So in general terms I imagine that would be the same sort of process for HCV.

A. Yes.

Q. Yes. But what we haven't found is any kind of minute corresponding to this.

THE CHAIRMAN: Yes, I appreciate that. What I was looking for was a date that might refer to other events that had dates and formed part of a picture, but if we do not know the date on which the element would have got into the budget, it doesn't help us terribly much.

MS DUNLOP: We do have some information about that and I can return to that later in the week, because we have looked into the question of PES, and certainly what Mr McIntosh says I think no one is disputing, that the money was in the budget. How it got there, there is a paper trail in relation to that which I hope we can lay out.

A. Sorry to interrupt but I would be very surprised if in the PES detail, there wasn't a line for this, because

the financial people will have had good control over this. There will have been a line item.

Q. Yes, and the point you make is that de facto, that is political approval?

A. Yes, and pre-dates the English one.

Q. Yes.

A. That's me just being Scottish, is it, and defending our position?

Q. "Scottish exceptionalism", I think it's called. But just looking at, as it were, the narrative going to ministers, there doesn't seem to be anything of the character of a submission explaining what was being done, and why and when, before 24 July 1991.

A. I'm very surprised to see "24 July 1991" because all it does is, in modern parlance, "cut and paste" or "swipe and paste" the advantages and disadvantages which had long since been irrelevant. The decision had already been taken. So I think this probably ticks a box somewhere but wasn't actually in any way instrumental in anything.

Q. I know, we have got your decision -- I'm saying "your", the board meeting decision in Stirling in the middle of June.

A. Yes.

Q. So I suppose part of the exercise in which we are

involved is trying to find the decision, and there are a number of candidates but obviously this is the political arm, if you like, of the decision-making.

A. It was George Tucker, I think, who in his own statement said he was surprised that I mentioned the need for ambiguity to help civil servants operate, but I think this is an example of it. Why would you give presentations to ministers until you knew exactly what you were asking them to authorise, when you were asking them to authorise it? So why would you send any earlier submission?

I think they actually sent Michael Forsyth the relevant submission about two days before we fired the gun. But that's the way they operate very much with ministers. I don't know what it's like with the new Scottish Government, but that was very often the way; because it wasn't ministers taking the decisions, it was the civil servants building the decisions and ministers then accepting recommendations.

Q. We do have Mr Forsyth's response and we know that he turned it around in two days, so in fact he authorised it or endorsed it or whatever the verb should be, before the end of July 1991.

A. Yes.

Q. So can we go back to the statement, please? I don't

want to get bogged down in arguing with you about whether we have a fundamental error in our metadata or not but you have answered what you think would have been a better question.

A. I'm sorry, yes.

Q. No, it's quite all right. That if an equivalent sort of authorisation to the Lady Hooper authorisation for Scotland had been granted in January 1991, whether that would have altered the course of events. And you say, I suppose, that would have been a necessary but not sufficient ingredient of earlier implementation. Is that fair?

A. Fair. Absolutely right.

Q. So there would have been that authorisation but there would also have had to have been notice, as you say, that arrangements should be made.

A. But from memory, the earliest date that I can recall -- and this is not from memory, this is from your documentation, so from recent memory -- was some time in February, when Edinburgh said they could have gone ahead, and my memory of the pulse rate, as it were, of the organisation at the time on this issue is that had we been in a more urgent state of mind organisationally in January, we could have done it a hell of a lot quicker, yes.

Q. Right. Can we move on to the next page, please? This returns to the notion of the near disaster. We have covered much of this already. But just to pick up what you say at 6.4, that Professor Cash was proud of having, as he thought, averted this disaster. That is the earlier adoption of screening in Scotland.

I wanted you, please, to look at another letter, which is really part of the background to question 37. Could we have [SNB0020457], please?

This is Professor Cash to you, dated 29 August 1991. And he says he has recently had access to minutes of the Advisory Committee on the Virological Safety of Blood:

"I note that the chairman is recorded as stating that: 'The policy for a uniform starting date has been endorsed by all UK Health Ministers'."

That section being underlined.

Just to remind everybody that that comes from the set of minutes that we looked at earlier; that is the minutes of the VSB committee 21 May 1991. He is saying:

"I think we made the right decision at our board meeting on 11 and 12 June."

A. Do you want me to comment on that?

Q. Yes.

A. Yes, well, I shall try and do so as politely as I can.

That Jeremy Metters should at such a late date have

been noting that ministers have endorsed their own decision to do something is -- I mean, it's just so trivial and crass as to be completely unhelpful. What were they going to say? "Oh no, dear oh dear, we have changed our minds. We do not endorse what we have done. We wish we had done it sooner." Or, "We have decided now to do it later". What on earth could they have done other than endorse their decision? That's my point one. I don't think this adds anything.

My point two is that this is precisely my point and I think I made it to John Cash in my letter to him at the time, that being told after the event that this shadowy method of making decisions had resulted in the people who had made the decisions being thoroughly satisfied with their own decision is hardly helpful to those of us who for the last four months have been trying to get something else done rather quicker.

So this isn't background, this letter from Jeremy Metters. This isn't sort of starting stuff. This is just post facto guff really.

Q. Well, you replied and that's the letter which we used as the basis for our final question in our schedule, question 37. Let's have a look at your reply, [SNB0054822], if we could, please.

A. Is it appropriate to ask, we haven't done question 36

yet. And though I accept we have touched it, I don't think we have actually dealt with it.

Q. Well, I'm sorry, that's my fault. I thought that we had already discussed the near disaster and identified it.

A. Yes, but Professor Cash has been kind enough to provide us with some more evidence on that and I think if we are dealing with question 36 in my context, it might be helpful to go over --

Q. If you are speaking of Professor Cash's most recent statement --

A. Yes.

Q. -- my intention had been to complete this document and then go to it. If we could do it in that order, please.

A. No problem.

Q. Here we have your very swift reply, 30 August 1991, back to Professor Cash, the ME -- the management executive?

A. Yes.

Q. Perhaps you could expand that a little bit for us, please?

A. Well, again, this, I think, has to be taken in the context of my having been appointed in February the previous year to reorganise and restructure and generally change the BTS in ways that were positive. And one of the things that I'm identifying here, as early as August 1991, is a dissatisfaction with the

decision-making processes. And what I'm warning John is that the kind of shadowy methods that were used for HCV really didn't seem to me to be the right way forward, and I would want to talk to the management and to the management executive about doing it better next time.

Q. Right. You have been more specific in that goal. You have provided three bullets. Firstly:

"To whom the advisory committee ... provides advice and what status that advice has, who is thereafter responsible for turning that advice ... into actual policy, with authority to instruct action and/or inaction; and who is responsible for communicating relevant and authoritative instructions clearly and timeously to the relevant punters at the coalface."

I suppose the ACVSB could have primarily reported upwards; in other words, it could have seen as its main or exclusive purpose to advise ministers and after that it would be for government departments to take the matter on, or that ACVSB could have had some kind of responsibility, using hierarchical terms, but downwards to inform others with more direct operational responsibility of a policy, and asked them to begin to implement it.

A. Yes.

Q. Do you have any clear sense of which it was?

A. Your point about the word "ensure" used in their terms of reference is an interesting one. I think my view of it is pretty well set out in my letter of August 1991. But perhaps not everybody here is as familiar as I am with the structure of these things. For a start, Harold Gunson, as medical director of the English and Welsh Blood Transfusion Service, had no executive authority.

The regional transfusion centres didn't report to Harold Gunson. The regional transfusion centres reported to their local area health authorities. Therefore, even Gunson himself and his central blood authority team did not have the kind of executive authority that would have allowed for a hierarchical progression.

That having been said, it's not at all clear to me that the ACVSB had any kind of real executive authority of any kind, nor indeed I think would they have wished to have, chaired by a civil servant, set up to advise ministers. I don't think it was their aim to instruct and be seen clearly in the firing line as having instructed. It was their role to advise, to manage, manipulate and generally try and organise things in such a way that happy outcomes ensued. But they weren't managerially responsible for anything, as far as I can

tell.

Q. So as to my upwards --

A. Sideways.

Q. They advised ministers and ministers take over from that point?

A. That's where they derive their authority but I don't think that Jeremy Metters advised ministers much at all about this. He advised himself and his colleagues and in due course they chose to tell ministers what they wanted to tell ministers.

Q. Right. Can we just look down through the letter, please? And you are alluding to an element of self-help, and then on to the next page. Your comment, Mr McIntosh, about a certain amount of inherent ambiguity always being required by civil servants has not been universally well received.

A. I noticed that. I didn't mean it to be unkind. I think in the context of a Dear John/David letter, the point was -- you see, I mean, this is a problem I have come across with many medical friends and colleagues. They have a very direct and specific approach to their own work and they expect the rest of us to be equally focused, targeted, efficient. I think John was always expecting civil servants to give him answers to questions or to give him instructions and he totally

misunderstood the role of civil servants. That's not what they are there for.

And therefore in telling him that I thought a certain amount of ambiguity was necessary, I was not complaining, I was simply saying, "Look John, we are not going to be able to get this perfect but by golly, we can get it a lot more perfect than it already is". And not by passing responsibility upwards, which was something that I found when I arrived at SNBTS -- I mean, John tended to wave his arms and say, "It's all them. They are no good at it." My point was it's not up to them, it's up to us and we should expect ambiguity to exist to some extent in the fog above us but that was not an excuse for our own inactivity.

Q. "Up to us", you say. Up to you to do what?

A. Well, to run the SNBTS in the best interests, within a very broad policy guide from the department, but not to expect the department to instruct us specifically on things.

Q. All right. But what about when a step change appeared to be required, so the introduction of a new form of screening or something like that? Up to you to do what in that situation?

A. What I said, I think, in my statement, which is to be much, much clearer about what the issues are, to be very

clear about what we recommend and to be very clear about the consequences of their not accepting our recommendation. None of which we did with HCV. That sounds extraordinary to think of it but we did none of those things with HCV, we just let the fogs gently unfold until September.

Q. So you are envisaging a situation in which independently you would be providing advice to ministers at the same time as bodies like ACVSB and even ACTTD, are you?

A. Well, insofar as they might have been helpful and relevant, and I daresay they were, one would have expected that sort of input to have been taken into account.

My point was that none of those bodies had any executive or ultimately medico-legal responsibility for the doings of the SNBTS here in Scotland, and therefore, regardless of what advice any other people might be getting, confidential, secret or otherwise, we had a duty to build our own case and to take it forward on that basis. And I think Scottish ministers had a right to expect us to do that. And this is my first shot across John's bows as a newly appointed GM to say, "Look, having lived through the HCV saga, I really, really do not think we want to do that again. We want to do it much better next time."

Q. Right. Can we look at [SNB0140418], please? That's you at the end of August. And here is the reply, 16 December 1991.

A. Yes, John -- did he reply very quickly? No, he didn't.

Q. No.

A. Good Lord.

Q. Four months, nearly.

A. Yes, but he couldn't have left it without him having the last word, could he? I have no comment on that letter at all really.

Q. Right. Can we look at the next letter, which is [SNB0047207]. You wrote back on 17 December.

A. This is not -- is it? Is this already in the evidence? I don't recall this one.

Q. No.

A. This is new, isn't it?

Q. Yes. We are just looking, I suppose, at a bit of the debrief, if you like.

A. It ends on a note of Scottish solidarity at any rate. You can see the kind of thing I was trying to achieve and there is John being very supportive. So that was good.

Q. Yes, delighted with your response. And then [SNB0101055], please? This is the NBT/SNBTS liaison committee in January 1992 and there is a very brief

reference to reviewing how things had been done.

Can we go a little bit further down? I think it's actually on to the next page. Paragraph 3.

Was that really the end point of the debrief, Mr McIntosh, or was there something else? We haven't found anything else, some kind of meeting or symposium or something looking at issues which the whole process had thrown up and how it could be done better next time. Was there something else?

A. My memory of this is as follows: that having been through this harrowing experience and having been alerted to it and having got John more or less lined up as my colleague and the medical director, we went forward with those things in our minds, as it happens -- you are probably going to find some very good examples to correct me and I'm wrong about this, but as it happens, I don't think we ever had quite a similar case again after that, after HCV. I don't think there was an issue quite of this magnitude. So I can't tell you how it was handled.

What I can tell you is that my own avenues into the Scottish Office and my relationship with civil servants, and indeed in due course with ministers, made it much easier for me to deal with things like this later than it had done in my very early days, bearing in mind that

I took over an organisation that had not had a manager, was not used to management.

My medical and scientific colleagues were very much used to committee working and doing their own things. So therefore the lessons that were learnt were organisational lessons but I don't recall us having a conference or a two-day meeting at Stirling about it, no.

Q. Right. Can we go back to the statement, please, back at 2139?

I think, Mr McIntosh, partly in view of time and also because you have obviously put a lot of thought into setting out the matter as you see it, we should take much of this as read.

Can we go to the bottom of the page, please? Looking from 7.7, we note your reference to Mr Tucker's letter and then on to the next page, you think that for the first quarter of 1991 the SNBTS team was working on the understanding that implementation would be 1 April or thereabouts.

A. Yes.

Q. You make the point about a coordinated approach, which, as you have already said, doesn't have to mean simultaneous. That's 7.8.

Mr Tucker, I should say, was not keen to have his

words seen as prophetic. I think he really wanted to tell us that if he had known that there was still evaluation of kits going on, he would not have suggested the firm setting of a date on 1 April.

A. Do you want me to comment on that?

Q. Well, if you have an observation, by all means.

A. I hope nobody feels that I thought he knew he was being prophetic.

Q. No.

A. I only pull that out of the record because it's just so prophetic as to be extraordinary, and I think it's very noble and sensible of him to make that comment but actually he made a very good point and he shouldn't be weakening it.

Q. And just looking down this page, please, I'm not going to take up time with this, but at the end of 7.11 you say:

" ... late August 1991, when finally the department formally asked Mr Forsyth to endorse the proposal to proceed with full testing ..."

A. I draw that from your own papers and if I have misplaced something, I apologise, but the date of the final note endorsed by Michael Forsyth I think was August, was it not?

Q. No, it's really the end of July 1991 that he gave his

approval.

A. There must be another one in August. It's in your documentation. I didn't get this from anywhere else. So if it's a misprint, I'm sorry.

Q. It was 26 July that Mr Bearhop, on behalf of Mr Forsyth, wrote saying that Mr Forsyth agreed to the introduction of testing, and I don't think we have found a further document involving Mr Forsyth.

A. Sorry, I have misled you then.

Q. There is, however -- and this is just a bit of a loose end that arose last week and I won't go to the document, to save time, but just to say that there was a draft press release prepared at the end of July -- I think Mr Panton took responsibility for that -- and documents which relate to that -- that is to its preparation at the end of July -- are [SGH0027827] and [SNB0045774]. We will just have a look at the press release as it was eventually issued, [SGH0027783], and in almost identical terms to the original draft from end of July. The press release was issued, I think, on 2 September 1991 and there it is.

Then on to the following page, please. Just a little bit of background and the advice that further information can be obtained from Professor Cash.

A. It's interesting, I don't remember having seen this.

I'm just trying to work out the dates because I would have thought that by then our national donor services manager would have been the one to answer any press enquiries, not John. However, interesting.

Q. There we have it. Can we go back to the statement, please, and just complete our scrutiny of it? Again I think we can take much of this as read, Mr McIntosh:

" ... lack of written instruction or policy statement from SHHD."

And then, with or without that, also:

" ... a lack of clear policy within SNBTS on what exactly we were trying to do and what our key priorities should be."

A. Have I explained myself sufficiently there for your satisfaction?

Q. Well, I think so, and we should highlight that you see the unnecessary five-month delay in the full implementation of Hep C testing in Scotland as the "one inglorious exception to an otherwise excellent record".

A. Yes, it's probably not the only one but it's the one that occurs to me.

Q. Right.

A. We did have an outstanding international reputation, there is no doubt about that, and I think everybody involved always worked very, very hard to maintain it

and I think we always felt we were doing the right thing. On this occasion I think we tried to do the right thing but failed.

Q. So what you would have wanted -- and you explain this in 7.13.2.2 -- is a clear internal, SNBTS document, what, setting out what you were trying to achieve and how you were going to achieve it?

A. Doesn't this sound absurd? I'm very sorry it sounds so silly and you would have thought you could have taken it as read but I think I would like to expand on that a little, if I may.

It seems to me, for instance, that the fact that all of the evidence that you have gathered and indeed all of my memory of this never once mentions the number of people who might actually die during this period -- if we had met in a committee room with a sort of taxi meter on the wall showing the number of deaths -- "We have talked a bit more, here is another one gone" -- we might have taken a different attitude to life. But we were talking in all sorts of airy fairy terms about all sorts of very scientifically fascinating things but at no point did we have the kind of policy or strategy statement against which to measure ourselves. You know, "Okay, this may have disadvantages. What are they? How do we offset them against the other disadvantages?"

Simple decision-making processes simply were not in place and I think this is best illustrated in my suggested hypothetical memo on 7.13.13 on page 7 of 20. It sounds crass, I know, but I am afraid sadly we did not address ourselves to those issues in that sort of way.

Q. Right. Can we look at that on the following page, please? It's, as you say, your hypothetical memo.

A. I have used this as a kind of argumentive contrivance but I'm trying to get a point across here. This is how I got involved in the SNBTS in the first place. I went down to write their first mission statement in 50 years, and we worked together for weeks on that, and we finally got to the point where we knew what we were trying to do, and self-sufficiency was the provision of safe and efficacious products in sufficient quantity to provide all the needs of Scottish patients who needed them, et cetera and so forth. We enunciated what we were trying to do, we gave ourselves targets and then we could start measuring ourselves.

When it came to Hep C testing, it was loudly announced very early, before 1990 even dawned, that it was a good thing to do as soon as practicable. I don't think we then set out making sure we did it as soon as practicable and I don't even think we defined what we

meant by "as soon as practicable". What did that mean?

So the easiest way to describe it is in my short, hypothetical letter to ministers, which is precisely the sort of letter ministers never like to get, and I'm sure no civil servant would have wanted to go near them with such a thing, but I use it as an example of the way in which our thinking should have been developed.

Q. So on your analysis, in these pages of how things could have been done better, where would the initiative truly have lain?

A. Well, I don't think this is exactly and absolutely the point, if I may say so, and the initiative should have lain with the general manager of the SNBTS and I should have generated a consensus on that amongst my colleagues and we should have moved in this direction much earlier.

Q. And obtained an instruction from SHHD?

A. And generated an instruction for SHHD to send back to us, because that's the way these things work.

Q. Right. Then you go on to say under a heading at 7.13.5 that the responsibilities of the advisory bodies involved were not clear and, as you say on the policy page, you couldn't find any reference to them in your chain of command. I think Mr Tucker made this point, that, of course, your chain of command was through the CSA to the SHHD and the Secretary of State really, and

it would be difficult to work out quite where ACVSB or even ACTTD fitted in.

A. I agree with him entirely about that, it didn't fit in, and, as far as I'm concerned, probably still doesn't.

Q. Yes, to be fair to Mr Tucker, I think he was really only making the former point, that that was your chain of command, as you set it out yourself.

A. Well, yes, I sort of set it out myself but I think I have been clear somewhere in my statement that actually the CSA took no part in this whatsoever.

Q. Yes, you have.

A. Effectively, the SNBTS reported direct to ministers through the Home and Health Department. I never had any CSA involvement or interest in this at all, so far as I can remember.

Q. Yes, you do say that in 7.18. You say:

"For completeness, I should mention the Common Services Agency, but the fact is that the CSA took no part in any of the proceedings in and around the Hep C testing issue. They were the official conduit for the final formal authorisation to proceed with full implementation but had, as I recall, no other role."

THE CHAIRMAN: Ms Dunlop, I would like to have a little bit of context for that, please.

MS DUNLOP: Right. I'm jumping ahead really just because of

Mr McIntosh mentioning the CSA. Perhaps we should come to it when we come to it.

THE CHAIRMAN: Yes. I'm just asking, please do develop it a little so that we have a clear idea of the role of CSA as perceived by Mr McIntosh. No doubt he had a job description at some stage that might help.

MS DUNLOP: Right. That description that you have in 7.13.5.2 is of yourself reporting to the CSA. Is that right?

A. Yes, I mean, let's be absolutely clear, I was the divisional general manager within the Common Services Agency responsible for the Blood Transfusion Service and I reported direct to Jim Donald, the general manager of the CSA, and Jim reported to the CSA board -- and their chairman indeed was the CEO of the Scottish Health Service, Don Cruickshank -- and they reported to ministers. So that was the official line. But if we had sent runners up that line every time we wanted to do anything, we would never have won the war.

So actually, operationally, for all practical purposes, we reported direct to the Scottish Office and just got on with it.

Q. Right.

A. I used to traipse up to the CSA once a month, or whenever called, with huge reports and tell them what we

were doing and what was going on and nine times out of ten they would find no time to see me, so I would just go back again. But they certainly had no direct involvement in this Hep C issue, so far as I can recall, from start to finish.

Q. Right. Can we just scroll to the foot of that page then, please? And on to the following page. Perhaps highlight 7.15. You say:

"The timing of the SHHD submission to ... "

Mr Forsyth really:

" ... and the confirmation of his support for testing is ... "

You would suggest:

" ... eloquent testimony to the fact that the department was not leading but following the decision to implement testing. The SNBTS was authorised to commence on the day that we ourselves had chosen."

And you say:

"We did in the end take the decision ..."

And that reference is to the minute of the board meeting of 11 and 12 June 1991.

You are saying you don't think you can reasonably blame the department, and you go on in 7.17 to say that with Mr Forsyth you think that you have the least cause to apportion blame for the critical and, for some, fatal

five-month delay in the full introduction of testing, and you highlight the use of the word "endorse" in the communication on 26 July 1991 giving Mr Forsyth's views.

A. Yes. An awful lot of this is very obvious and I apologise if I sound over analytical, but I was trying to step through the thought processes.

Q. No, I'm taking it perhaps rather quickly just because we could be short of time.

On 7.18 is that reference to the Common Services Agency, and you have explained your line management. Is it appropriate to call it "line management"?

A. Yes, it is, and I'm very anxious not to sound dismissive about the CSA. Jim Donald was a lovely man and he was a great boss; I did annual appraisals with him, we talked together about strategy and he was always very supportive and very complimentary. But the Common Services Agency was in an anomalous situation. They were a collective conglomerate. They had the Blood Transfusion Service, ambulances, the building division, dental estimates, they had a whole range of things that the general manager of the CSA couldn't possibly keep in touch with all the time.

So in the time-honoured principle of good solid delegation, where an organisation was free-standing and

was being properly managed, we got very little interference on a day-to-day basis.

Q. I suppose the clue is in the name, Common Services Agency: they were responsible for particular bodies which were shared across different health boards?

A. But I think it's testimony to Jim Donald's effectiveness as manager that he stood aside and let us get on with it when that was the appropriate thing to do. So I'm not complaining about it or in any way criticising; I'm just saying they were not actually, for the Hepatitis C issue, a central conduit, except in the ultimate --

Q. And your conclusion in 7.22 is that you think, if things had been done in the manner you set out now, the Scottish minister would almost certainly have authorised the full implementation of testing, you say, much earlier.

A. Well, when I wrote that, of course, I hadn't seen Peter Fraser's letter about look-back, which happened later, but that is the best possible enunciation of precisely what I have been trying to say. That was the letter in which, if you remember, Peter Fraser said, "This is no longer a matter of policy, it's a matter of legal requirement." That confirms two points: one, that Scotland could, and indeed had, the obligation to go its

own way if it felt it had to; and, secondly, that we could and should have done so.

Q. We will come to look-back in January, so we will certainly be analysing that in more detail then.

Before I conclude, however, Mr McIntosh, I should ask you to comment on Professor Cash's supplementary statement, which is [PEN0172779].

A. As you may know -- and I would certainly want Lord Penrose to be clear -- I got this couriered to me after driving 440 miles from England last night. So I haven't had time to give it very deep consideration, so everything I say has to be taken as a kind of first run at it.

Q. I think we, for our part, should record that we received it at the weekend, so it is not something anyone has had an opportunity to study in great detail, Mr McIntosh.

A. Yes, sorry, I didn't mean that by way of complaint, only by explanation.

Q. And I didn't mean it by way of defence either, only by way of explanation.

Can we just look at the first page? Professor Cash has obviously spotted some of your choices of language. I don't think I need to ask you about any of the examples that he gives from other contexts because we are very keen not to get sucked into looking at other

issues and only to look at this issue, which is the introduction of screening for Hepatitis C.

The first point I did want to put to you, however, is on page 3. We can see that.

A. Is that your PEN0172781?

Q. Yes, it was this section -- I'm really taking you, Mr McIntosh, to parts where you are mentioned by name. He says on many occasions he briefed you on your understanding of the position, and that is that I think you were not being held back by confirmation to an English norm. On many occasions he briefed you on his understanding of the position and also on his feeling that in some political circles there was overt antagonism to the Scots doing anything their way and that on many occasions he advised you that if you felt the HCV donation testing position was intolerable, as he did, then you should go to Mr Donald and be prepared to join Mr Donald and petition senior SHHD officials and ministers to change their position.

Does this accord with your recollection, this section here?

A. No, it doesn't. In a way it's very encouraging because it would have been nice to think that he felt the situation was intolerable, and here he is writing it in terms: He thought the HCV donation testing position was

intolerable. And we are being asked to believe that, having thought it was intolerable, the best he could do was just suggest coyly to me that I might go and talk to someone about it and not, as national medical director, stand up somewhere very high, so he could be seen by all, and say, "It's intolerable." Anyone who knows John Cash knows perfectly well, if he thinks something is intolerable, he says so rather more loudly than this, a little note 20 years later, only stimulated by my note.

So I'm baffled by this but I would like to think it's kind of a good sign because at least he is evincing some understanding of the fact that it was intolerable, and that has to be seen as positive, in my view.

But, no, I don't remember any of this and I think in fact it runs totally counter, not only to my memory, but also to the facts. If he did feel it was intolerable, what did he do about it? And if he thought it was intolerable, why did he defend it so strongly and describe it as a near disaster that we nearly got round his intolerability. So I find that rather baffling.

Q. Do you remember him supporting you in the context of challenging the role, structure and performance of the ACVSB, thereby speeding up the kit evaluation process for everybody. Do you remember that?

A. No, quite to the contrary. I think I would have to say that if I got myself involved or interested in those areas, he would sharply tell me that as a dearly beloved and esteemed colleague it was nevertheless none of my business and would I please butt out.

Q. On to the next page. He says he remembers you getting jittery -- back to that word again -- when the news of Dr Lloyd's action became known:

"We discussed this at some length and he clearly regretted he had taken no earlier action to alert SHHD of our concerns at the way the kit evaluation process was being handled."

Does that ring a bell?

A. I think there are two things to say about this. One is that -- my recollection is not that I got jittery when the news of Dr Lloyd's action became known; I got jittery, and increasingly so, from April onwards because we were not doing what we had set out to do and what we were encouraged to do, which was to introduce as soon as is reasonably practicable.

Now, given that he has already stated in his notes here that he thought the position was intolerable, it seems to me very odd that he thought I was the jittery one. I would have thought we would both have been joining hands and being very jittery very much more

publicly.

So, no, I don't remember any of this. I think it's very odd that he remembers it in these terms, but that I don't think is the point. My memory and his memory are just two things you can do nothing with. What I would suggest to you is the facts show that he was not concerned. He did nothing about it. He wrote repeated letters to Gunson saying, "Don't worry, Harold, we are with you on this."

So where is his concern? Very sorry, don't understand it.

Q. He goes on to say in paragraph (d) there that he supported the concept of the UK approach and his views were informed by the several examinations he had made of the working of the fragmented and dysfunctional service in England and Wales, and he refers to a previous study.

A. He does and he has given us some very nice background on that. I'm sorry, but you are much better at this than I am -- you are properly qualified; I simply have problems of logic with all of this. If he thought the position was intolerable, how does he go on on the next page to say he supported it, and if he admits that he opposed a Scottish move earlier on the grounds that it would have dangerously fragmented, dysfunctional effects -- and he says that in his earlier statement; he

says that it would have been not in the interests of Scottish patients because it would have led to damaging operational fragmentation. Well, if he believes there would have been operational fragmentation and therefore he was stoutly against Scotland moving separately, how can he hold that view and at the same time hold the view that the situation was intolerable and at the same time ask the Inquiry to believe that he was encouraging me to go off and do something about it? I'm sorry, the logic of this does not fit. So I don't think my memory is relevant.

But for what it's worth, my memory is that this is -- I am afraid this is just not accurate at all.

Q. What about the bottom of this page? He is saying he failed to secure a place for the SNBTS to influence the management of the UK agenda for kit evaluation and thereafter be engaged in discussions on implementation, that you were fully aware of that and you were requested by him to use your position to seek change?

A. Here is the man who had colleagues sitting on that committee, who had day-to-day contact with them under the privilege of their medical professional colleagueship and who knew exactly what was going on, was writing to Harold Gunson, giving him support, and he actually says here that I was the one who was supposed

to go off and do something about it? I'm very sorry, it just doesn't fit for me.

Q. Next page, please. He refers to your having been briefed, soon after you took up post, on the fact that -- and this, I think, must be what I have been calling the Scottish evaluation of the Ortho first generation kit in 1989. So he is saying that you were briefed in 1990 that there had been that survey in 1989 which generated data indicating you could have commenced donation screening between April and June 1990 and that this had been communicated to SHHD. Do you remember briefings to that effect or indeed the following reference, the briefing about the April 1990 meeting of ACVSB, where Bob Perry and Harold Gunson had wanted to press on with screening?

A. I do recall the Gunson/Perry thing, and it's an interesting issue because it's kind of embedded in this whole comfortable relationship between Gunson and Cash, talking about solidarity, but I know that both Bob Perry and Harold Gunson did quarrel with that committee and try very hard to get them to change their minds. But what we seem to be being asked to believe is that various people are now apparently, including John Cash, were deeply concerned; they were very jittery, as well as I, but, because they were overruled, they then felt

it -- I'm taking this from his own statement. They then felt it essential to defend with their lives the position that they had felt was intolerable and had tried to change.

But there is certainly nothing in my memory about anybody coming to me and saying, "Dave, we really don't like this. Will you help us change it?" I would have been up to the Scottish Office like a shot. I spent the whole of this period treading on eggshells and trying not to upset my medical colleagues because, as a general manager, newly appointed, I was entering territory that they had never before had challenged by anybody outside of the profession, and if they had given me the joy of saying, "Look, we really do not like this, Dave, please come and help," I would have been delighted, and I'm sure I would remember it. So I don't believe it happened.

Q. What about distressing phone conversations between Dr Gunson and Professor Cash about the NHS financial management system problems in England and Wales? Do you remember briefings about that?

A. No, I don't, and it's the only place I think we have in the evidence now, finally, thanks to John, where my sort of secondary theory, that actually this was all about money, comes to the fore. So here is John saying he was

aware at the time that the only reason why the English weren't implementing was financial restraint in the regions and yet he was still encouraging Scotland to follow the party line. I find this very, very difficult to understand.

Q. And then he says -- and this is on the next page -- that your description of your chairing of the board meeting on 11 and 12 June to the effect that you didn't feel it was your role to come down heavily on any one side is not his recollection. He thinks that your support --

A. Whereabouts is this on the page?

Q. Sorry, it is (g), just at the top.

A. Oh, yes.

Q. His recollection is that essentially you were supporting Dr McClelland.

A. He makes me much prouder of the memory, if it's true. I would love to believe that he is right because I certainly did support McClelland's position, but my memory is that I was more diplomatic than that, but maybe I wasn't. But anyway I think that's splendid, if he remembers that I did argue for this.

The only place where I diverge from him in this is that he seems to have got himself into the frame of mind that says that McIntosh wanted to go alone under cover the darkness and not say a word to the Scottish Office.

Where he got that from, I cannot imagine. That must be warped memory over time because that was certainly never my intention, and nor do I believe that the Scottish Office was an obstacle. Had we made our position clear, I'm sure we would have got agreement. There was no need to do it under cover of darkness.

Q. What about the minutes? Can we look at the next page, please? He says that there was a heated and damaging discussion that at that meeting in Stirling an attempt was made to persuade board members to essentially follow Dr Lloyd's lead and that this material was in the original draft minutes. Ms Corrie took the minutes. Is that right?

A. I can't recall that Ms Corrie -- Ms Corrie, by the way, was a long-serving and very effective employee who retired shortly thereafter. So when John Cash says that I replaced her with Mrs Porterfield, my PA, which sounds very dramatic, Morag Corrie retired and the general manager's PA took the minutes. That's what happened there. Yes, I think Ms Corrie took the minutes. I have been over this, as you know, many times in my head and I'm astounded that the minutes are quite so brief. But on the other hand it's good practice. If you have a heated debate but there is an outcome and a clear decision has been taken, it's good practice to just

minute the decision. So, sadly, all of that near disaster to which he refers has got lost.

Q. He says on the following page -- I don't want to get out of order but, just to finish this point, he says that the first draft of the minutes from Ms Corrie had some of the debate in it and you didn't like that and you insisted that that was taken out and the whole debate was covered by the single statement we now see. So you are responsible for that change. Could that be right?

A. It could be. I'm not going to pretend my memory of 21 years ago is that accurate but I think it extremely unlikely and I certainly think it extremely unlikely that I would have adjusted the minutes without having a word with John first. I also note that the minutes were not finally approved until August, so he had plenty of time to review them and they were approved at the August board meeting. So the minutes were approved by everyone. There is no question of a draft having been adjusted and then it all just slammed out and I assure you my colleagues would not have been happy if they had seen a minute they didn't recognise.

So it was not just John who saw the minutes in between drafting and finalisation, we all did and we must all be assumed to have given assent to them.

Q. Then, as far as the actual discussion in Stirling is

concerned, he says that some board members, including himself, arrived for the meeting without knowing that such a debate had been planned by David and Brian:

"I have a strong recollection that some of us felt, perhaps unjustly, that we had been hijacked. This did much to raise the temperature of the debate."

A. Yes, and he also implies somehow -- because there is clear evidence to refute that, isn't there? There is Brian McClelland's letter, in which he says in terms, "I really, really think we need to discuss this because I'm concerned about medico-legal matters," and when a consultant in charge of a significant part of the Scottish Blood Transfusion Service asks for a debate in writing to the medical director, I assume the medical director takes note, but he has implied in this note here that somehow Brian's letter was post-dated and scurrilously slipped in under the door, when nobody was looking.

But this is very typical of John; he can be a little over dramatic at times. I just refute this. It's nonsense.

Q. I think it's probably not clear who saw Dr McClelland's letter and when, but perhaps you and Professor Cash will not disagree in the end because, whether by the route of the letter having suggested this as a topic for

a discussion or simply by its being mentioned under AOB and everyone agreeing to discuss it, it did end up being discussed.

A. (a) it ended up being discussed and (b) could this Inquiry possibly have counselled a situation in which such an important issue that was raised was not discussed. It would be unthinkable.

Q. I don't think that the specifics of how the item came to be dealt with under AOB will detain us, Mr McIntosh.

A. Agreed.

Q. Bear with me a minute. Excuse me. (Pause)

Thank you very much, Mr McIntosh.

THE CHAIRMAN: After lunch.

(1.01 pm)

(The short adjournment)

(2.00 pm)

MR DI ROLLO: Sir, I have discussed matters with Mr Anderson and I think it's thought between us that it would be a more efficient use of time, I think, if he goes first.

THE CHAIRMAN: I'll accept your assurance of that, Mr Di Rollo.

Mr Anderson?

MR ANDERSON: I'll try to live up to that, sir.

THE CHAIRMAN: I don't yet know what degree of efficiency saving is anticipated. We will see.

MR ANDERSON: Mr McIntosh, could you have in front of you, please, the document [SNB0020457]?

A. Sorry, that being?

Q. It will come up on the screen.

A. Oh, it will come up, thank you.

Q. Do you have that?

A. Yes.

Q. You will recall we have looked at this before, this is the letter from John Cash to you of 29 August 1991 and in it Dr Cash quotes the minute of the VSB meeting of 21 May 1991, which records that:

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

Then he offers the view that:

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

Do you see that?

A. I do.

Q. Can we look together, please, at your reply, which is [SNB0054822]? You say:

"Thank you for your views of 29 August. Isn't it interesting that this, the first alleged record of a clear UK policy in this regard, should come to our hands indirectly, unofficially and too late?"

Then a paragraph further on you say:

"I feel certain that under the circumstances, we have indeed taken the best decision available to us."

In your statement to the Inquiry, Mr McIntosh, in your penultimate paragraph on page 20 of [PEN0172126], you say at paragraph 7.21:

"With hindsight, the issues of 1991 seem painfully simple and the five month delay in implementation a painfully obvious error."

Standing that some two and a half months after the decision was made in June 1991 to abide by the September starting date, can you explain to me, please, why you said at the end of August 1991:

"I feel certain that under the circumstances, we have indeed taken the best decision."

But now you say "it's a painfully obvious error".

A. I think the answer to your question, sir, lies in the "under the circumstances". I think what I'm saying now with the benefit of hindsight -- and I think I did make it clear in my statement it is with the benefit of hindsight -- those circumstances should have been other and had they been other, we would have taken a different decision.

Also, if I may, I'm speaking now to an Inquiry with a serious concern to get deeply into the issues and get

at the truth. My letter to John Cash at the time has to be seen in the context of being effectively his boss and trying to move on from a severely difficult period and trying it make the best of a bad job.

Q. It's quite unequivocal though, isn't it? It says:

"I feel certain that under the circumstances, we have indeed taken the best decision available to us."

What is it that is so important about "under the circumstances", Mr McIntosh? What are the circumstances?

A. "Under the circumstances", taken together with the phrase "available to us," makes it clear, I think, that had other decisions been available to us, we might have taken those and that had circumstances been different, we might have availed ourselves of other decisions. It is therefore not an emphatic statement that we did the right thing. We took the right decision under the circumstances, we took the only decision that was available to us, actually.

Q. Yes. What were the options in June 1991, as you understood them, Mr McIntosh?

A. Well, there were only options as far as I can recall in relation to the half of Scotland that wasn't already covered. We had by that time already introduced HCV testing and patients in the West of Scotland were

receiving blood which was significantly, not enormously but significantly safer than blood in the rest of Scotland. Therefore, at that time the decisions available to us included introducing testing in Edinburgh and the Southeast, in Dundee, in Inverness and in Aberdeen, or one or all of those or some of those, under the guise of trials or whatever, but we could have improved patient safety in Scotland within a budget already approved using materials and procedures already established, had we chosen to do so.

The fact that that decision was not in the end made available to us because we were not allowed to do so is a different point. But in answer to your question what might we have done, we might have done the right thing. We might have protected patients by introducing Hep C testing in the half of Scotland that was at that time uncovered.

Q. I'm having difficulty with that because a moment ago you said you took the only decision that was available to you and now you seem to be suggesting that there were other decisions available to you. Is that right?

A. No, I'm saying that other decisions might have been taken. I'm not saying they were available to us. We might have stimulated other decisions had we put our case in a different way, I think is what I'm saying but,

I mean, help me here, correct me if I am wrong. I think that's what I'm saying.

Q. Does it come to this, I wonder, Mr McIntosh that, your position essentially is that the SNBTS didn't lobby the SHHD hard enough. Is that what it comes to?

A. Yes, absolutely. I think that's a very succinct summary.

Q. Can we look at the circumstances of the meeting in June 1991, please, and you cover this in your statement at page 10 of [PEN0172126]. Perhaps we could have that up in front of us. Can we look at paragraph 5.11.1, please? You say:

"I chaired a debate in which Dr McClelland put his case as outlined in his letter of 11 June and some others shared his concern."

Can you remember who the "some others" were that you say shared his concern?

A. Yes, I think -- obviously this is anecdotal and from distant memory but if I just go down the east coast, we had Dr Urbaniak, who was the regional transfusion director for Aberdeen, who I think was very much of the view that we should do whatever was most consistent with the prevailing opinion; in other words, we should do what we were told. So I don't think he was one of the those. I think Bill Whitrow in Inverness was one who

shared concern and I think Ewa Brookes in Dundee was another.

I know that Dr -- yes, Dr Perry, Robert Perry, though he was not directly involved because he was the PFC director rather than a regional director, also shared our concern.

As I say, you can take evidence from them, which would be a much better approach but that's my memory of it. Sorry, I should have mentioned Dr Mitchell, who was one of the others. But Dr Mitchell was already testing for Hep C, so he didn't have an axe to grind.

Q. On that basis, if one looks at the minute, it's rather difficult to understand how the decision came about because we have a fair number of medical practitioners according to you in support of Dr McClelland. Is that right?

A. No, I said they shared his concern. There is a long way between sharing his concern and joining an out and out rebellion against the medical director.

Q. All right. You go on in paragraph 5.11.1 to say that your own position, you felt, was that you needed to establish a clearer formal position. Can I understand what you mean by that?

A. Well, I'm sorry, but without being impolite, I mean what I say. There was no formal position in front of me as

a general manager that I could understand as being a formal position. There was rumour, innuendo, suggestion, notes, private and otherwise; there were telephone calls but there was nothing that you would regard in disciplined managerial terms as a formal statement of the position we were in, and what we should be doing and why we should be doing it.

In other words, looking back at Brian McClelland's letter of 11 June, of which you have copies, his concerns about the medico-legal situation, who was responsible for what and why, if we were, were we following an English policy, if there were such a policy, could we please have all of that a little bit clear. So clear formal position on those matters raised by Brian would probably be the neatest answer to your question.

Q. We will come back to that in a moment, Mr McIntosh, but in the next paragraph you say:

"Without necessarily advocating immediate implementation, Dr McClelland and I and others certainly argued the position in which the SNBTS found itself was untenable."

So have we gone now from a number voicing concerns to deciding that the position of the SNBTS was untenable?

A. Yes, because our concerns were that the position we were in was dangerously close to untenable, and I think we came to the conclusion during the debate that indeed yes, it was, and it was untenable in the sense that we were assuming constraints and policy guidelines upon us that we could not actually evidence and therefore our failure to act in what some of us regarded as an appropriate way could not be ascribed to instructions from proper authority. They would either be ascribed to dilatory behaviour on our part or some other carry-on. There was no clarity about the instructions from the command that we were following in deliberately postponing the implementation beyond April, and at that point way beyond even May or June.

We decided it was untenable and we took action, at least I assert that we did. It became tenable for us when we sent our letter to the Scottish Office recording the position as we believed we could understand it, and the absence of a reply would allow us to assume that we had made the correct interpretation of the instructions under which we deemed ourselves to be acting.

Q. Well, if we go over the page, Mr McIntosh, to paragraph 5.12.1, you say that at the end of this long and often heated debate, a compromise was reached whereby clarification should be sought from ministers.

What was the clarification that was needed from ministers through the SHHD? What was it that you or anyone else at that meeting were unclear about?

A. I don't think that we believed that we were unclear. What we believed was there was absolutely no way we could prove whatever it was we thought we believed because there was no written clarification.

So clarification of what? Clarification of, yes, ministers were aware that we could have implemented. Clarification of, yes, ministers knew that the non-implementation was putting patients at risk but that was okay. Clarification of, oh, well, if we are delaying from April, when are we going to do it then and why? Those were the clarifications that I think we were seeking.

Q. The debate that arose as a result of Dr McClelland's letter dated 11 June was in relation to the clearly accepted policy that testing would be introduced throughout the UK on 1 September or at least not before 1 December. Is that not correct?

A. No, it's not correct. I mean, it's a fine post facto rationalisation but, no, it's not. There was, I think, looking back -- and I still believe this to be the case -- no evidence that we, the SNBTS, having been funded to introduce the testing, were authorised to

delay it. And I think some of us, by the time it got to June, were beginning to very, very sharply realise that actually we were behaving under assumed instructions of which we had no proof, not proof from the hierarchy to which we were responsible and through whom we reported to the Secretary of State for Scotland.

And I'm sorry if I belabour the point but I do think it's an important one, that acting on the common knowledge -- there are endless comments in the witness statements of, "Oh, it was common knowledge", "It was well-known", "It was clearly established", we all knew. Excuse me, you all assumed but as far as I'm aware, we still have no evidence that any minister or any senior civil servant in the Scottish Office close to ministers actually sent an instruction down the line, that, "Yes, indeed, you shall, please, postpone the planned introduction of HCV testing on April 1, until further notice".

Q. We are talking, Mr McIntosh, about a meeting that took place in June 1991. We know that April 1 had gone by, we know by then that July 1st had also gone by.

A. July 1st had gone by?

Q. Well, it was clear that the testing was not going to be implemented on 1 July. Is that not correct?

A. There certainly were rumours to that effect, yes.

Q. There were more than rumours. I think just before the break counsel to the Inquiry took you to a document which showed the decision having been made.
A. Yes, but with respect, it was not a document from the proper authorities in Scotland instructing us in a proper manner.
Q. So is it your position that you just didn't know what the position was and that you were somehow being kept in the dark?
A. No, I'm sorry, I'm explaining myself poorly. It is my position that though we thought we knew what the position was, we did not have sufficient clarity on that to feel comfortable in our consciences that we were doing something as profoundly influential on patient care as not introducing a Hep C test without better written documentation of that authority.
Q. The whole point of the decision in June 1991, Mr McIntosh, centred round the thorny question of delay and the concerns that Dr McClelland had raised, resulting, no doubt, from the UDI declared in Newcastle. Is that not so?
A. No, no, no, no, I'm sorry. Again, I think that's so close to being true that that would be fine but not for this Inquiry. It would be quite wrong to suggest that Scottish practitioners, with an acute sense of their own

responsibility for their own patients, were only concerned when it came to light that a colleague in the north of England had taken steps to salve his conscience by doing the right thing. We did not start concerning ourselves just because of Newcastle.

Now, I know, there was a great flurry when Newcastle took place and all kinds of strange things happened, but no, I don't think it would be true to say, with respect, that our meeting in June was entirely focused around the repercussions of Newcastle. And indeed if you read Brian McClelland's letter again, I think you will see there is clear evidence that this was not so. There were quite separate reasons for wanting to know what the position was and how we were instructed.

Q. I think we have reached agreement at least that your position is that SNBTS did not lobby the SHHD hard enough. Is that correct?

A. Yes.

Q. That, of course, begs the question of what might have happened if more forceful lobbying had taken place. Is that correct?

A. Well, it depends on -- you say it -- if you wish to raise the question, I'm listening.

Q. Well, if you look at your own statement, Mr McIntosh, at paragraph 7.10, what you say is this:

"I believe that had we at the SNBTS decided to send a comprehensive brief to SHHD in, say, May 1991, by which time the delay until September was already looming away into the distance, and had the team at SHHD properly explained to ministers both the new position and its likely consequences, the ministers would surely have decided to authorise the immediate introduction of testing throughout Scotland."

That's your personal view, I take it?

A. I started the sentence with the words "I believe". I hope I made myself clear.

Q. Can we look together at two memos from Mr Tucker, the civil servant. The first one is [SGH0028008]. This, of course, we see from the second page is dated 23 August 1989. So that pre-dates your term of office. Is that right?

A. Absolutely.

Q. You started around February 1990, I think, we have heard?

A. I did, you are absolutely right.

Q. You see there what Mr Tucker is saying is:

"This is a UK issue and the Department of Health will be taking the lead, but SHHD and SNBTS will be represented in any meeting and the minister will be consulted before any decisions are taken."

Do you see that?

A. Yes, I do. I didn't see it at the time but I do now.

Q. Indeed. Can we look at a later memo from the same Mr Tucker, please? That's [SGH0027890]. You see there, this is to Mr Panton, who you referred to recently, with a copy to Dr McIntyre, and it states:

"Mr Canavan, Department of Health, has informed me that Department of Health ministers have given their approval to the submission on Hepatitis C testing. He does not know what date for the introduction will be chosen since some laboratories will require new equipment. He is to convene a meeting with RTCs to ascertain what would be practical. He agrees that there should be a common starting date for the whole of the UK but there appears to be some concern by English public health laboratories about testing. I suggested that it might be better to set a target for 1 April as the earliest possible date for introduction but leave it to blood transfusion centres to come in line thereafter, since delay for the slowest could mean a long wait. He will let us know following his meeting with RTCs.

"I should be grateful if you would prepare a draft submission to Mr Forsyth explaining briefly the background and the English decision. Would you also ascertain from SNBTS when it would be practical to

introduce the test in Scotland but indicate that we wish to maintain a UK approach."

Do you see that?

A. I do.

Q. Are you saying that that wish to maintain a UK approach was something that was unknown to you in June 1991?

A. These documents were unknown to me. I was absolutely clear that we would all have wished to maintain a UK approach. Of course we would. It's absolutely obvious and I was quite clear that the people in the Scottish Office held that very sensible view, but there is a long way between that, of course, and then finding that that was going to slavishly tie you to very inappropriate results. So at that time, as I think I have said in my statement, that was an eminently sensible approach. But wishing to maintain a UK approach and hanging on to it to grim death long beyond the point where it was of any value to Scottish patients, was in my view an error. That's my point.

Q. With respect, Mr McIntosh, there are two matters. There is the question as to whether the decision made was an error or not and there is the matter that I'm seeking to discuss with you at the moment, which is the attitude of the SHHD. You see Mr Tucker's statement in this regard, and that's page 4 of [PEN0172060].

A. I have got it here, thank you.
Q. I think we have got 2163 on the page?
A. Yes, but I have got it in paper, here.
Q. There we are, thank you. Do you see as answer 13 he says this:

"It was intended that the position to be reached would be a UK one. It was not unusual for the Department of Health to take the lead in respect of national issues and because SHHD was a smaller (both in terms of numbers and resources) department, there was a general desire to make whatever use we could of DHSS resources. There was a real desire not to duplicate effort. It was also important that DHSS, as the bigger department, was able to exert more pressure on the Treasury. From our point of view, it certainly made sense to be in partnership with DHSS, and in any event both SHHD and DHSS obtained the same advice from ACVSB. Their recommendations went to ministers in both countries as well as Wales and Northern Ireland."

Can you also, just before we get to the question, Mr McIntosh, have a look at what Dr McIntyre said about this in his statement, which is at page 2 of [PEN0172073].

A. Yes, I think I can remember what Archibald said.
Q. We have it in front of us just now. It's at answer 10

where he says:

"It was not a question of principle but a question of a suitable test being available. There was never any question of the tests, when available, not being introduced simultaneously through the UK."

Do you see that?

A. Absolutely.

Q. Isn't it quite clear, Mr McIntosh, that the SHHD line was to bring in testing simultaneously on both sides of the border?

A. Yes. At the risk of belabouring a point we have already agreed, yes.

Q. So why do you think --

A. Could I refer --

Q. -- it is likely that if you had made a stronger lobbying -- if SNBTS had made a stronger lobbying, how are you able to deduce that that would have changed what seems to be a pretty constant idea, that there should be simultaneous introduction on both sides of the border?

A. Indeed, sir, and if I may refer you back again to page 4 of [PEN0172060], from where you left off your quote, George Tucker goes on to say:

"I am asked whether Scotland would simply follow England. The answer to this is "yes" and "no". We would follow England if it was sensible to do so. For

example, in relation to the introduction of national testing when there was clear expert advice that this was the correct thing to do. We would not necessarily have followed England if, for example, the ACVSB's recommendation had not been unanimous and decided not to introduce testing if we had contradictory expert advice in Scotland."

I do put it to you that the evidence for the point that Scotland could well have taken a different course is irrefutable, and that any line of enquiry based on the assertion that Scotland and England were locked at the hip on this and there was no room for manoeuvre, is doomed to failure. And I say that only in the interests of saving time.

If you cross-examine me on this further, I will have to continue to repeat to you that I believe the evidence makes it clear that Scottish ministers could have gone a different way and that easy assumptions during the course of early administration of this process, about the desirability of going together, do not bear centrally upon the key point that we are all trying to get to, with respect.

Q. You misunderstand me, Mr McIntosh. I'm not suggesting to you that they could not have gone their own way. What I'm seeking to discuss with you is the likelihood

of their actually going a different way.

A. That's pure speculation. I have speculated what I think and I'm obviously open to dialogue if you wish me to animadvert but it is pure speculation, I admit.

Q. All right. It would have required, would it not, a fairly cogent and persuasive article from the SNBTS?

A. Possibly, though with respect, again, I do think that seeks to imply that ministers might have been intransigent or unreceptive on this point, and I don't think that's true. And I know it's not amongst these papers but I think that Lord Fraser's letter in relation to look-back makes this absolutely clear, and of course he was a lawyer. It is absolutely clear that ministers would have been bound to listen to other arguments, and it is my personal view knowing them -- and I knew Michael Forsyth quite well and had a lot of respect for him -- that had we put the case in the terms I have explained in my witness statement, it seems to me reasonable to expect a reasonable man to assume that they might certainly have listened attentively, and it seems to me reasonable to suggest that they might indeed have taken a different course, particularly in the latter part of that period. And I think there is evidence to suggest that. I don't put that just as a speculation.

Q. Do you accept that on the question of simultaneous introduction of testing on both sides of the border there was a clear argument, a clear difference of views; there were pros and cons, were there not?
A. To help me with my answer, I wonder if you would like to suggest to me what you think they are.
Q. Well, for example, the question of, as someone has put it, "postcode lottery", the question of inequality, the question of why someone in one town is not getting tested when someone in another town is getting tested.
A. Shall we take that first or do I interrupt you there?
Q. The question is simply: do you accept that there is a counter-argument?
A. No, but I have a follow-up question. If it's a postcode lottery we are worried about, how come that we were doing all this testing in Scotland in the west but not anywhere else? There was a postcode lottery in Scotland from May until September. How come we were happy with a postcode lottery in the north of England from May until September? I am sorry, the postcode lottery argument works equally but well both ways.
Q. But it is an argument, is it not, Mr McIntosh?
A. I think it's a poor one.
Q. So far you seem to have given the impression that there really was no decision to make; it was entirely obvious,

according to you, that we should simply have gone alone. Is that right? Because there was no counter argument?

A. Forgive me if I give that impression. What I think I'm saying is this, that if there were arguments in favour of English solidarity, at a time when some parts of the UK had already implemented testing on a grand scale, the arguments in favour of solidarity must have got weaker and weaker as time went by, and I asked you to help me with some of those stronger arguments which might still have mitigated in favour of UK solidarity. I'm suggesting to you, with all due respect, that the postcode lottery is not one of them and that we did not deal with that issue by insisting upon UK solidarity right up to the bitter end.

Q. Was it not a matter discussed in June 1991?

A. Yes, it was and I lost the argument then and I hope I'm not going to lose it again now.

Q. You see, the decision that was taken in June 1991, Mr McIntosh, was taken by a majority of medical practitioners, was it not?

A. Oh, no, no, no, please don't follow that line of enquiry. It was taken by a majority of the board of the SNBTS, which was the management board for the purpose. I don't think by this time there were very many medical issues left in it. But we took it together and I take

my equal responsibility for it, but there were others there other than medics.

Q. Do I understand your position to be that whatever the decision taken on 11 June, you now disagree with that? Is that right? Or do you think that that was wrong?

A. I don't disagree with it, I heartily regret it and I feel heavily responsible.

Q. I think I noted you as saying that you felt it was probably wrong. Is that right?

A. Where are you quoting me from, excuse me?

Q. Earlier this morning you said you felt it was probably wrong at the time and you tried to do something about it. Do you remember that?

A. Yes, but I think I was quoting myself. Can we just find where I was saying that? Oh, this was when I was describing the situation at that meeting in June, wasn't it? Can you find the reference?

Q. It was during the period when you were taken to your statement, Mr McIntosh, and you described different periods. The first one being what I think you described as a "genuine period". I may not have the correct word precisely.

A. Quite right.

Q. And then you went on to talk about the period from March to September 1991 which you described, I have you noted,

as a "phoney period". And you were asked -- and this is simply my notes, Mr McIntosh -- whether it was wrong or became wrong, and I have you noted as saying:

"I felt it was probably wrong."

And you tried to do something about it.

A. I think this was when Laura Dunlop was cross-examining me on the subject -- or enquiring of me on the subject of the lead-up to that meeting.

Q. Can I just ask you this: what was it you say you tried to do about it if you felt it was probably wrong?

A. I tried to persuade my colleagues to join me in a different approach and tried, as best I could, to lead the board meeting in June to that end and, as we know now from the record, failed so to do but that's what I was trying to do about it.

Q. Did you attempt to resuscitate the debate at any time after that?

A. No, because I think my recollection of that is that this letter that I may or may not have sent, but certainly felt I had sent, covered the ground in the -- it covered the basic minimum that I thought was required from a managerial and a medical-legal point of view. It did not seem to me that I was free to take a decision about the postponement of Hep C testing without higher authority. It did not seem to me that the SNBTS

management board or the medical and scientific committee or, the national medical director, had the personal authority to take that responsibility on their own shoulders. Therefore I sought to have it clarified. I succeeded in having it clarified but I didn't succeed in doing anything about it, and that's the bit I regret.

Q. Can we return to your statement, Mr McIntosh, and page 11 of 20. That's page 11 of [PEN0172126]. We are back to the June 1991 meeting. In the second full paragraph at 5.1.4 you say:

"Some of us would have preferred to ask SHHD to authorise immediate implementation."

Do you see that?

A. Yes.

Q. Do you accept that in general terms it would not have been impossible simply to declare UDI in the way that Newcastle had done?

A. I wouldn't have seen it in those terms at all, and I think it would have been quite unnecessary to do it a la UDI. I think it would have been perfectly possible simply to quietly extend the trial in half of Scotland to the other half of Scotland, and carry on trialing in precisely the same way as they had painted the picture for Newcastle.

So I would absolutely have not seen it as UDI at all

and indeed, that's not what I was trying to achieve. What I was trying to achieve was to gain ministerial attention to something which I thought merited their attention and had got to that level.

So, no, I wasn't looking for UDI. I was looking for authorisation to do something that I thought everyone would agree was right, if we only persuaded them to listen.

Q. I think we have heard that the position in Newcastle was different because it was a regional transfusion centre which was self-funding, so it didn't require authority from anyone or funding. Is that your understanding?

A. With respect, again, I don't think it was altogether a funding issue. I mean, I don't think Newcastle was any more independent than Colindale, for instance, from a funding point of view but Dr Lloyd, as I understand it, went up his local regional health authority hierarchy and got authority to proceed. The funding is much more complex about England because there was cross-charging and so forth.

Q. All right. I think we are at one on that, Mr McIntosh. In any event, what you are saying in 11.4 is that you would have preferred to ask SHHD to authorise immediate implementation. Is that right?

A. Absolutely.

Q. We have looked at 5.12.1, clarification should be sought, and then you go on at 5.14.1 to tell us what you think was in your letter, and you say:

"The letter to SHHD did at least get the position clearly on record."

5.14.1:

"The SNBTS was in a position to implement immediately."

Is it not the case, Mr McIntosh, that the SHHD were entirely aware that the SNBTS were in a position to implement at that stage?

A. Yes, indeed. I hope I have tried as best I can to make this clear. Everybody was, as it were, fully aware but there were no written confirmations of these facts, as far as I knew. And I wanted all those facts clearly set on one sheet of paper and hopefully placed before ministers.

Q. You say:

"We were only delaying in order to fall in line with English implementation."

Again, does that not follow from 14.1?

A. Yes, it follows, as night follows day -- and I'm sorry, I must be sounding quite ridiculous and I apologise to you for this, but the fact is that nobody was addressing those simple facts: (a) we are ready to go, (b) there

are damaging consequences if we don't go, (c) the only reason we are not going is the English. Will somebody please confirm that they do know all of those things, they have thought them through and they agree with us.

Q. With respect, Mr McIntosh, are you not being a bit disingenuous? All these things were well known, and they were well known to everyone at the meeting in June 1991, weren't they?

A. Yes, but why does that make me disingenuous? I'm trying to tell you that of course they were known but -- it's a bit like the Battle of Sebastopol, I had no instructions to charge. I had nothing in writing from the generals to tell me what to do. I only had rumours from the sergeants' mess that we thought the generals didn't want -- you know what I mean?

Q. But there was no dubiety, was there?

A. There may not have been any dubiety for those and such as those who are quite happy to believe in rumour and gossip, but there was great dubiety for those who like to see things signed in writing. As a lawyer, with the greatest of respect, sir, I am quite sure you understand exactly what I'm saying.

Q. Are you characterising the SHHD line on this, that simultaneous implementation both sides of the border was desirable as some sort of, how did you put it, "rumour"?

Rumour and gossip. Is that how you characterise it?

A. We are being recorded, so don't worry, it will all go down on the record. What I'm saying is that I had no written evidence from bodies that were authorised to give me instruction.

What Archie McIntyre might think and what he might share with John Cash had no relevance to me as somebody responsible for the SNBTS, and ultimately somebody who might have to turn up at his Lordship's Inquiry 20 years later and answer for myself. And therefore I want something in writing.

Now, I'm sorry if I belabour it but I don't think I can make it any clearer than that. And I didn't want it in writing because I thought there was doubt.
I wanted it in writing because I want the reality to be very, very clearly stated so that everybody could reassess it.

Q. Did you regard this as particularly important at the time?

A. I regarded it as important but for those of you who have had occasion to look at the minutes of the SNBTS management board at the time, there were a lot of other things going on. So I could not pretend for one minute that this was McIntosh's number one priority. We had many, many other things to worry about but, yes,

I regarded it as important and I regarded it as important enough to lead to a fairly serious argument with my medical director, with whom, on the whole, I got on fairly well over six years.

So, yes, we had a fight about and we disagreed about it. So yes, I regarded it as important. But particularly important in the total context of my job? Probably I would have to say not.

Q. You see, again, I do not want to make much of this, Mr McIntosh, but we don't see anything in the minutes about this, do we, about this letter that you say you were instructed to write?

A. No, we don't and that's both surprising and somewhat mysterious but I think we did talk about that at quite some length this morning. It would have been quite normal for us to have a good old argument, come to a final decision, whether we liked it or not, but collective responsibility taking hold, it would have been quite normal to have a simple minute like that.

Q. Right. Have you seen Dr McClelland's statement in this regard?

A. I don't believe I have. Is it here? No, it isn't because it hasn't been sent in yet.

Q. All right. Can you look with me at page 14 of [PEN0172491]? We have heard from Dr McClelland that

these are the notes that he made at the 11/12 June 1991 Stirling meeting, all right, have you seen these?

A. What is it they say about doctor's handwriting?

(Handed) Thank you very much.

Q. We have provided you with a translation.

A. You are very kind. Thank you very much.

Q. All right. If we look at the page in front of us, which is 2504, you see at the bottom it says:

"Hep C."

A. Yes, it does.

Q. Someone helpfully putting an arrow towards it, and beneath it says:

"The UK pack is still a pack."

Do you see that?

A. Yes.

Q. And then across the way, it says -- I think you may care to go to the copy?

A. Is it the, "Can we make a strength of this by ... "?

Q. Yes:

"Can we make a strength of this by demonstrating that we have considered the early start option and rejected it in the interests of support/buttressing a coordinated national service."

Do you see that?

A. I do.
Q. Does that essentially encapsulate what the decision was at the time?
A. First of all I would say I'm not sure that this is necessarily Brian. This may be reported speech. It may have been John. I absolutely do not believe we decided to make a strength of it in this way, no. I think the decision was that having considered an early start and having given the department an opportunity to support an early start if they so wished, we would do what we did and the rest is history. But I think the making a strength of it -- the making a strength of it comes back in John Cash's response, his most recent one, in which he talks about the English being grateful, and so on.
Q. Leave aside the "make a strength of this", let's just look at the remaining lines please:
" ... that we have considered the early start option and rejected it in the interests of support/buttressing a coordinated national service."
A. That, I believe, is the outcome and I think that's what I have said in my statement, but just because it happens to be in Brian's notes, I would not have said it was necessarily Brian's view. He was taking notes on what was said by everybody.

Q. I think we have heard --
A. That was his only personal note, was it?
Q. This is his handwriting. This is his note.
A. It's his handwriting but he was taking notes of the meeting in his own way. All I'm saying is that I'm not sure we can assure Lord Penrose --
Q. My fault probably, Mr McIntosh, I'm not suggesting it's his view, it's simply his note of what passed --
A. It is and also it's also opposite, if you notice, the initials "JDC".
Q. So he is recording what others have said. Sorry, I didn't mean to suggest otherwise. Then I think you have accepted the point I was seeking to discuss with you, Mr McIntosh, that it appears accurately to record the decision that was taken. Is that right?
A. Sadly it does, yes. Can you imagine? So we decided not to go for an early start date because we wanted to support/buttress a co-ordinated national service.
Q. And you see no merit in that?
A. It's not that I don't see merit in that, it's that I have never understood why it was so important, and the more I read the papers, the less I understand why it was important.
Q. Can we return, Mr McIntosh, to your statement, please, at paragraph 7.22? This is your conclusion at page 20

of [PEN0172126].

A. 2145 or 2139.

Q. 2145.

A. So it's not 722?

Q. Sorry --

THE CHAIRMAN: It's 7.22 not 722.

A. Apologies, I'm with you.

MR ANDERSON: Yes, all right. Earlier on you said surely the ministers would have taken a different view if SNBTS had been more forceful, essentially. Do you remember that?

A. Yes.

Q. And by the time you go to the end of your statement, you seem to firm up on that and you say you are certain that:

"If we had done things in a timely way, they would almost certainly have authorised full implementation."

Then in the last sentence you say:

"I'm certain we could and should have implemented earlier than first ... "

Who is "we" in that sentence?

A. All of us, from the Secretary of State downwards. Perhaps I should have phrased it differently. What I'm saying is that I'm certain there should have been an implementation earlier than September.

Q. But that, of course, was not within the gift of the SNBTS, was it?
A. But happily, now that I'm no longer the general manager, I'm a witness, so I can share with you my honest opinion as to the situation. I'm not saying it was in my gift. I'm saying with hindsight, it jolly well should have happened.
Q. This is, with the greatest of respect, Mr McIntosh, a layman's view, though, is it not?
A. A layman in what sense? You mean not a minister of the church?
Q. At the outset of your evidence you say:

"The Hepatitis C was a matter for medics and scientists."

Was the way you put it.
A. Yes, I think I did, but I think I also said that I had a duty as the general manager to take an interest, and if I felt that things were not going correctly, to intervene.

Sorry, slightly flippant. When you say "layman", I don't know what you mean. As the general manager, as a professional health service manager of some standing, I had responsibilities to fulfil and I do not regard either my behaviour then or my judgments now to be suitably categorised in some secondary category of

"layman", no. I do not believe that that is the case. I believe I had enough facts then and I have enough facts looking back now to be clear.

I wouldn't say that to you unless, as a good general manager I had also taken advice and consulted and looked at the evidence from medically qualified practitioners -- not medically qualified only but microbiologists, epidemiologists and others. Therefore, no, I would refute any suggestion that somehow 7.22 has less weight because it's a layman's view.

Q. By layman, let me make it clear, Mr McIntosh, what I'm suggesting is non-medically qualified.

A. With all due respect, by the time we get to 7.22 and by the time this Inquiry gets to these issues, it was no longer a matter for medical practitioners. It was a matter of public health responsibility by the management team responsible for that public health. It was not a matter, in my view, for medical practitioners, though heaven knows, had it been, I daresay they would take the same view that I do. I do not need the medical qualification to make the judgments that I'm suggesting are appropriate in 7.22.

Q. Because you think there should have been a meter on the wall showing the number of deaths, is that right?

A. I'm sorry, that's dramatic but it does focus the mind.

Q. Well, there is no evidence, is there, that anyone died as a result of this?

A. There is ample evidence to make it clear to us that in all conscience, in a country that was taking 3,000 donations a year -- 300,000 donation a year, something of the order of 1,000 donations a day, there is good evidence to suggest that in all probability such donations taken without HCV testing were likely to expose quite a few patients to quite a lot of danger and that some mortality was likely to have arisen.

Now, in that area, I do defer to medical science, not necessarily to doctors but certainly to epidemiologists, microbiologists, bacteriologists and others. But if I'm accused of over dramatising, I think I cry guilty and I apologise. I don't wish to dramatise but what I wish to say is there is no doubt that there were risks to patients because we decided to introduce Hepatitis C testing in order to reduce the risk to patients, and if you look at the statement from the DHSS -- the Department of Health that we looked at this morning, the one on which Lady Hooper commented, it says:

"We are going to introduce Hep C testing in order to reduce the risk of transfusion-transmitted disease to patients."

So if I suggest to you that the delay was causing a risk of morbidity and at worst mortality, I think it would be fair to say that that was a reasonable assumption.

Q. No one is disputing, Mr McIntosh, the need to bring in the testing, the question is simply one of timing, isn't it?

A. Yes, but if you are one of the poor souls who got Hep C during the gap, it's not simply a matter of timing, it's a matter of very important timing.

Q. It's a matter essentially for the doctors, isn't it?

A. I beg your pardon?

Q. Isn't it a matter for the doctors?

A. To decide to just casually infect a few people because there was some other good reason? When you say "it's a matter for the doctors", I'm sorry, I need clarification of that.

Q. You think that your view that you have now reached 20 years later, is to be preferred to those of the doctors at the time?

A. You are doing a good job on this but you are not getting anywhere. John Cash just a few days ago has written a statement in which he agrees it was an untenable situation. He has already talked about damage to patients by transmission. All the doctors at the time,

then, since and ever in between, have made it clear that there was a risk to patients. Why else were they proceeding?

I'm not asking anybody to take my view over and above any of the doctors. What I'm suggesting to you is that there is a consensus view that there is a risk with non-tested blood and that that risk could have been reduced four or five months earlier had we acted with more speed, and I find it odd, Mr Anderson, that you are not with me on that.

Q. But in any event, the majority view reached in June 1991 was to wait for the 1 September introduction. Is that correct?

A. That being so, I went along with it. I have put my hand up as part of that majority view. I was ultimately responsible for the board at the time.

Q. Thank you, Mr McIntosh.

A. Thank you.

THE CHAIRMAN: Should Mr Johnston go next or doesn't your agreement extend that far.

MR DI ROLLO: It doesn't extend that far but I have one or two questions that I would quite like to ask.

THE CHAIRMAN: It is 3 o'clock and I think that we should have a short break now so that you are not interrupted but I think that you and Mr Johnston should speak,

please, and see whether he has any questions that might assist you the way Mr Anderson may have assisted you.

MR DI ROLLO: Thank you, sir.

THE CHAIRMAN: The break will give you a chance to do that.

(3.02 pm)

(Short break)

(3.21 pm)

THE CHAIRMAN: Mr Di Rollo, or Mr Johnston?

MR DI ROLLO: I think it's me, sir.

THE CHAIRMAN: It's you.

Questions by MR DI ROLLO

MR DI ROLLO: Mr McIntosh, I just want to ask you one or two questions very briefly. There is a document I want to put up. It's [SNB0051726]. This is a letter from Professor Cash to the directors, dated 8 May 1991 and it's in the immediate aftermath of the Newcastle decision. Have you seen this letter before?

A. Not to my knowledge, no.

Q. Can you just have a read of it then and I'll ask you some questions. (Pause)

A. Sorry, can somebody just scroll up and let me know the date? May 1991. Okay, thank you very much. (Pause) Thank you.

Q. The second page, I think, if we can just see that. (Pause)

A. Oh, it was copied to me. I don't recall that but, yes, I mean, it all seems perfectly in order.

Q. This is the day after Dr Cash had written to Dr Lloyd at Newcastle, complaining in strong terms to him about the UDI, if I can short circuit it, in relation to Newcastle going it alone and introducing screen testing there.

Do you have any comment to make about the particular letter that I have shown you in relation to what might have been possible in Scotland as far as taking matters forward at this stage?

A. I'm surprised at it and it's my fault. If I was copied, then I was copied but I don't recall it no. I think anything I said would be with the benefit of hindsight and that might not assist you. In terms of my feelings at the time, I am afraid I'm a bit of a blank on it.

Q. Right. It does appear that Professor Cash had very strong feelings and he articulates them in a number of different pieces of correspondence that we can see, about sticking with the English and going it alone in Scotland, Scotland not doing its own thing in relation to screening for Hepatitis C. On previous occasions he does seem to have been keener for Scotland to be more independent in terms of what it did, and we have seen in relation to surrogate testing that a unanimous recommendation was made that Scotland should introduce

surrogate testing at an earlier stage. Can you give us any insight into what the reasons were that Scotland should stick with the English in relation to this particular matter? Can you tell us why do you think it was that the Scots did not do their own thing in relation to screening?

A. Please bear with me and if I go in the wrong direction and I go on too long, please stop me, but I think it's necessary in answering your question to go back to my division of the timescales involved because clearly, as I agreed with Mr Anderson -- clearly a co-ordinated UK approach is the right thing. We do not want a postcode lottery. We don't want any of those difficulties. The blood supply is a sacred trust from the donors to the patients and it ought to be consistently a very good blood supply throughout the UK.

So we were all agreed about that and until December 1990 or January 1991 we could all be firm about that, be absolutely clear. A few early tests to make sure that the tests work and so on were perfectly legitimate. We were all going to introduce testing all over the UK on 1 April.

At that point none of us would have disagreed with the idea of a consistent approach for the UK. It didn't have to be uniform and indeed it wasn't, because those

who went first carried on with their trials right through and so forth. So you got a certain amount of short-term postcode lottery but in the right timely implementation quickly of such a thing, that was okay, and I think we all felt it was okay. And with the benefit of hindsight, we would still hold that view.

The problem is that that is a clear, understandable argument but as time goes by it gets thinner and thinner and thinner, and therefore I was surprised that John went on hanging on to it, and not only hanging on to it but writing to Gunson, as we have now discovered, offering him support and all the rest of it.

It does surprise me. And then, when I read John's most recent statements, I begin to get perhaps more insight into it than I ever did before. He talks about his work in the English health service where he felt there was fragmentation, there was inefficiency, there were poor results as a result. Like a lot of doctors -- and I remember the chairman of the joint consultants' committee saying this to me years ago -- a lot of doctors are very, very strongly influenced by the experience they have in their early days.

If you are an obstetrician and you have a huge bleed, you spend the rest of your career worrying about huge bleeds, and John clearly worried about

fragmentation and different approaches in different places. And he seems genuinely to believe that if I had let Dundee join Glasgow, all hell would have broken loose. I don't agree with that and I have absolutely no sympathy with it, but I respect that he did genuinely believe it.

So I don't think he went with the English because he was an English spy, you know? I don't think he was the Hammer of the Scots. Indeed, as you quite rightly say, he had a reputation for being an upholder of Scottish separate traditions where these were appropriate, but where it came to Hep C testing, it crept up on him and I think Newcastle was probably what did it. That when Newcastle, as it were, let down all its chums -- and John would have seen it that way, like a kind of rugby player; if somebody left the pitch right in the middle of the game. He would have hated that. And I think he then felt -- and I think it was a greatly exaggerated feeling. He then felt he had to hold the line in Scotland at all costs. And I think the evidence shows that he did.

But if you ask: why on earth did he do that? Why in his written statement does he say that this operational fragmentation would have been bad for patients in Scotland? I'm sorry, but you would need to ask him

that. I have no idea what he was talking about.

Q. No doubt we will do, but I'm grateful to you for giving us that insight. The other matter I wanted to ask you about is that you have obviously been examined comprehensively and have given a detailed statement, and I don't want to go over those matters, but you do highlight a number of, I think, defects in the structure of decision-making at SNBTS, which you say played a part in the wrong decision in relation to this particular issue that we are concerned with, namely the delay in the introduction of testing for HCV.

I take it you would accept that those defects in the decision-making structure that you have highlighted would have existed for a long period of time, perhaps since the beginning of Scottish National Blood Transfusion Service; in other words, that as you inherited it, that was the structure that was there and had always been there.

A. Yes, but just to be sure that I'm clear in my answer to your question, I think my feeling about the defects is much more about the national structure than it is about the SNBTS. I think left to its own devices -- and again John has confirmed that in his own statement -- we were in a position to act independently, despite the fact that for 50 years we had been unmanaged, we were a very

loosely knit organisation, we were in a position to act.

I don't think this is a defect in the structure of the SNBTS really. It's the environment into which I fell when I joined the SNBTS, the environment that they were in or we were in by then. And really it revolves around the Metters committee and the whole kind of hazy area of advice in this space, and the reasons and the background for it, which I'm not at all clear about even to this day, and hopefully now that we have got an independent Scottish Government, these matters will no longer be of trouble to us.

Q. We can but hope. Thank you, sir.

THE CHAIRMAN: Mr Di Rollo, I have got some continuing interest in the last topic. The Scottish Government were kind enough some time ago to give us an organisation structure, a chart that shows the formal relationships between all the various bodies and I'm not really interested in spending a lot of time on that. Indeed, I'm not interested in spending a lot of time today at all.

What I'm interested in is what I think you just referred to as the "environment", the understandings, the practices, the approach to work that subsisted before your time and which you came into. Then into that your own formal position in terms of your job

description, if was such a thing, how that may have changed when you became general manager, and generally how people approached the work.

I don't feel I have a very good understanding of the practical aspects of it, as distinct from the legal or structural sides of it, and what I'm going to ask you to do is an imposition but would you like to put something on paper for me after this and give that sort of description of the realities of working that might bear generally on the issue but provide a particular insight into the topic that we are dealing with today? If you could do that, it would give you time to do it and think about it, and it might be helpful.

A. I shall attempt to do so, my Lord. I would be happy to draft something but what has been enormously helpful to me about this whole process is the way in which you have focused your questions, and as Laura knows, I go on if allowed. So can I do a brief draft and then get some guidance from you on whether I am in the right direction?

THE CHAIRMAN: I think that would be very helpful because I can then share it with everyone else and we can make sure that we get the best product at the end of the day.

A. Will I send it direct to Laura?

THE CHAIRMAN: She is not quite the whole Inquiry but I'm

sure that will be as easy a way of doing it as anything if that would be appropriate.

MS DUNLOP: I think the most appropriate person to send it to would be Janet, who is giving us the most support in this area.

THE CHAIRMAN: It's only occasionally that those behind the scene get a mention but that might be the best way to do it.

Mr Johnston, I did that at this stage to avoid you feeling it's necessary to follow some of these issues, but if there are any questions ...

MR JOHNSTON: I don't wish to ask any questions.

THE CHAIRMAN: Thank you very much.

Is there anything you wish to follow?

MS DUNLOP: No, thank you, sir.

THE CHAIRMAN: Mr McIntosh, you must realise not all that you have said is uncontroversial but thank you very much for attending and giving us your assistance.

A. Thank you very much indeed for your time.

MR MACKENZIE: Sir, the next witness is Professor Cash, who has kindly indicated he is able to sit on a bit beyond four o'clock. I think that may be acceptable to the stenographer as well, but obviously if we go on too long, then we can just be told to stop.

PROFESSOR JOHN CASH (continued)

Questions by MR MACKENZIE (continued)

MR MACKENZIE: Professor Cash, good afternoon and I apologise again professor for having kept you waiting.

I would like to continue now, if I may, with your C2 evidence. I think we had reached 1986 and had looked at a letter from yourself to Dr Ian Fraser of Bristol, when you mentioned the drums were beating loudly in other parts of the world. I think you may remember that letter. I think we should then, to complete the chronology, look at Dr Fraser's response, which is [SNB0024227]. We will see this is a letter dated 4 September 1986 from Dr Fraser to yourself and he explains in the second sentence:

"I am afraid the only two supporters of carrying out a study were Marcela and myself, the rest of the directors were not very interested."

Then in the last sentence:

"I'm obviously very keen that something should be done and perhaps if the three of us rowed hard enough, we could get our colleagues to move in the same direction."

And then the next item, please, is [SGF0010268]. These are the minutes of a Scottish directors meeting on 9 October 1986. Can we go to page 5, please, which is

0272? Under item (g):

"Surrogate testing for non-A non-B Hepatitis."

A reference by Dr Gunson to a proposed multi-centre trial, and then it's underlined, the following paragraph:

"It was agreed that the UK Working Party on Transfusion-associated Hepatitis was the most appropriate body to pursue the issue of implementing surrogate testing in RTCs and Dr Cash would write to Dr Gunson on behalf of SNBTS directors formally requesting that this working party be reconvened, with a view to making proposals to the Department of Health."

I emphasise that passage, professor, because when we look to the recommendation by the Scottish directors in March 1987 that such surrogate testing should be commenced, I'm going to ask you then if that recommendation is consistent with the agreement at this meeting that the matter should be pursued by this working party.

We also see a discussion in (h) on the question of product liability, which we will come back to.

Could we then, please, look at document [PEN0171554]? Go to the second page. We will see that is a note by Dr Forrester of 1 December 1986. If we go back to the front page, please, it's a note of a meeting

of the UK Working Party on Transfusion-associated Hepatitis of 24 November 1986. We don't have the minutes of that meeting so I think Dr Forrester's note is as good a record as any we have. We can see in the second paragraph a reference to:

"Written presentation by Dr Gunson".

Then reference to the American experience, et cetera. In the final paragraph on page 1:

"4. Is research indicated?"

Dr Forrester notes this:

"The meeting felt that a prospective study to discover the present burden of transfusion-associated non-A non-B Hepatitis was impracticable on grounds of cost and huge sample size. They propose instead a study to identify in three centres (1 Scottish), donors positive for ALT or core antibodies, and search for other risk factors in them."

We know, professor, that Dr McClelland in the early 1980s proposed such a large-scale prospective study along the lines of the American studies, including detailed follow-up of recipients, but at the meeting of this working party, by this time certainly Dr Forrester has recorded that such a prospective study is impracticable and instead a much more limited study is proposed, looking at donors and the instance of

surrogate markers in donors.

Do you remember, professor, what was or what would have been your view at this time in late 1986 as to whether a large-scale prospective study should be commenced?

A. Well, rightly or wrongly, I remember very well -- rightly or wrongly I advised Harold Gunson, whom I was in regular touch with, that I was very disappointed to hear that once again -- if I'm not sure, this is the third occasion actually, if you take the MRC as the first one -- that a multi-centre prospective, proper trial with recipients had been turned down.

I conveyed that to Harold and I can't recall how -- to be honest, how he responded but I have always sensed that Harold was as keen as I was but it just wasn't going to happen.

Q. So was perhaps there a sense of resignation by this point?

A. Yes, as far as Harold was concerned, to be honest I felt on this and other things, he had thrown in the towel.

Q. How about on your part? Did you still think there should be a large-scale prospective study, including the follow-up of recipients?

A. Yes, I wasn't as familiar by any manner or means as Brian McClelland was of this whole area. I very much

tended to leave Brian to get on with it, a first class professor. So I wasn't familiar with this whole business that was going to catch us later, ie we have run out of time at this point.

So I would still in 1986, not aware at all of the Chiron development and so on, those sort of things, still felt we had a moral obligation in the United Kingdom to do a proper prospective study, and I had a view that rightly or wrongly part of the reason why we had never got down to it -- only part -- was we had never thought through properly how it would be done and who would be the best people to do it, and I can expand on that later. But, yes, I still believed in 1986 that's what we should do.

Q. A prospective study involving the follow-up of recipients?

A. Yes, very much so, yes.

Q. And what would your views have been at the time as to the practicability of such a study? Do you consider such a study would have been impracticable on the grounds of cost and huge sample size?

A. I don't and -- you need to take this with a pinch of salt because I'm not an expert, but I took a simple view about this, that if you looked at the people -- one of the fundamental problem of this trial was the follow-up

of patients in terms of had they been transfused, how much had they been transfused and so on and so forth. And if you looked at Scotland, we could get that data only from what we called the "eastern seaboard transfusion centres". Why? Because Aberdeen, Inverness, Dundee and Edinburgh all did crossmatching directly for patients.

Glasgow, that looked after 2.5 million of the Scottish population, didn't do any of this work at all, not even for Law Hospital, where they were based, and you needed then to look at who was doing that work in the West of Scotland, but more particularly in England, which was just like Glasgow.

The answer to that was it was haematologists running hospital blood banks, and I took a simple view that if you looked at randomised, controlled, double-blind trials in medicine at that time, the most outstanding group in the 70s and 80s were haematologists. They transformed, with the backing of the MRC, which is very important, and the government -- they transformed the management of leukaemia by doing these studies.

So there was a mindset for detailed, logistic, you know, the resources required for ongoing patient studies in haematology, and I think we didn't tumble to that. That's one of the reasons why I felt people like Harry

Zuckerman and even, if I may say, Howard Thomas, might declare, "It's far too expensive, it's just not possible". And my view was it was possible. The haematologists have demonstrated that in very difficult circumstances, particularly in, for instance, childhood leukaemia.

Q. We know that the decision at this meeting was to carry out a multi-centre study into donors, not into recipients. Do you regard that as being a mistake?

A. Oh, a total mistake, and in fact from my point of view -- and Brian knew this, it was more of the same. There was a little bit they were adding on. It was more of the same that had been done in Edinburgh, North London, Brian Dow's stuff in Glasgow and so on. And really the key bit that was missing was: was this clinically relevant?

Q. Did you make those views known to anyone at the time?

A. Oh, yes, Brian McClelland. We talked about it a lot, particularly, as we may go on later, when we got into this chaotic situation that developed in terms of Edinburgh pulling out of submitting a grant for this particular study; we discussed the situation like that.

Q. I think this working party was being chaired by Dr Gunson.

A. Yes.

Q. Did you make your views known to him directly?
A. Oh, yes. And I had the distinct impression that Harold shared my views that he was much closer, of course, to DHSS and he took the view that they would not budge, that they would use every instrument they could to avoid doing this sort of study.
Q. I see. Over the page, please. In paragraph 5 it's noted:

"There was some discussion of the cost of screening all donations, perhaps £8 million. I asked the chairman whether he would advise screening if it were free of cost. He said, no."

What would your position have been at that time, as in late 1986, if surrogate testing had been free of cost, or rather if the SHHD had provided the funds? Would you have been in favour of introducing surrogate screening?
A. I would have been very -- and all of us were very twitchy about this because we were very uncertain -- I think I went on before, the last session when I was with you, about my worry about Jack Gillon knocking on doors and all this sort of theatrical stuff. We were very worried about the other side and we desperately wanted to know: is all this worth it? Not just in terms of money but is the risk to these people getting

transfusion that great?

You know, there are -- people in this room are better on aspirin, and their doctors would be able to tell them now because we know what's the risk of fatal bleeding if you are on aspirin. There may be people on oral anticoagulants in this room and the doctors know and are able to judge the risk. We did not know the risk in relation to non-A non-B and that's a very serious problem.

So I would have -- even if it had cost -- I wouldn't have been happy with just going ahead and doing it. We eventually decided that we were going to be forced into this. The market was going and we had no control whatsoever. But that came later.

Q. So your position at the end of 1986 would have been more research, ideally involving follow-up of recipients, rather than simply going ahead to introduce surrogate testing at that stage?

A. Yes, it would.

Q. And then the final paragraph on this page states:

"The position explicitly reached at the meeting is to recommend research of no great significance or scientific interest because the prospect of research would serve to counter pressure from, for example, haemophiliacs and haemophilia directors to embark on an

indirect and largely ineffective form of screening, which would also lose us a certain amount of perfectly harmless blood."

Breaking that down a little, if you had been asked at the time, is the proposed research of no great significance or scientific interest, what would your response have been?

A. I would have agreed.

Q. The next part of it:

"The prospective research would serve to counter pressure from, for example, haemophiliacs and haemophilia directors ..."

Would you have agreed with that?

A. Not this research, no.

Q. No. And then the final part:

"... to embark on an indirect and largely ineffective form of screening ..."

Would you have agreed the screening was largely ineffective?

A. I would -- the "largely" is one I would be stumbling a little bit because I wasn't an expert, but I would say it was very crude. It was a surrogate test and I think you have had enough evidence and far more experts than I on that topic.

Q. And even on the best figures available, as in the

figures most pro-surrogate testing from America, the majority of infective donations would still slip through the net, I think?

A. Yes.

Q. Thank you.

THE CHAIRMAN: Can I ask you just a little bit, please, about the possibility of research into recipients?

You mentioned that the haematologists had a great deal of experience and you referred particularly to the treatment of leukaemia patients. Was the experience much wider than that, encompassing a whole range of cases in which people were treated with blood and blood products?

A. No, sir. Absolutely right. And when I talk about the leukaemics, it wasn't the blood transfusion that they were getting, although they desperately needed in these trials platelet support, it was the wonderful studies they did of three and four drugs. It was all about haemotherapy for these patients in different combinations.

THE CHAIRMAN: I see. So it wasn't that you had sort of pretreatment samples that provided a baseline that could be compared to what happened later; it was just that they had general experience?

A. Yes, and following up patients. For me then it was

remarkable. Nowadays I have a relative who has just had a simple knee operation over in Glasgow and every three months she gets phoned up by a research team and brought in for blood tests and so on. There is a whole culture there that wasn't readily in at the time. The haematologists had it.

THE CHAIRMAN: Thank you?

A. Thank you.

MR MACKENZIE: Thank you, sir.

The next document, please, moving on into December.

We now go to 3 March 1987, where the directors meet and recommend surrogate testing. This is [SGH0016653]. If we may go, please, to page 5, which is 6657, and letter (f) at the bottom of the page, we can see reference to the working party. Over the page, please, at the top of the page we see a reference to some commercial plasma collectors and non-profit blood collectors in the US had begun surrogate testing and that in Britain, the Haemophilia Society may adopt a position which put pressure on BPL to ensure surrogate testing was introduced. The directors discussed the options open to Scotland and agreed the following:

"To recommend to the SHHD that surrogate testing for NANB should be implemented with effect from 1 April 1988 as a national development requiring strictly new

funding."

To pause there, professor, what had changed between the end of 1986, where you said your view would not have been to recommend the introduction of surrogate testing, and really just over two months later, where the view is now to recommend such testing?

A. I think a number of things. One would be, to our amazement, Ian Fraser -- somewhere in the excellent papers that have been supplied to me from the Inquiry team -- Ian Fraser reports to me in a letter that the NBTS directors had discussed surrogate testing and were coming round to the view that one way or another, they were going to be caught and have to do it at some time in the not too distant future. That was a big turnaround and it's in the papers that I have got.

The other thing -- I mean, in previous statements I have told you about the vast number of international colleagues that I was in touch with. What I didn't tell you was there was an actual group of them -- I was on the editorial -- academic editorial board of Vox Sanguinis, which at that time was arguably one of the most prestigious blood transfusion international journals, and we met every January/February in the intervening days there between the two months -- every year at a board meeting in Basel.

There I would meet Jussi Leikola, Henk Reesinck, who was Pim van Aken's bright microbiologist and so on, Alfred Hassig, a whole group of people on the editorial board, two of whom were also American. One was from Sydney, Australia. They were a pretty interesting bunch. We used to dispatch the business quite quickly, have a very good dinner and then stay for another day for general discussions and so on in terms of the science and so on, and where we thought we ought to be going.

These were opportunities for immensely important discussions for me, picking up what was going on. What I can say is -- and I'm absolutely certain about this -- is that that particular January/February 1987, one of the things that I was buzzing about for the obvious reasons that you ... asking them all about non-A non-B and surrogate testing. And I remember very vividly, and I don't know if there are any records, that Henk Reesinck, who was from the Netherlands, Pim van Aken's lab, he was absolutely sure that they were going to be starting surrogate testing some time in 1988.

I have no idea -- Pim will tell us -- I can't remember now whether that actually happened but it was all -- the Americans will tell it, "We are off", "We are

going", "Okay", and other people that I was meeting saying, "It's all happening".

So in that period you have asked what changed me, I began to get the jitters that once again in the UK we had gone to sleep, we were off the ball, and I felt that I had a duty as national director to advise my colleagues that we should get in an application for money in the event -- knowing that in the event of the Department of Health saying, "Yes, okay, go," at least the budget was there to get down to the detailed difficulties of doing it.

Q. What were the reasons at the time this recommendation was made for making the recommendation?

A. The reasons were that the rest of the world seemed to be walking in that direction.

Q. And --

A. And associated(?) that emerged, the product liability and the whole question of patient safety.

Q. Yes. How was it envisaged, this recommendation would be taken forward by the SNBTS?

A. Well, the traditional way that we have done would be to put it into (a) we would have directors' meeting, where we were debating it, and Home and Health Department officials were us. They rarely -- including in Dr Bert Bell's time, they rarely engaged in the actual

discussions but what they did was talk to me in great detail before or after a meeting on a particular topic.

So we felt by that way we were signalling to the medical team in the Scottish Office about the particular problem that we needed resolving.

The other method, which was in parallel, was going through our PES submissions, public expenditure survey submissions on an annual -- I think on one occasion we were asked to do it for five years, looking at it, that that would go into the department and we thought that would generate discussion and debate and so on and so forth, and we would get the thing going.

What we were concerned about is we didn't seem to be able to get it going in the transfusion -- post-transfusion hepatitis working parties in -- Harold was alerting to us in interactions with the DHSS. What we were doing was saying, "We have a responsibility here. Let's lead off and get the debate going," and the way we can get this going that we felt most comfortable with was a suggestion that we need some money to do that and that would, we felt, trigger off debate.

Q. So the recommendation would be taken forward informally perhaps by the fact that Dr Forrester attended the meeting and perhaps --

A. Informally then but then later, very formally tests

[sic] of submissions.

Q. You see, professor, I think to the outsider, on an issue which was clearly controversial at the time, one would, I think, assume it would be for SNBTS to make the case for surrogate testing and to perhaps draft some sort of detailed, fully reasoned, vouched case in favour of such testing to go to the SHHD, because we know that the CSA were not really a decision-making or policy-making body.

We know that the SHHD medical officers were essentially generalists and we know that the minister obviously had no medical qualifications. So it does seem to the outsider that really, if the SNBTS were serious about this recommendation, then really the onus was on the SNBTS to formally make the case by some form of detailed, reasoned, vouched submission. Is that correct?

A. Yes, the problem that we had was that the case was totally weak because the Department of Health -- the departments of health, consistently blocked the acquisition of patient data. Faced with that situation, we were left with other countries, who were moving in that direction. Our own licensing authority was now recognising that product -- this is plasma products -- that ALT testing was a valid improvement on safety.

So there was this drift going on that was a reality

that we were attempting to address and bring to the attention --

Q. I fully understand the lack of data in the UK because of a lack of a prospective study involving patients, but it surely must have been an easy enough task to start with a literature review, to look at the main textbooks, the main papers in the area, and then to make some sort of prediction perhaps of the benefits of testing and maybe to set out all of the pros and cons and to factor in other issues like product liability and what was happening elsewhere in the world.

It just seems to me that such a document was never produced and I really wonder, ought it to have been?

A. I think, looking back, yes, yes. I think one might argue that Harold Gunson's very interesting paper to the hepatitis working party, which was put in to DHSS and so on and John, John Forrester was well aware of.

But, yes, I mean, I personally then must stand guilty that we didn't do enough. I think the only defence, which I think was a bit pathetic, we were rather busy doing many other things as well.

Q. Yes. Thank you.

Then just moving on, if I may, in the chronology to look at what happened -- I should just pause and ask this question. We looked at the minutes of the

directors' meeting on 9 October 1986, where the agreement was that the working party on transfusion-associated hepatitis was the most appropriate body to pursue the issue of implementing surrogate testing and the recommendation reached at the March meeting, is that inconsistent with what had been agreed at the October meeting, that the working party was the most appropriate body to take forward the issue of surrogate testing?

A. I think only inconsistent in the sense that we reached a point where it was evident to me, and I think Brian McClelland, that that working party yet again -- it was nobody's fault -- was not going to go anywhere.

Q. I understand. Could I then, please, move on to the next document? We are now moving on to look at one or two documents on product liability and the first one, please, is [SGH00050149]. This is an SHHD internal minute from Graham Calder, who I think was the chief pharmaceutical officer?

A. Yes.

Q. Of 13 February 1987, to Dr Scott and copied to others. The heading is:

"Consumer Protection Bill ('product liability')."

He states:

"Early in December last, colleagues informed me that

Dr Cash was campaigning for the removal of blood and blood products from the requirements of part 1 of the above bill on the basis that if they were not and some defect in such products caused damage to a patient, the BTS/CSA would have 'no defence' and be liable for large compensation awards."

So two observations, professor: firstly, it seems to be suggesting here that you were arguing to remove blood and blood products from the ambit of this strict liability legislation. Is that correct?

A. Yes, I think I must have been, yes.

Q. Do you have a recollection of that?

A. To be honest, no.

Q. And the second point that arises, it seems the basis for your reasoning was that if they were not so removed, and some defect in such products caused damage to a patient, the State would have no defence, and I think in a way that's a premonition because I think that following the judgment of Mr Justice Burton in 2001, that's essentially what he ended up holding?

A. Yes, absolutely and it wasn't appealed.

Q. I'm sorry?

A. And it wasn't appealed either.

Q. Indeed. In the second paragraph we see Mr Calder stating:

"We raised this matter with the DTI and I attach their reply."

I think we looked at that at the previous session. I'll give the reference anyway, in case we didn't. It's [SGH0050155].

The next document, please, is [SGH0050140]. In short the position of DTI was to refuse your suggestion that blood and blood products be removed from the ambit of the legislation and this is a letter, a memo, of 13 March 1987 from Hugh Morison at the SHHD to Mr Donald, the general manager of the CSA, on the question of product liability.

We can see what is said but I think essentially Mr Morison is passing on to Mr Donald the word they have received back from the DTI, firstly that blood and blood products will not be removed from the legislation and secondly that there may be a defence based on state-of-the-art or scientific knowledge. We don't have to, I think, look at that any more.

This is fast forwarding a little but if we could then, please, go to [SGH0050054] and go to Bellshill Maternity Hospital, perhaps slightly surprising, but Mr Gold of the blood transfusion department there on 5 March 1988 -- so I have jumped a year -- wrote to the DHSS stating:

"I understand that you have published a booklet entitled 'Guide to the Consumer Protection Act 1987: product liability and safety provisions'. Could you be kind enough to send me a copy of this and any other information regarding the Act, pertaining to blood transfusion practice."

We can see a handwritten note:

"Passed to us by DHSS, with attached PP."

If we go to the next document, we can see that the DHSS sent Mr Gold's letter to the SHHD. If we go, please, to [SGH00050049]. We can see a letter of 25 April 1988 from Miss Glancy at the SHHD to Mr Gold on the question of the Consumer Protection Act 1987. We can see:

"Your letter of 5 April 1988 to the DHSS has been passed to this department for reply. I enclose a copy of the Department of Trade and Industry booklet referred to, together with a copy of a departmental circular giving general guidance on product liability."

Then the next part:

"It is not proposed to issue detailed guidance on the possible effects of the Act upon blood transfusion practice."

There is then a reference at the end to a possible defence based on scientific and technical knowledge. So

that appears, on the face of it, to have been the position of the SHHD and indeed the DHSS at that point, that it wasn't proposed to issue detailed guidance on the possible effects of the Act upon blood transfusion practice.

Does that accord with your recollection or do you recall seeking or receiving any detailed guidance on the Act and how it may impact upon blood transfusion practice?

A. No, I don't recall, sir, but if there are documents that contradict that, I'll accept that, but I have no recollection other than what you have already shown me in terms of the generality.

Q. Thank you.

Now, we leave the question of product liability to one side again and return to the central question of surrogate testing. The next document, please, is [SGH0016628]. We see a letter of 21 April 1987. It's from Dr Gunson to yourself and he has now received the minutes of the directors' meeting of 3 March 1987, including the recommendation to introduce surrogate testing. In the final paragraph of page 1 of this letter, Dr Gunson states that:

"I was further dismayed ..."

Et cetera:

"This decision seems to go against the proposal in paragraph 3 on page 2 of the study, to which I thought the SNBTS was a party ..."

Et cetera. Over the page, please. The last sentence, the first paragraph:

"Also I recall your telling me that Scotland would not take unilateral action in this matter without consultation with RTDs in England and Wales."

Before I ask you a question, go to your response in turn, please. It's [SGH0016627]. You are replying to Dr Gunson on 27 April 1987. In paragraph 1 you state:

"I don't think you should take the content of minute 3(f), with regard to the introduction of surrogate testing for NANB, too seriously at this stage. I think it would be appropriate to say that it was a decision made with our PESC submission in mind and, I suspect, a view that we have often expressed, that the results of the UK study are unlikely to have a material effect on future operational practice."

What did you mean by that paragraph?

A. I beg your pardon, could you repeat that again? I was looking at something else.

Q. Take a minute to read paragraph 1 for yourself.

A. Yes, thank you.

Q. And then tell us what did you mean by that paragraph.

(Pause)

A. I think I was conveying something that Harold actually knew from our conversations, that whatever submission we made, and however we thought we may go off on our own, we couldn't and wouldn't, simply because we would need significant funding and this would have to be approved by the Scottish Home and Health Department.

So any panic that he had in seeing these things, he could relax because this would be all part of the UK exercise, hence reference to the PESC submission.

I think I was also explaining to him, which he knew very well, that we didn't really think the currently floated new study of the transfusion hepatitis working party would materially affect any of the ultimate outcomes in terms of practice, if we in fact implemented it all.

That's really all.

Q. When you said you couldn't or wouldn't go off on your own, dealing with each separately: to say you couldn't go off on your own, I can quite understand you would need funding before you could carry out such testing. Did you also consider you needed the approval of the SHHD and perhaps even the minister before introducing such testing?

A. Absolutely, and I think there are many other documents, sir, if I may say so, that the Inquiry has, that confirm

that. That was the root, fundamental issue, the ultimate people responsible were ministers and senior civil servants, and until they press the button -- and the pressing of the button for them was about money. For us it was the operational.

Q. You also said you wouldn't go off on your own. If funding --

A. We wouldn't because we couldn't.

Q. Okay, but let me ask you this hypothetical question: if funding and approval had been in place from the SHHD, would you have introduced surrogate screening unilaterally, even if England didn't?

A. For me that -- forgive me, I'm sure you will understand -- is a totally hypothetical question. I couldn't have ever imagined us being allowed to go off on our own. If you are saying, "Just imagine you were," then we would, because we were being instructed so to do by ministers.

Q. Let me ask this way: what were the reasons for seeking to act in unison with England on, for example, introducing surrogate testing together?

A. Well, the reasons -- and we will come to this again, I have no doubt, in C4.

I mean, I have got my own personal reasons and they happen to fit in with the political agenda and I used to

get quite concerned as a national director, when I heard about, for instance, the Queensland people going off unilaterally and not telling their other Australian colleagues that they were doing surrogate testing and thereby placing their other colleagues in a pretty vulnerable position legally and so on and so forth.

I felt that that was very important just the straight legal -- I also have this passion about teamwork, if I may say so, that we all should be working together if we can, as a team, and for any one centre or groups of centres to go off and do their own thing could in the end be very damaging, and I think we had a number of examples of that.

Q. Were there any medical reasons for seeking to introduce testing together, rather than separately?

A. Medical reasons?

Q. Yes, to do, for example, with patient safety.

A. I think, if -- I would be very worried if a particular centre went off, say -- or even Scotland went off and other colleagues were not aware of this because if they knew that this was happening, then they could consider that independently themselves, their own patch.

So the medical reasons would be that you weren't sharing with other people what you were doing to allow them to reprioritise their own priorities in terms of

patient safety. I don't know whether that makes sense but ...

Q. In paragraph 1, the first sentence, professor, when you say:

"I don't think you should take the content of minute 3(f) ... too seriously at this stage."

How serious was the recommendation?

A. On a scale of what? When you ask that question -- it was serious in the sense we were trying to alert the people, the minister, ultimately, that things were happening outside the UK that we believed -- we were not certain -- could have an influence upon us; and that concept was very serious indeed.

Q. How --

A. And I have already explained why we did it that way.

Q. Why?

A. Why?

Q. Why did you do it that way?

A. Because it was using PESC, using our directors' meeting, where we had these communications. This was a way -- this was the only way we could alert, we felt, ministers to this difficulty. We had tried other routes in the early 80s, a little further on, and had failed.

Q. When you said to Dr Gunson that he shouldn't take the content of the minute too seriously -- so he shouldn't

take that recommendation too seriously -- how seriously should SHHD have taken that recommendation?

A. Very seriously. What I'm meaning for him: do not take it seriously in a sense you are going to wake up tomorrow morning and the Scots are testing and you are caught. That is what I was signalling to Harold.

Q. But as regards SHHD, you were alerting them to something which may be on the horizon, it may in fact be unstoppable and there may be a need to make provision for funding for it.

A. Absolutely. We were later to discover that Brian McClelland's opinion was doing a big study -- we were too late. The whole world was moving on and we accepted that, perhaps too easily, but we accepted that.

Q. I suppose, just finally on this point, what I'm still just a little unclear about -- I can quite see on the one hand why you would wish to alert the SHHD to a possible need for funding a new screening test which may be required for perhaps a variety of reasons. I can see the need to alert the body providing the funding. What I'm still not quite clear about is just how strongly you and the directors felt at the time that surrogate testing should be introduced?

A. Forgive me, I'm struggling here. I feel I'm repeating myself but we felt very strongly that we did not wish to

introduce it because we didn't have clear evidence that the clinical interface -- as to what value that be and what risk -- and quantitating the risk.

Now, that -- we had tried very hard, and it was the Scots that had tried the hardest to get into a position so that on a UK basis you could actually look at what were the pros and cons very carefully and enter into some very serious considered debate, which we never did.

Faced with that position, I'm sure I'm repeating my -- we were conscious that other people were moving ahead and moreover our own UK licensing authority were recognising that for plasma products, that was in fact the significant safety advantage. And so we felt we were drifting, and the effort we made was one last effort to stop the drift and get people to sit down and seriously talk about it.

Q. Was your position at the time to SHHD, "We don't think surrogate testing should be introduced but we think we may have to"?

A. Yes, absolutely. I think our letter of "inescapable", or whatever it is, in The Lancet, conveys that, I thought, regret, as well as, we felt, the compulsion.

Q. Because the wording of the minute of 3 March -- it does state:

"To recommend to the SHHD that surrogate testing

should be implemented."

But is your position really it was "may require to be implemented", rather than "should"?

A. Yes, forgive me, I didn't record -- I was not the minute taker and dancing on a pinhead of a word, you know, when one is not in control -- yes, absolutely, very content with that.

THE CHAIRMAN: I'm not quite sure about it. The background to the debate was whether you could put a line in your PESC application. Did that not need a decision that the expenditure was necessary rather than just some hypothetical possibility?

A. Yes, but there are -- I need notice of this, sir. There are many occasions, when using PESC, we used it as a method of floating to our colleagues in the department ideas about various different things.

THE CHAIRMAN: Even where you really didn't want the thing at all?

A. Yes, I would need notice, sir -- yes, I think what we want and what we are being forced into by dint of other people's practice doesn't, sometimes, match. If I may say, I can give you an excellent example. We may have lost the fight there, but that was high purity Factor VIII, and I think you will, I'm sure, know that a number of us, including Peter Foster, initially were

very concerned that we were dragged into that and very reluctant, but ultimately we were asking for money to develop a higher purity Factor VIII and we were very uncertain that in fact the clinical reasons and rationale for this were well based. In 2011 it is very clear we were absolutely right.

MR MACKENZIE: Thank you.

Continuing with this, please, professor, the next document is [SNB0040672]. You will see these are the minutes of a meeting of an extra meeting of the coordinating group of the SNBTS on 16 June 1987. If we go to page 3, please, under paragraph 5 we see reference to:

"Dr Brian McClelland tabled a draft letter to The Lancet in expansion of the SNBTS view of the need to commence surrogate marker screening of blood donations for NANB in the context of product liability and of competition from commercial producers ... Certain SNBTS staff had already written to The Lancet that surrogate testing was not justified on scientific grounds and the directors acknowledged this."

And a reference then to product liability again afterwards.

So was your view at the time, professor, that surrogate testing was not justified on scientific

grounds?

A. I think I have already said that we didn't have the science -- we had not done the science to actually say, when we now have the science, that this is in fact a significant or insignificant risk versus the burdens it will place on finance of the NHS, actual NHS services, looking after hundreds of surrogate tested positive donors that we were handing on to hepatologists. Huge problems. We had not actually, as I have said earlier, done that. Yes, that's what I think I mean.

Q. There is a reference to "not justified on scientific grounds". Does that bring us back to lack of UK data?

A. Absolutely, sir, thank you.

Q. I understand. Then the next item, please, is [SNB0083507], I think a copy of the letter to The Lancet, but the directors had been sent to Dr Fraser, who replied to you on 2 July 1987. Half way through paragraph 1 he states:

"I think you will find national transfusion directors in England and Wales will not be very pleased reading this letter."

Then in the last two sentences he states:

"We have all managed to work together to introduce HIV antibody testing on the same date. I think it's

only a shame we have not been able to have the same type of discussion to agree whether or not to implement ALT and/or core antibody testing in the UK."

We will come shortly to your response to that letter but if we could then, please, go to the letter in The Lancet, [LIT0010328], of 4 July 1987.

Firstly, professor, we see the heading, "Testing blood donors for non-A non-B Hepatitis: irrational perhaps but unescapable."

Was that title chosen by you or by the editor of the publication?

A. Almost certainly the latter, sir.

Q. Yes. Would you have agreed with that summary of your position, that your position was irrational?

A. I have to be very careful. I have a problem with the English language when I speak to lawyers. We have had this -- and I do apologise for that.

Q. Let me put it this way, professor --

A. Yes, I mean, I would need somebody to remind me what the word "irrational" --

Q. Put it this way, as lawyers I think we are used to the word "irrational" being "lacking logic", "without any evidence", and almost an arbitrary decision. Would you have agreed with your position as being illogical, lacking in evidence, arbitrary?

A. Yes, I think I would buy that, sir, yes.
Q. How about the American data showing on the face of it a correlation between surrogate markers and donors and increased incidence of post-transfusion hepatitis in recipients? Is that not something to go on, albeit it has certain limitations?
A. Yes, yes. But I think the general view, supported by the Council of Europe -- and Jussi Leikola and Pim were there -- is that each country needs to give serious consideration to looking carefully at what this means in its own population.
Q. So perhaps when the word "irrational" is used, we are coming back to the lack of scientific data in the UK?
A. Yes, yes.
Q. Just the final question on this letter, professor, and I think my final question for the day: we can see a number of reasons set out why the directors take the view that surrogate testing is inescapable but I think nowhere do we really see an argument based on patient safety or increasing the safety of blood. To what extent, if at all, was patient safety a factor in your thinking at this time?
A. I find that an extraordinarily interesting question. We set out in 1980 with patient safety. We set out, not -- the Scots set out and took it down south, with patient

safety as the overriding -- we grinded on and on and on for years. By now we are looking -- you know, this doesn't mean it's not here but -- I'm reading:

"If harm should come to a patient ..."

The producer is going to be liable. Are we then saying, if that's the situation -- and the Burton thing made it pretty clear that's what it was -- then surely that's a reason? If we can't get through on patient safety, can we get through on, if you harm a patient, you will be automatically accused of not trying hard enough. So the notion that behind all this somehow the SNBTS medics had walked away from patients, if that's what you are implying, I find that really quite difficult --

Q. No --

A. -- when I think of the heated debates we had.

Q. The point is a very simple one, professor: to someone reading this letter and asking themselves why do the directors think surrogate testing is inescapable, one doesn't see from this letter a reference to surrogate testing increasing patient safety. There are other reasons given but not patient safety at the heart of it, and what I wonder is, did that go without saying that was why the directors --

A. Yes, I think so, and arguably this was the end of

a process, to some extent the end of a process, that had been going on for years. I don't know whether you have asked Brian, who -- this is Brian's letter.

Q. Yes, that was Dr McClelland's position, I think, that essentially it went without saying.

A. I cannot imagine that Brian McClelland hadn't, right from the beginning, said it's about patient safety.

Q. I should say, just as a point of detail, if we look at the bottom of the right-hand column, item 2, there is a reference to patient safety in the context of pooled plasma products, and it may be that surrogate testing would slightly improve the safety of those products, although for my part I can't quite see the logic of that, but certainly in terms of the transfusion of blood and blood components, there is no reference in the letter to increasing patient safety.

A. I have to say that if you have read it and you feel that and you feel that's materially relevant, I accept that and it's -- we could have done better.

Q. Yes.

THE CHAIRMAN: Could we move to the next page, just so that we can see the whole letter?

MR MACKENZIE: Yes, we can go over the page as well. To read the sentence in total, it states on the previous page:

"In the meantime, even if surrogate marker screening would only modestly reduce the level of infectivity in these products ..."

That's a reference to the pooled plasma products:

"... many would argue that some improvement is better than none."

So there is a reference to patient safety in the sense of plasma products but, if anything, that seems the wrong argument because perhaps plasma products with surrogate testing wouldn't improve patient safety, but for single blood components it perhaps would?

A. I could argue, but I don't wish to, that if we had put in plasma products, that's the least -- you are not going to get much benefit, relatively speaking, in plasma products. But we put that in: Even that is better than none, and we would say -- the evidence that it could be of benefit to the single platelet concentrate is greater than that.

Q. So finally, should we, when reading this letter, take it as read, as implied --

A. I would hope so, sir, yes.

Q. -- that patient safety was really at the heart of surrogate testing?

A. Absolutely, yes.

Q. Thank you. Sir, that may be an appropriate place to

stop for today.

THE CHAIRMAN: Where have we reached?

MR MACKENZIE: We have reached most of the way through my examination of Professor Cash on C2. Tomorrow we have Professor Leikola speaking on both the C2 and C4. Professor Cash is back with us on Thursday, when I would hope to finish off C2 and Ms Dunlop can finish off the professor on C4:

THE CHAIRMAN: I hope "finish off the professor" is not prophetic.

A. Close to the mark, sir.

THE CHAIRMAN: We hope that will be Professor Cash's last visit or is he coming back in the New Year?

MR MACKENZIE: I think that's it.

THE CHAIRMAN: I will keep my comments until then.

(4.36 pm)

(The Inquiry adjourned until 9.30 am the following day)

I N D E X