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

MS DUNLOP: Thank you, sir.

Good morning, Professor Cash.

A. Good morning, ma'am.

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

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

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

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

We have looked at events in the immediate aftermath of that. We have looked at Dr Mitchell's letter to you, reporting on what had happened, and you picking up that we were a little closer to D-Day, is, I think, the way you put it. You were off the blocks very quickly, writing to the directors around Scotland and asking when they individually could begin testing. We have looked at the reply, which was September, on behalf of Edinburgh and Southeast Scotland by Dr Gillon, giving
a possible commencement date of 25 February 1991.

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

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

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

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

He says he thinks it would take perhaps two months for the counselling arrangements to be established. Then which kit? The Ortho kit, he is saying. Then can we just look over on to the next page, please?
Costings. So in very rough terms, it appears to be along the same lines as the Edinburgh reply, talking about maybe a couple of months. So it doesn't look from this letter as though they were suggesting that they would need anything beyond about the end of February, as

A. Yes, in terms of testing, testing.

Q. Yes.

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

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

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

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

Q. Fine.

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

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

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

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

We have seen already that around about the end of January 1991 you were suggesting May or June, and it seems that around about early to mid-February, a date of 1 July was in fact selected for the commencement of screening in the United Kingdom. It certainly appears from correspondence of that period that you were
operating on that basis and, for example -- and this is
not a letter we need to go to -- but one of your
letters, [SNB0051679], and some of the other material in
the extended narrative, I think, shows you personally
operating with the 1 July in your mind.

A. As a working --

Q. Yes.

A. Yes.

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

A. That is correct, the weekend.

Q. So he obviously has your home number?

A. Oh, yes, he stayed many times.

Q. Right. So he phones you at home?

A. Yes.

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

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

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

A. Absolutely.
Q. Right. So can you --
A. Let me say, as best as I can remember --
Q. Fine.
A. -- the first was a very acrimonious and distressing
   phone call because for me, out of the blue -- and
   I didn't know anything about this -- I think
   Ruthven Mitchell did actually -- at that time on that
   Saturday I didn't know anything about the fact that the
   department, London, had made a decision that there would
   be yet another field trial on the second generation
   kits. My understanding was, from Ruthven Mitchell
   originally -- and this is a matter of record -- that the
   second generation evaluation would be fitted in after we
   had started on July -- without any problem whatsoever.
   But the message that Harold Gunson had on that Saturday
   was that the department had decided this and I began to
   say, "What do you mean the department; you mean the
   advisory committee?" "No, the indemnity."
   And I instantly realised that we would be -- another
   month would go by while this kit -- before we started
   again and I objected, and he made it very clear to me
   that the departments -- and I should say he kept
   reiterating that the Scottish Office -- I mean, he said
   this -- I had no idea whether it was correct -- were
   party to this decision.
Q. I want to stop you there, if I may, and try to separate out some of the elements in what you are saying. You, I think, are telling us that you knew there was to be an evaluation of the second generation kits but you thought it would happen after testing had begun. Is that right?

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

That was my understanding of Ruthven's communication.

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

A. Yes.

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

A. I did.

Q. Using first generation kits?

A. I did.

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

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

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

Q. Yes, right.

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

Q. What about --

A. That's when I stuck.

Q. What about another position? What about the idea that there was to be an evaluation of the second generation kits but that that would be carried out expeditiously and testing would still begin on 1 July?
A. Whether that was technically -- it's a long time ago now. Whether that was technically possible, I don't know, but Harold was already talking -- this is where we ran into a very serious problem, he and I. He was already talking that this must delay the start date of July.

Q. Right.

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

At the time, that was not apparent either to me or, I think, to Harold. What was clear to me, he was making it very clear to me, that the consequences of this instruction from the department would be there would be a delay and we would start after July some time. I don't recall in the conversations on that very heated weekend whether the September was -- I honestly don't recall.

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

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

Q. All right.

A. -- to the meeting on Monday and comply with this, and he knew what that meant because in 1987 -- and he was very
much involved in this -- I went public as to my great concern about the transfusion services in England and Wales. And he was clearly very anxious, not only him but other people, to get me on board.

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

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

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

And if you look -- I'm sure you have done this -- at the minutes of some of these meetings, there was an illusion -- because there was no evidence of this -- that the problem we had that there was soon going to be no first generation kits available and there would only be second generation -- and I argued that because the
other countries were coming in, that had to be nonsense.

It was not in the interests of the companies to do that, simply to withdraw first generation kits.

Q. Right.

A. We knew that that was just not happening.

Q. We are still in the first conversation.

A. Yes.

Q. And I'm inferring from what you are saying that you were not making an objection to evaluating the second generation kits --

A. No, no.

Q. -- per se?

A. No, no.

Q. Indeed, that would presumably have been inevitable?

A. That would have been our duty.

Q. It was just that you didn't accept that that had to be completed before testing could begin?

A. That's correct.

Q. Is that right? Right. Second conversation, what's that? Does he phone you back, do you phone him?

I should ask you, how does the first conversation end?

A. Telephone slammed down.

Q. By?

A. Well, the problem was that when I said what I have just told you I said to him, Harold lost the plot -- we
became friends again later. He lost the plot and gave me a short sharp lecture on the amount of destruction that I personally had done to the UK blood transfusion services, in association with all the objections and problems, the BMJ article and so on. And I likewise lost the plot and gave poor old Harold a short lecture on the deficiencies of his thing. And the whole thing just deteriorated and the telephones went down.

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

Q. All right.
A. The next call you have asked for was from Harold again.

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

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

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

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

A. Stand up and, if necessary, go public and say, "We are not going down this track, we should do what all these other countries are doing and start implementing first
1 generation tests”.
2 Q. Right and the "we" you are speaking about is the UK?
3 A. Well, yes, but it would have been me making the
4 objection and making the point and trying to turn them.
5 Q. Was it all or nothing? Was it that the UK would move to
6 a position where the evaluation of the second generation
7 kits had to be completed before testing began, versus
8 your alternative of sticking with the 1 July date for
9 the whole UK and fitting in the comparative study
10 thereafter? Were those the only two possibilities or
11 was there a possibility in your mind of saying,
12 "Scotland won't sign up to that"?
13 A. To be honest -- and we will be coming to this with the
14 whole McIntosh thing, I can't honestly remember. What
15 I was convinced of at the time, and remained for a very
16 long time, was that whatever we did would require
17 Scottish ministers to agree to. That had been made very
18 plain to me during the HIV and during the Hepatitis C
19 from Archie McIntyre.
20 I could not see -- I mean, I know I have said this
21 and I believed it -- that ultimately the Scottish
22 ministers could have done their own thing if they had
23 wished, but I never was convinced that they would go
24 alone and go outside the UK position. That wouldn't
25 have stopped us saying to the UK, the advisory
committee, "Look, there is no need for us to go down this track."

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

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

A. Yes.

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

A. Yes.

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

A. I'm glad you say that because when I finally got the papers from Harold, which was a communication from the Department of Health, I think -- some procurement directorate, I think it was -- there in fact -- announcing there would be a second generation study and
so on and so on and so forth, copied Ruthven Mitchell.
I was totally unaware of this, completely.

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

Q. We are going to look at it.
A. Oh, excellent.
Q. You won't be disappointed.
A. Yes.

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

Q. And that Glasgow would be one of the centres?
A. Yes, absolutely.

Q. So does the "onboard" comment extend to Dr Mitchell
knowing that there would be this postponement from July
to September?
A. I really wouldn't know that, to be fair to Ruthven.
Q. Right, yes.
A. That's very important.

Q. Okay. So what is the underlying reason for this position that Dr Gunson is advancing to you? "We have to change. We have to have September as the date. The second generation evaluation must be completed." What is the underlying reason for this position?
A. That was the subject of the calm, second conversation I had with him, and it was there that again it emerged -- it wasn't the first time -- that there was a fundamental problem that they had south of the border of funding and agreeing that funding system. And by then I was quite certain in my mind, as I look back, for reasons that I can't recall in detail, we knew we were not going to have that problem. We were not in the cross-charging mode. And somebody had let us know that in the event of a decision -- whether it was Mr Tucker, I don't recall -- a decision being made to go... the funding in some way would be found for us.

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

Q. Last time you were here, you used the term "device".
A. Yes.
Q. And I do want to be careful about this because it connotes deviousness and a lack of frankness, possibly, with the public, with other parties involved in these discussions and so on. From where did you get the impression that there was a device being employed?

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

Q. Right.

A. I have seen no papers that confirm that but I discussed that with Harold and I recall he didn't demur that that was a possibility. I don't think he actually knew for certain. He was just carrying out instructions. But I will tell you who will know: Graham Hart moved from London to become secretary of the Scottish Office at this very time, and, as I'm sure you are aware -- I was aware of this -- and advised George Tucker that this was a unique opportunity that we had. Mr Hart --
Graham Hart was heavily into this whole area of transfusion down in the south of England. So we had somebody in St Andrew's House that we could have walked into -- and he could have easily maybe told us but networked and give us the facts.

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

Q. So is it fair to take from that that Dr Gunson didn't say to you in terms, "The bottom line, John, is you have to go along with this simply because we don't have the money and time"?
A. No, he did not say that.

Q. Right.
A. He did not say that. I eventually capitulate.

Q. Even though, on your account he is unable to give you a good reason why this postponement has to happen?
A. I don't know what you mean by "good reason". Yes, okay, I'm not sure it was very good or bad. I just felt that we were getting -- this emerges later. We were getting sucked into a delay phenomenon and the problems were south of the border.

Q. Right. And you tell us that all along, by which I really mean since the summer of 1989, when this topic began to be discussed in earnest --
A. Yes.
Q. -- your understanding had been that the final endorsement or authorisation would come from the Scottish Health Minister. So you say that you thought that SHHD were involved in this instruction and your source of information on that was Dr Gunson?
A. Absolutely right.
Q. So what did he say to you about their involvement?
A. Nothing more than that they were on board. I mean, I don't remember the details now. This is a telephone conversation.
Q. So I would have to ask the same question as I asked about Dr Mitchell: onboard with the carrying out of an evaluation of second generation tests or onboard with the postponement from July to September?
A. I wouldn't know.
Q. Right. So was that part of the conversation a bit vague?
A. Looking back, it must have been. It was certainly very heated, yes.
Q. Right. Just following that theme -- and I think we should look at your statement as well to see how it's reflected there -- I want to ask you one our two questions about SHHD and your role.
Your statement on C4, which we should probably have
opened up right at the beginning, but it's [PEN0172094].

We are around about paragraph 33. In fact that is page 2104. Right. If we look firstly at the answer, which is that underlined paragraph under 33, you say in your answer:

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

And you also say that:

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

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

A. Well --

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

A. I do understand exactly where you are trying to go. You are asking me, did the department go along with
postponement, and I would have to say that there was
no -- I'm not absolutely certain that's what Harold told
me. Did I assume in all the flak that was flying around
that when I said, "SHHD are onboard with this
development", I must have assumed that they had taken
in -- I mean, these guys are very intelligent -- they
had taken on board all that was involved. You are, as
an excellent lawyer, nitpicking, quite rightly, in the
context of did it mean the second thing, and I'm
absolutely certain that on the day I must have assumed
that it did. I'm simply saying now that you are making
a fair point and I can't be absolutely certain when
pursued about it. I don't know whether that helps.
Q. If I don't make it, others will, so I'm anxious to try
to achieve as much clarity as is possible.
A. Yes.
Q. Of course, we bear in mind, as we always do, that this
is all a long time ago. We also bear in mind that we
may never achieve a complete understanding of who said
what, and who understood what. And not the least of our
difficulties in that regard is that Dr Gunson is no
longer with us.
A. Indeed, this has been the big disaster for me.
Q. Right. Just staying with that paragraph there that we
see on the screen under question 33, this document you
refer to, dated 21 February, we should look at.

A. Yes.

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

A. I think so, yes.

Q. It's in your list of references?

A. It's my best recollection, yes.

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

A. That's right.

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

"... is not undertaking to examine the samples from all three centres, at least at this juncture.
I confirmed with Dr Gunson that we wish to only use
North London BTS-sourced donors."

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

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

Q. Right. When was it sent to you?

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

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

A. No, no, no.

Q. Right.

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

Q. Can we just flip back to the statement, please? We need
to keep the statement open, I should say. We are going
to keep referring back to it. I am going to suggest to
you, Professor Cash, that there is actually better
evidence to contradict, with respect, your assertion that the ACVSB meeting of 25 February reversed a decision of November 1990 to start testing in July 1991, and of course, the first thing to notice about that assertion is that, as I said in my introductory remarks this morning, in November 1990, ACVSB were talking about April 1991, they weren't talking about July 1991. So that's the first snag, I think, with that first sentence you have there.

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

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

"... all sorts of problems still, for example, exact choice of test, supplies of this, confirmatory testing arrangements, training et cetera, et cetera. There remains real concern about how the necessary money will
get into the system. The starting date he wanted to try on me was 1 July: would this be too late? My initial reaction was this would be okay. Attempting to go earlier would mean some stragglers would be left behind, the slight delay increased the chance of the finance being sorted out, and with diversion of RTC resources to Gulf-related activities a short time date might not be feasible ..."

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

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

Q. Yes.

A. Again, which is interesting but, yes.

Q. If we just look on through the extended narrative into the next paragraph. Not the beginning of 253 but on to the next page, if we could, please. This does seem to be around that reference to 13 February. We have already looked at this too, a slightly baffling,
secretive conversation. Mrs Falconer of SHHD has spoken
to Elaine Webb in DHSS and:
   "Unofficially it is hoped to commence 1 July."
   But that is to be confidential and SNBTS are not to
know.
   Well, we actually asked Dr McClelland why that would
have to remain secret from SNBTS, which he was unable to
explain. Anyway, let's not get distracted into
speculating about that. The important feature of all of
this material is that the date people are working
towards seems to be 1 July.

A. That's correct.

Q. In the next paragraph indeed, we see Dr Gunson writing
to his directors of 15 February advising formally -- and
with a commitment -- that the date would be 1 July.
Then you are writing the same date. So there are
letters crossing. You are writing to him, thinking
ahead to the end of June. So everybody in the middle
of February is thinking of 1 July and you have suggested
in your statement that a different decision was taken at
ACVSB on 25 February, but I don't think that is what
happened.
   Let's look at the ACVSB minutes, [SNB0018934]. The
first thing to notice about that meeting is that
Dr McIntyre was there in his role as observer and that
Dr Gunson wasn't, because if we look a little bit further down, we can see that he gave apologies. There we are.

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

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

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

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

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

"Members agreed it was important for proper evaluation of the Ortho and Abbott 1 and 2 tests to be
carried out before RTCs decided which test they would adopt."

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

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

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

A. The regional directors, when they came to the point of making a selection for second generation, they would require an assurance that it had been properly
evaluated. I have made the point -- you have had Richard Tedder up here -- I don't know whether you plan to have Phil, who is very much alive and well. My understanding was at that point they were reaching a point where the first generation looked as though they were pretty good and satisfactory, and that we could have done what a whole lot of other countries did at that stage and move to implement, as I said earlier today.

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

THE CHAIRMAN: Could we just have a pause?

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

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

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

(10.34 am)

(Short break)

(10.57 am)

THE CHAIRMAN: Yes, Ms Dunlop?
MS DUNLOP: Thank you, sir.

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

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

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

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

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

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

Q. Right, fine. We can do a bit better actually than looking for hints. Can we look next, please, at a document [SGH0027881]? First we should look at the second page so that we can see what this is. This is
a note -- and it comes from SHHD -- written by
a Mr Bayne on 19 March 1991.

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

Q. I think he was below Mr Panton?

A. Right. Mr Hogg certainly was.

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

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

"Mr Panton and I met with Dr McIntyre on 26 February
and he informed us that, following the UK advisory
committee meeting, Hepatitis C testing would commence on
1 July."
There are some references to nuts and bolts, including the need to tie up a procurement contract. Let's just go down to the bottom of the page. Back up reference testing also a problem. Mr Fuller at the Department of Health is being talked about.

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

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

Q. Sometimes, unlike Ikea --

A. I hadn't seen this.

Q. I'm sorry --

A. I apologise.

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

A. Yes.

Q. Yes. I should at this point, sir, make a small correction to our extended narrative. We do refer to this discussion in our extended narrative and we say that the meeting involved Dr McIntyre. Certainly this document refers to Mr McIntosh but it was Dr McIntyre,
not Mr McIntosh, who was the source of the information about 1 July. Just to record that.

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

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

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

"Please discuss."

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

A. I think that rab had a terrible time.

Q. So from the documents we are looking at just now, it does looks as though at this point -- this is the end of February to the middle of March -- everyone is thinking of testing being introduced on 1 July. If we go back to the extended narrative, please, and that's
our document [PEN0172165] and now looking at paragraph 9.257, we have added in more recently this passage in italics:

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

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

There we have it. To Dr Gunson.

A. Yes.

Q. Yes:

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

Importantly from paragraph 2:

"The work ... should start in February for the North London RTC and March for the other centres and be completed by the end of April."
I can't pretend that the material has been easy so far but I think it gets possibly slightly more difficult now because that's the Thursday and this is an impression on the part of some of those involved that this evaluation can be completed by the end of April, and two days later Dr Gunson is phoning you and saying that the commencement date will have to be postponed.

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

Q. Right.

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

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

"The second generation evaluation was not promoted in this specific way the VSB."
A. Yes.

Q. Can you explain that a little bit further?

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

Q. Yes.

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

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

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

A. Yes.

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

A. Not -- that's not the way I interpreted it. When Harold phoned me -- we had this appalling phone call -- I actually chased him very hard, "Who has made the decision that we stop everything and do the second generation before we finally commence implementation?"
And Harold made it very clear to me -- and I regretted there are no pieces of paper that we have got that confirms this. Harold made it very clear to me that this was a decision made by the Department of Health and had not involved -- the advisory committee was very anxious that the principle that second generation tests, before they were used, were in fact assessed. I don't think -- that's not a problem at all. He was saying that we have been told to get on and do it, and on Monday -- that's the TTD -- we are going to start planning to do this. And as we talked, he made it very clear this will inevitably make -- I don't know whether he used September at that point -- a delay in the July date.

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

A. I think the mechanisms whereby that was achieved, I believe, were not made by ACVSB, and they were delivered by the TTD on the Monday morning.
Q. Well, just to be very clear, what I'm suggesting to you is that the ACVSB, at the end of February, said that the second generation kits had to be evaluated also and that had to happen before choices were made by transfusion centres about what kits to use in screening?

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

Q. All right. Now --

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

MS DUNLOP: Yes.

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

A. Absolutely, sir.

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

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

THE CHAIRMAN: You see, at the moment it doesn't seem to me on this material to exclude the possibility that another
branch of the administration may have been initiating
a new approach that was fed through Gunson to you at the
weekend.

A. That's speculation.

THE CHAIRMAN: I know it's speculation.

A. That was always my understanding, sir.

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

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

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

A. It's their job.

MS DUNLOP: I should perhaps spell out more clearly,
Professor Cash, where I'm going with all of this. In
the context of allegations that devices were used and,
as I said already this morning, that some people involved in this story in 1991 were less than frank and open about what was going on, I’m putting to you an interpretation, which is slightly different from what you are advancing. I'm suggesting that the ACVSB, which we know from all our previous examination of this topic was the body which was making the recommendations to the UK departments of health, has decided in February that there needs to be an evaluation of second generation kits, that that needs to happen before centres choose the kits they will use, in other words, before they begin screening, and that this letter that we can now see follows perfectly naturally from that as the implementation of that decision, and really the crunch is going to come when it starts to emerge that, for practical reasons, it's not going to be possible to complete that comparative evaluation and have testing begin on 1 July.

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

A. I can't refute your hypothesis because I don't have any facts. All I can recall very vividly is the difficult position I put Harold in, in trying to understand why we...
were going on Monday to make these decisions, and the
implications it might have on a start date. I just
regret he is not available to illuminate it. But this
is my best recollection of those discussions.

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

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

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

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

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

Q. Right.

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

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

Mr Fuller and Dr Rejman are to be involved. We have had reference to Dr Rejman before. We can see that from paragraph 5. A programme of work and then an arbitration provision and then on to the last page. Okay.
We have been stuck at the end of March; let's look at the minutes of the ACTTD on the Monday. That's [SNB0018793]. You were there?

A. Yes.

Q. Were you suggesting earlier this morning that, at least during the first of the telephone conversations, you contemplated not even going, or did I misunderstand?

A. I honestly don't know that. I don't recall that at all.

Q. Right. But you did go?

A. I did, because I promised Harold I should go.

Q. Right. I don't think we need to read the matters arising but look on to the discussion of this point, which I think begins on the next page. There we are. The introduction of anti-HCV tests into NBTS and SNBTS, starting date and its definition. And here we have it, 4.11:

"The proposed starting date of 1 July presented difficulties since it was considered essential that the second generation test from both Ortho and Abbott should be evaluated prior to the commencement of routine tests."

We can see that there are problems of availability. Ortho not a satisfactory --

A. That was five days after the procurement director issued their letter.
Q. Yes, referring to completion of the exercise by the end of April?
A. Yes.
Q. I know. But the Ortho position is not easy and the Abbott position seems to be worse.
A. It's unknown at the time.
Q. They had not yet given a provisional date for launching their second generation test and in fact we know because we have looked at this before, that there was intellectual property problems. Abbott, I think, were subject to an injunction at the instance of Ortho in the early part of 1991, which certainly cannot have helped.
A. I should add that Wellcome were threatened likewise.
Q. And if we read the whole of this section, some discussion of practicalities and then, 4.14:
"It was agreed that testing of blood and plasma donations would commence on a specified date. There would not be retrospective tests carried out on donations collected prior to that date."
Then on to the next page:
"Confirmatory testing."
Then plasma for fractionation. If we just look down through it. On to the next page. Of course, what's missing from these minutes is any suggestion of what the date's going to be.
A. Absolutely.

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

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

So the whole question of funding was extremely complex indeed and the notion that you could just cross charge -- it was very complicated, which I thought was dead easy, you just put ... I had not appreciated that you were operating out of a patient budget. So if you cross charge, patient care would suffer in a region. But mechanisms of moving money, I was told, from one English region to another for confirmatory testing,
these very specialised (inaudible) was also at that time a serious problem.

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

Q. Right.

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

Q. Right.

A. Because they are in such difficulty.

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

A. Yes.

Q. Right. Something else that's not in the minutes is any discussion of decoupling the second generation evaluation from the actual commencement of testing. So
no one is saying, "Well, given that there are these practical problems, why don't we just start testing with the first generation kits and slot the evaluation of the second generation kits in thereafter?"

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

Indeed, when I had the awful telephone calls with Harold, that was the burden of the problem. Why couldn't we in fact start in July, as planned, and get on with it and fit in the second generation evaluation at a later date? I mean -- so when you say that wasn't in the minutes, that was the obvious -- everybody else was doing that. Finland were way ahead but there was a whole bunch of about nine countries in Europe alone that at that time -- at this time were already moving into actual full implementation with the first
Q. Quite. So --
A. That was known. Harold knew that.
Q. So why did you not put forward that suggestion at the meeting, if it was obvious?
A. I put it forward to Harold and I know we will no doubt run into problems of the briefings of David McIntosh.
Q. Let's keep Mr McIntosh to one side for the moment.
A. Well, but David was there and he was being briefed to say, "Look this is an option. Why don't we go to the Scottish Office and say, 'For goodness sake, we are caught up in something that's not of our making'."
I was putting two and two together and perhaps making five by saying it's a funding problem. I don't think so.
Q. Is the answer to my question not that you didn't put it forward at the Monday meeting because you had promised Dr Gunson that you wouldn't?
A. Exactly.
Q. Right. But would it not have been, perhaps even just in retrospect, a better position for you to take with Dr Gunson that this was all of great importance and needed to be discussed in full at the Monday meeting, all the options? Why did you not say that?
A. I can't remember.
Q. Right.
A. But if you had witnessed these phone calls -- I don't honestly recall, I am afraid.
Q. If you are saying that was an obvious alternative, it seems strange, if I may say so, that you parked it just because of a telephone conversation with Dr Gunson.
A. When you say "because of a telephone conversation", this is a guy who I respected greatly. He was department adviser for the very topic and he had declared that he had been instructed to get me on board, and after much huff and puff, I went on board. I have already said I deeply regretted that. Subsequently. But I did and that's it.
Q. Okay. On the Wednesday -- it's a fast moving picture -- you wrote to Mr McIntosh. That's [SGF0012026]:
"Dear David,
"UK BTS: HCV donation testing: start date.
"You will want to know that our NBTS colleagues are struggling, on a number of accounts, to meet the 1 July deadline, as previously discussed, and I thought agreed. We believe the fundamental problem is one of financial resourcing.
"At a meeting of the UK BTS Advisory Committee on Transfusion-transmitted Diseases in Manchester on Monday last, the following was agreed ..."
And the first of the detailed agreements relates to Dr Gunson telling the Department of Health that the 1 July start date should be delayed:

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

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

"More anon when things are clearer."

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

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

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

Q. Certainly.
A. If I may.

Q. Yes.

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

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

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

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

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

Q. Let's not get ahead of ourselves. We are up to the Wednesday, when there has been the ACTTD meeting on the Monday.
A. On the Monday.
Q. You are writing to him this letter and are you saying to us that you think even the Friday of that week you were telling Mr McIntosh that he needed to take some action.
A. I have every reason to believe that that would be so, yes, because I felt -- well, I have explained. I felt we had been put into a very difficult position and the fundamental issue was, if it was a funding problem, this wasn't about medicine or science -- I think I said this on 1 December -- this was about policy, and the SHHD in my view needed to be briefed, although I actually thought that Archie McIntyre would have been fully aware of all of this but he was aware because I -- also because I copied him into this letter -- that they needed to consider their position.

I cannot escape the conclusion that I would have made this at the briefing meeting on the Friday.
Q. You see, the trouble is, Professor Cash, that the language you are using is conditional; you are not speaking of an actual recollection; you were telling us about what you think you would have done.
A. Yes, but I had written -- I mean, I had written a letter to the -- to David and I can't imagine that that wasn't taken up at the briefing meeting.
Q. Well, there is nothing in the letter. Let's go back to
the first page again, please. Sorry, it's the previous letter.

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

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

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

A. I have a clear recollection, whether it was on that Friday or subsequently -- I have a clear recollection that isn't conjectural, that I was very concerned that we, the SNBTS -- and for reasons which have not yet been explained -- that had to be David -- I would be happy to go with him -- we needed to get in to explain that there was a problem south of the border that didn't exist in
Scotland, but that problem south of the border was having an impact on the timing of Scotland's implementation of the testing.

Q. And therefore what?
A. Therefore --

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

Q. Do you have an actual memory of saying to Mr McIntosh that you wanted him to contact SHHD and moot the possibility of Scotland decoupling from England?
A. Oh, yes, no question.

Q. You have an actual memory of that?
A. I have that memory and it recurred later.

Q. What did he say?
A. Oh, he was enthusiastic -- I mean, he was enthusiastic at the notion. I think this emerged later at the board meeting that we had on the 11th and 12th. You see, what was astonishing to me was that we didn't get there.
Q. You see, he doesn't remember you asking him to do that.
A. I realise that. I'm very conscious of that. If I may say so, the minutes of the board meeting, as you know, on 11 and 12 June is very inadequate on this topic but one of the trigger points in which the temperature went up in that heated debate, was I drew David's attention to the fact, in front of all the our directors, that he had agreed to go to the department to promote, in a sense, what Brian was saying some form of consideration as to whether we are going to stay in with the UK and that he hadn't done it, and David was very upset with that.
Q. Right. Let's not go to June because we are still in March.
A. I appreciate that. I mean, it's evidence that in fact I did try.
Q. Well, you said a moment ago that it had to be him. Why did it have to be him?
A. I'm glad you have asked me that question. I was very surprised on December 1st that you were not aware that on -- thereabouts, mid-February, the post of national medical director was disbanded and the job description that you went over with me very carefully at the previous occasion I was here was no longer valid. You have got lots of documents in your files which
demonstrate that the change was (a) Jim Donald insisted
on this. My title was changed. I'm very interested to
see David McIntosh was talking about "my national
medical director". It didn't exist. He was now the
national medical and scientific director, and David has
got -- you have a lot of documents which show that my
reporting was exclusively now to David McIntosh. We
discussed this at great length and I was very
comfortable with all this, with one exception. I was
a little uncomfortable. David made it very clear to
me -- and when he said to you that he arranged to be
chairman of the board -- and this was a managerial
contrivance -- to tell the world that he was the boss
and John Cash reported to him, I had no problem with
that.

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

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

I can tell you there were occasions when David got
a little distressed when I was sending copies of
documents into the office -- the Department of Health
here, without him being aware of that. I must say
I made mistakes and I often apologised. But that is
very important. The point I'm trying to make is that
I had -- when David was appointed, I had no direct
access, as far as management line access, into the
Scottish Office, and Jim Donald assured me that this had
been discussed in the department and they were
satisfied.

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

A. February/March 1990.

Q. 1990?

A. Yes.

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

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

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

A. I'm saying --

Q. Is that what you are saying?

A. Yes, I'm saying that. Whether I'm held on to that well
enough, I don't know, but yes, it was an issue.

Q. Right. If we carry out a study from the beginning of 1990 onwards, we will not find any instances of you making direct contact with SHHD. Is that what you are saying?

A. Beyond copying letters. Can I make it -- so in other words, he wrote this letter we have got here to David and I copied in Archie McIntyre.

Q. Yes. But is the answer to the question, "yes" you are saying that with effect from the beginning of 1990, with effect from this discussion with Mr McIntosh and Mr Donald being involved and so on, you made no further direct contact with SHHD?

A. Yes. As far as I recall. This was a big issue and David tackled me the night before he was actually interviewed for the job, actually.

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

A. That's a very good question.

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

A. Yes.

Q. That's the obvious answer to it.

A. I can only apologise. The answer is I was extremely tired and quite distressed and I apologise.

Q. I don't know that we need to go back and look at the transcript. I think it's probably etched in your brain
as it's etched in mine, but when you suggested on
1 December that any contact with SHHD should have been
made by Mr McIntosh, I asked you whether this wasn't
really in your patch because you were the national
medical director.

A. Yes, I was.

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

A. Yes.

Q. Why did Mr McIntosh issue that instruction?

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

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

You see, Professor Cash, because you didn't tell us
on 1 December -- I'm surprised to hear you say that you
were in some way almost gagged by Mr McIntosh from
making direct contact with SHHD and that's why on an
issue which at first blush relates to patient safety, therefore is one for the national medical director, you felt you couldn't make direct contact with SHHD. I'm surprised to hear you say that. I'm surprised you didn't say it last time.

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

Q. Yes.

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

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

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

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

Q. But this is not about the management of SNBTS; this is
an issue which on any view was of very significant
importance for patient safety, even if there was
a background that Mr McIntosh preferred contact in the
ordinary run of affairs to be between himself and SHHD,
was this not an exceptional issue on which you, as
national medical director, could have made direct
contact with SHHD?

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

Q. Yes.

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

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

Q. Well --

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

Q. Well, professor, you are taking me off down a side
road --
A. Well --
Q. But I'll follow you down it because if I can just pick you up on your reference to litigation, surely the point is this, that if an error of judgment is being made by the whole group, then the whole group will be sued, the entire blood transfusion service in the whole of the United Kingdom will be vulnerable to litigation. If some members of that group, so some transfusion centres, break away, to use a term that we see used at the time, and do something different, they may not be sued but the remainder will.
A. Yes.
Q. So it's not a question that the best defence against possible litigation is to stick together, that way everyone may be doomed.
A. I'm not sure about "doomed" but you have --
Q. Doomed to suffer a lengthy and expensive litigation, which even lawyers would accept is not a happy fate.
A. Yes, I can only say that in the briefing memo that you have drawn my attention to, the London -- after Newcastle, this features quite strongly and I don't get -- I take all the points you have made but I don't get that that was a message that was coming through.
Q. All right. So can we stay with your mindset around
about this time, which you are now telling us is that
you were very unhappy about the decision which had been
taken at the ACTTD meeting and you wanted SHHD to
consider decoupling the introduction of screening in
Scotland from the introduction of screening in England.

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

A. We did --

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

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

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

A. No, I didn't.

Q. All right. A week on the Friday, so this is 5 April.
So 29 March would be the Friday of that week. Then on 5 April you sent your letter to Dr Gunson, which we have looked at before and we will just look at again, [SNB0063958].

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

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

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

Q. No, and that's different from what you said on 1 December. I asked you if you had consulted your fellow directors and you said you didn't think so.
A. No, I said probably not in that timescale. On reflection I now know -- I have now looked at that again because I was very concerned about that. It was most atypical of me, in my experience. I would have consulted them and looked carefully at that and realised the turnover wasn't as quick as was implied, because the substance of Harold Gunson's letter for my colleagues was in my letter of the 27th.

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

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

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

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

Q. How do you think you got their response?

A. Oh, phoning them, I imagine.

Q. So you think that you phoned round all the other
A. Yes, that's not -- I'm almost certain I wouldn't need to phone round Ruthven because he was at the meeting. Yes.

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

A. No, that is so. If you look at the document you are looking at now, that comes from Manchester. And you might ask the question: why hasn't it arisen from our own resource. There was a real problem -- Douglas Tullis knows this -- of security of documents during this period, and I haven't the faintest idea whether this is relevant and I'm not sure that I put on paper the individual responses I got.

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

Q. Right. So you are in effect wishing to alter your evidence on this particular point. So when last time you said you doubt that you made contact with your
fellow directors, you now wish to say that you think you
probably did make contact with your fellow directors?
A. Yes, I said on the last occasion that it was improbable
that I had, simply in the timescale. On reflection,
because I was very concerned this was most atypical,
there was more time and I cannot imagine -- and I'm
happy to have that changed, yes.
Q. Well, strictly speaking, it's not a facility offered to
witnesses. It will be a matter for the chairman in the
end to decide what he thinks the position was.
A. I appreciate that.
Q. But why did you want to send this letter at all?
A. I can't recall. I'm reasonably certain that Harold was
very anxious to know whether the Scots were on side.
I think we have discussed before in the Inquiry the
great anxiety our colleagues south of the border had at
times, that the Scots would do their own thing and go
off, as I say, and do their own thing. I must assume
that the reason I wrote this letter was in fact to give
Harold Gunson some comfort that we were on side.
Q. Right. So you are reassuring Dr Gunson that no Scottish
director is going to start testing in advance of the
start date of September.
A. Yes, unless -- and he knew this -- instructed so to do
by SHHD.
Q. Well, all right, but, as you sit here now, you think that you had ascertained that from all the individual directors, that none of them would start testing before September?

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

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

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

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

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

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

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

MS DUNLOP: Yes, not necessarily comprehensively, sir.
THE CHAIRMAN: I'm not anxious to intervene in any way, sort of in medio, and I will restrain myself.

MS DUNLOP: Right, thank you.

(12.06 pm)

(Short break)

(12.23 pm)

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

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

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

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

Q. Right.

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

Q. So it is a letter about solidarity?

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

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

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

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

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

Q. Right. So --

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

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

A. Is this okay?

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

That's option A.

Option B is a rather more dilute version of that. It is advocating an approach to SHHD in which it is checked with SHHD, confirmed with SHHD, that they are comfortable with maintenance of the simultaneous UK
starting date. Are you saying that what you wanted was option B?

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

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

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

Q. All right.

A. Okay.

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

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

A. Yes, because we had agreed that --

Q. Who should he be going to talk to?

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

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. We had better check it.

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

A. I can't be sure. I just know -- I mean, we were having very regular briefing meetings, not only on this topic but I honestly can't be sure but I do have a very clear
recollection. I'll tell you for why -- and I have
already said it -- it arose, this recollection, at the
board meeting in June.

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

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

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

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

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

A. Yes.

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

A. Very much so, yes.

Q. Did you want to be part of that?

A. Yes, I see where you are going, but, yes, absolutely.
Q. I'm not sure where I'm going. So I'm glad you can see.

What did he say to your offer to accompany him?

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

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

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

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

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

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

A. Yes.

Q. Right. On 8 May you wrote to Dr Gunson, and this is about the response to the Newcastle situation, if we can call it that. This is [SNB0051723]. And I think we understand that what's being discussed in this letter is presenting the commencement of testing in Newcastle as part of a study -- indeed that's what the letter says --
and that more centres than just Newcastle will have to be involved, and we understand that there were going to be two centres using Ortho and two centres using Abbott and so on, and you proposed that Glasgow should be one. Can we just look at the next page to see the reference to Glasgow, please?

Here we are. Paragraph 5:

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

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

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

What led to the conclusion of that?

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

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

A. I think -- because, if look at the proposals in the previous pages, they were medically more scientifically orientated, and if Harold had wanted to come back and
say, "I'm not sure about that, I'm not sure about that, what about that?" the obvious person would have been Ruthven to come back to, that's really all.

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

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

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

A. Yes.

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

A. Yes.

Q. We can see that from the reference to the public reason for this phase, and "public" being shown in inverted commas suggests that there is a presented reason and a real reason, which does rather smack of a device.

A. Yes, I think the use of devices is common across all homo sapiens' activities and I don't have a problem with that. The fact of the matter is that in the initial
discussions I had had with Harold Gunson, there were
a number of options that would be taken and the last one
that I suggested, which is what emerged to be the most
acceptable to Dr Gunson, no doubt colleagues in the
Department of Health, was this one, and it was a device.
There is no doubt whatsoever.

Q. I agree with you about devices, a tin opener is
a device. The use of devices is indeed common across
the activities of homo sapiens, but a device in this
sort of context smacks of a degree of deception or
something a little less than the whole truth, does it
not?
A. I wouldn't disagree with that.

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

Q. Yes. So your preferred option was to say --
A. Capitulate.

Q. -- "the dam is cracked --
A. Yes.

Q. -- let's dismantle the whole thing immediately and
everybody start testing." That was your preferred option?
A. Well, we need to do it in an orderly way, but, yes. To sit there saying, "No, no, no, September, September, September", my preferred option was exactly what you say.
Q. Right. That would have worked, would it not, with the whole of Scotland being in the first wave?
A. Yes.
Q. We are always coming back to the same point.
A. Yes, no.
Q. Could you not have advocated, "Well, Newcastle has started testing. We are funded, we are ready. Scotland can be in the first phase. We will start testing too, not just the West but all of us". Why did you not advocate that?
A. I'm repeating myself. What I wanted to get to, as I recall at that time, was to get the Scottish Office to say, "Hey, we have a major problem here. Let's review it," and do we in fact go it alone or do we go down to London, recognise that we should throw in the sponge and, yes, indeed, the Scots can be the first part of a UK programme, after the Newcastle problems, in which implementation starts and the Scots in fact will go first because they are funded and they can do it
quickly. I have no problem with that. But this, I argued, was a matter -- that it was a policy decision that had to be made by ministers.

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

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

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

A. I agree.

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

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

Q. We will come to that.

A. If I may.

Q. Yes. Let's just stick for a moment with your
encouragement to Mr McIntosh to go to SHHD. You have
told us you have a clear recollection but you are not
sure whether it's one conversation or more than one.
I wondered also, did you ask him every so often if he
had done it?

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

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

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

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

A. Hm-mm.

Q. Can we look at the transcript for 29 November, please.
Can we go to page 102? We had better get the context.
I think we need to go up a tiny bit. This is Mr McIntosh being asked about your supplementary statement, Professor Cash.

A. Yes.

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

"[Professor Cash] 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 [I think there may be an extra "not" in there] by conforming to an English norm. On many occasions Professor Cash 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 that 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."

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

THE CHAIRMAN: Can we go forward, please?

MS DUNLOP: Then on to the next page as well, please.
We can see at line 6 I'm asking Mr McIntosh about your statement in this supplementary document, that Mr McIntosh got jittery when the news of Dr Lloyd's action became known. You, Professor Cash, say in your statement that the two of you discussed it at some length and that:

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

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

"We ...

Which I assume is SNBTS:

"... 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."

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

A. No question. Would you like me to respond, not necessarily to specifics.
Q. I think I would prefer specifics, actually. I have no difficulty with you responding --
A. Sorry, relating specifics to David. But this is very specific.
Q. Right.
A. On 13 April -- you remember I had said I briefed him soon after the 27 March?
Q. Yes.
A. And whether or not I kept briefing him on a number of occasions on this topic, I can't remember. Whether I chased him up, I can't remember. I think it's probable but I can't remember. But the point I'm trying to make is less than 30 days later of this first briefing, or there or thereabouts for David, there was a meeting between Harold Gunson, myself, David and Dr Moore, this liaison meeting; where Harold, for the first time, formally reported to all of us the events that were going on in Newcastle. It's minuted.

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

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

Q. Yes:

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

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

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

A. Absolutely right.

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

A. Yes.

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

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

Q. Right.

A. That policy changed.

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

A. Yes:

"It was agreed that firm clarification of policy was urgently required."

Q. Yes. But it doesn't actually say by Mr McIntosh, that this was Mr McIntosh's responsibility.

A. I'm absolutely certain, if the minute taker, Elizabeth Porterfield, had known 20-odd years later that this would -- she would have put it in. She was his PA.

Q. Yes, but there is nothing in this, Professor Cash, to suggest that you couldn't have spoken to SHHD.

A. No.

Q. Right.

A. Nothing at all.

Q. Right.

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

Q. At the meeting? Are you saying that this was an agreement at the meeting that that clarification --

A. David McIntosh was going to inform --

Q. -- of policy?

A. Yes, it is very clear to me that he would be looking to
find out what was the policy. What is not clear to me, because I do not know, but I challenged him in June, did he do it.

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

A. Absolutely correct.

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

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

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

MS DUNLOP: "Finalise arrangements"?

THE CHAIRMAN: Yes.

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

THE CHAIRMAN: Yes. I get the context.

MS DUNLOP: Yes, and indeed, we have gone slightly back in time. That probably leads naturally to the letter of
8 May, in which Professor Cash was proposing some of the
arrangements for the UK-wide study.

THE CHAIRMAN: Yes.

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

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

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

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

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

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

A. Yes.

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

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

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

A. Okay.

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

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

Q. Right.

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

There is another letter -- which is hugely important in my view, and I should have drawn your attention to it before -- on the same day, which is curious because we
were all in Stirling. David McIntosh writes a letter to all the board members to draw their attention to events in Paris, which, as I'm sure you know, led ultimately to the imprisonment of the director of the transfusion service and his deputy, Pierre Allain.

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

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

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

A. Yes, I think my -- we have not got round yet. What was actually discussed -- what was the proposition, and the
proposition was -- and this I have seen in no documents at all, because the meeting minutes were just -- the original ones, I was led to believe by Morag Corrie, did refer to this, albeit no doubt, knowing Morag, not in great detail, but the debate was: should we, as directors, get on and do a Newcastle? And "doing a Newcastle" means you just start it, you don't tell anybody and then in due course you inform people, but it's a force majeure, you can't do anything about it. You just have to continue. That was what was on offer.

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

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

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

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

MS DUNLOP: All right.

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

(1.03 pm)

(The short adjournment)

(2.00 pm)

THE CHAIRMAN: Yes, Ms Dunlop?

MS DUNLOP: Thank you, sir.

Professor Cash, we did have a look for Mr McIntosh's letter of 11 June 1991 and we don't appear to have it in fact, in Signature, which is our main database. I'm not sure that it matters. I think there is enough other
material to show that litigation, possible litigation was in everyone's minds, certainly by the summer of 1991, and there are a newspaper articles and so on as well, to show that being discussed in the UK, and I'm inferring from what you are telling us that this is really on the same theme, this letter. Mr McIntosh is saying, "Look at what has happened to a transfusion director in France," or in a transfusion service in France in connection with the supply of blood in connection with HIV.

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

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

Q. Yes.

A. And I must say that there was nothing -- that was very specific. It was a sister transfusion service, so sisterly that we were heavily engaged in a major
exercise with the same organisation in Lille. So, you know, it cut very close to us.

Q. Right.

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

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

A. Thank you very much.

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

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

A. No, absolutely correct.

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

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

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

A. Absolutely not.

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

A. In fact that's in fact what actually happened. I don't
think we had seen this before the meeting. But that's fine.

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

A. Hm-mm.

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

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

MS DUNLOP: Yes. (Handed)

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

Thank you. Yes?

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

We know that this is the two-day meeting, the 11th and 12th. I just wanted to confirm that as well, 11 and 12 June 1991. We know that it took place at
Stirling University and the actual decision -- I can't remember if it's on the next page. Can we look at the next page, please? -- is recorded extremely succinctly.

No, further on.

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

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

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

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

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

"Page break."

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

"Medico-legal issues.

"PI issues.

"Long-term relations.

100
"Compromise.

"No publicity.

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

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

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

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

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

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

Then in block capitals:

"The UK pack is still a pack."

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

A. Yes, I must have reported to them in the debate at some point and as I have said, we were talking about Newcastle. I was reporting back that at that moment, with the exception of Newcastle, the position was being held. That, I think, is what is meant by that.
Q. What about the bit that we see to the right of that: "Can we make a strength of this by demonstrating that we have considered the early start option and rejected it in the interest of support/buttressing a co-ordinated national service."

Do you think that that is you speaking?

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

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

A. Yes.

Q. So the ACVSB, having said in November 1990 that testing should begin as soon as reasonably practicable, at least as far as Scotland was concerned, that wasn't happening, was it the case that you felt contact should be made with SHHD so that they knew that?
A. You mean are we talking about --

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

A. Yes, I'm with you.

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

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

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

A. This is worrying, surprise.

Q. Yes.

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

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

And it's interesting, Rab's concern was not the medical ones, it was that he had a job of briefing ministers and so he was concerned that he didn't know quite what was going on.
Q. You see, why would they, Professor Cash, because you say Dr McIntyre was a very committed member of ACVSB and so on and a regular attendee, but the discussion about the postponement of the starting date has taken place not at ACVSB but at ACTTD and there is nobody from the Scottish Office there.

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

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

A. Absolutely.

Q. If you don't mind.

A. Please do.

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

But no one is really doing that. No one is going.

A. I think we -- that may be a right conclusion. Yes.

Q. Right. You see -- I mean, another way of looking at it, and I suppose here I'm being devil's advocate, but if perhaps you were actually prioritising UK solidarity, you personally thought that UK solidarity was the primary goal and so --

A. No, I didn't.

Q. So everyone should move together, then the need to report to SHHD might be just much more formal, might just be this is what's happening, that we are all still moving together on this.

A. No, I would simply comment -- I made it very clear in my statement -- this obsession with UK solidarity, which David has made very clear I had, I don't accept that at all.

Q. What about:

"The UK pack is still a pack."

A. I'm simply reporting --

Q. It's quite eloquent, Professor Cash.

A. That's very kind.

Q. Well it's eloquent --

A. I'm simply reporting to the guys that I have no -- let's face it, I have no evidence, when we get into that
debate that any of the other English regions are moving
or wobbling in the direction that our mates in Newcastle
did. That's really all I'm saying, and I knew -- at
least I thought I knew -- that that also applied to
Scotland. So, I'm saying the UK pack --
Q. What I think it's eloquent of -- and you will no doubt
correct me -- it's eloquent of a man wiping the sweat
from his brow and saying, "Phew, we are all still
together."
It doesn't sound like someone saying "Scotland
should be taking its own steps."
A. That I think, if I may say, is a pejorative
interpretation of the five words you see on this piece
of paper.
Q. Seven. It depends what you count "UK" as?
A. Two, four, six. I didn't count "a" as a word.
Q. All right.
A. I think you are adopting, quite rightly, if I may say
so, a view that actually is just a little wide of the
mark. I wasn't going, "Phew, thank God." I was simply
reporting to my colleagues, as they began to debate the
notion of doing a Newcastle, the Scots doing
a Newcastle, that at the present time the UK was
operating, with the exception of our friends in
Newcastle, as a single unit in respect of this topic.
Q. Right, and that is a good thing, though?

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

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

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

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

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

Q. Does the "phew" come at the next point? Can we look at [SNB0118178]

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

MS DUNLOP: Yes.

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

MS DUNLOP: No, it's back one.
THE CHAIRMAN: Is it back one?

MS DUNLOP: Yes.

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

A. No, it doesn't, sir.

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

A. Yes.

THE CHAIRMAN: Which is why I ask.

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

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

A. Did I?

Q. Yes.

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

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

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

THE CHAIRMAN: That's correct.

A. What we do know is, and this, as you know, exercised me considerably, when we came to this stage at HIV and we reached somewhere pretty similar but it was a much
shorter timescale, it was a haemophilia director that
blew the whistle and, in my view, precipitated the very
quick introduction of the testing. This is HIV. So it
may be, sir, that that box there is conveying that sort
of message.

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

A. Absolutely.

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

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

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

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

Q. Right.

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

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

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

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

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

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

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

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

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

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

A. I mean, it's only in the light of what I have read from
Brian, the commencements evaluation testing,
7 July 1991.

Q. 15 July?
A. Sorry, 15th, I beg your pardon, which is interesting.

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

A. No, no, occasionally he did that.

Q. Right. The relevant letter is [SNB0118178].

A. Yes.

Q. That's where you would be expecting to be taken,
Professor Cash, I'm sure. You are writing to Dr Gunson
on 17 June 1991 on the subject of HCV donation testing:
"Picking up the pieces after last week's near
disaster up here."

I suppose the first thing that strikes a reader
about that is that there has been some kind of
communication between the two of you before this letter;
otherwise, Dr Gunson would be a bit puzzled as to what
you are getting at.

A. Yes, I daren't draw your attention -- this is another
Manchester -- this is about the fifth Manchester
document we have seen today.

Q. All right.

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

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

A. No, no, no.

Q. No?

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

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

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

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

A. Doing a Newcastle.

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

A. That's what --

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

A. That's what emerged as a proposition.

Q. And the --

A. In front of that was Brian in a sense addressing his
letter, and everybody shared the anxiety that he rightly
had raised but the proposition -- to be honest, I don't remember whether it was Brian that made -- or in fact David that -- but I do remember that one of the problems we had at the meeting was David giving us a lecture on medical ethics.

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

A. Sure.

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

A. First and foremost I believe we had a trust, a professional trust, between our relations and the Scottish Office, which were hugely important and which really, in my view, we may not have agreed on many occasions with our friends in the Scottish Office but in my view we had a professional -- there was a trust that was needed to in fact operate effectively.
I took the view that if we did something of this magnitude, bearing in mind the Scottish Office's declared position, policy position, this would be a breaking of that trust. That's the first thing.

I already knew by June, mid June, what was going to happen, I wasn't certain, to Huw Lloyd, and I was very distressed by this and at a personal level I envisaged -- and I think at some point in

together a disaster. I mean, the notion that we should break that trust with or colleagues in the Scottish Office, I found unacceptable. So that's -- that's about as much as I can think on the hoof of the definition of "disaster".

Q. Might it not have been better for patients?
A. Yes.

Q. It wouldn't have been a disaster for patients?
A. No.

Q. Right. So the disastrous element would have been,

according to you, the somewhat covert introduction of screening. What about a decision from the board meeting on 11 and 12 June that Scotland needed to introduce
screening immediately and that that recommendation would have to be put to SHHD?

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

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

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

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

A. Well, I think that's a very fair point and I can't answer that. Genuinely. I think -- I have to tell you that the fallout at the June meeting was really very
substantial and I think a lot of us lost heart in arguing the toss with David and asking him, for instance, "Have you been to the department?" and so on and so forth, or asking him, "Where is the copy of this mysterious letter," that he now says is the most important letter he wrote in his life -- I wouldn't make that judgment, but he doesn't know if it was sent. We are remiss and I take huge responsibility that I think at the August, the next meeting, we didn't actually say "Where is it, David?" And I think that's a very fair criticism.

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

A. No.

Q. But some sort of look back --

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

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

A. Yes.

Q. And about blame and liability.

A. Yes.

Q. It does seem surprising that if the board on 11 and 12 June 1991 had decided not to stick to
1 1 September 1991 date.
2 A. No, I didn't say that. Please, it's so important. We
did not decide not to stick to it.
3 Q. You didn't decide to stick to it. Sorry, you didn't
decide not to stick to it?
4 A. We decided that the option of doing a Newcastle was not
acceptable, for the reasons I have given, but we are
very concerned in principle with what had gone in
Brian's letter, and we therefore needed to go to the
department and say, "Your policy isn't working. It's
beginning to hurt us, the SNBTS. Can we get this
reviewed in some way?" That was our position.
5 Q. So your position was Newcastle but orderly?
6 A. My position was -- please -- my position was: can we in
fact get the thing relooked at. If in fact the answer
was yes -- I said this this morning -- indeed, mine
would have been -- talking to the people in London,
getting an agreement on that and then phasing in, and
there is no doubt we would have been very quick indeed.
7 Q. Right.
8 A. But that would have been something that both
departments, both ministers, accepted was acceptable.
9 Q. So we have a position where you are telling us that you
were not in favour of simply sticking, without further
discussion, to a simultaneous starting date of
1 September 1991?

A. That is correct.

Q. You were not in favour of that. That is what happened. We know from other people that they were uneasy about it. Dr McClelland has told us he was. Mr McIntosh. There was discussion. Who then carries the responsibility for the fact that that is what happened, that there wasn't some kind of alternative canvassed for Scotland or some sort of discussion or some kind of recommendation for Scotland?

A. The answer to that question is the same as I had this morning: the view was that was the general -- the general manager was asked to do something.

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

A. Yes, indeed, yes indeed, yes, indeed. But the letter going to the department -- if he had said to me, "Here is a draft, John, what do you think of it?" delighted to have contributed.

Q. Right. So these other possibilities, going to SHHD, telling them that the position had become unsustainable or perhaps even expanding the device, deciding at the meeting in June that the trial, which at that point included only Glasgow for the purposes of Scotland --

A. Which was being funded from London.
Q. Sorry?
A. The Glasgow trial was being funded from London.
Q. Right.
A. That's quite an important point to make if you weren't aware of it.

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

MS DUNLOP: Right. So you are saying that that was not an option because there wouldn't have been money to include the rest of Scotland. Could you not have asked SHHD?
A. Yes, no, no, no, no.

Q. In terms of how it could have been presented, it could have been presented that this trial which was involving Glasgow was to involve the whole of Scotland and SHHD, once they had been told that that was the right decision to make for Scotland, could have funded that part of it?
A. They could have, if they decided to break away from their commitment to supporting DHSS. Yes, absolutely.

Q. Right. But none of that seems to have been taken to SHHD.
A. I honestly don't know. All I know is I hear what David says, that that letter, which he wrote -- the most important letter of his life -- didn't go. I never saw that, I have to say, I didn't see that letter.

If we do -- before we move on. If we do get
a chance, I would like to draw your attention to
a letter that I did write to Gunson, copied into
Sir Kenneth Calman and Jeremy Metters, and it's in your
list here, but I only quote the first paragraph, which
is so anaemic, it's not worth almost reading it. But if
you go down below that level, you will see I'm being
very critical of the situation. This is on 13 May, sir.
And it's [SNB0051721].

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

Q. Can we look at it? Yes, please.
A. "Just in the past month we have witnessed the two
happenings in which the policy referred to above may be
seriously flawed."

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

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

Q. Yes.

A. I just offer it ...

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

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

Q. Well, this is to Dr Gunson.

A. Yes, yes.

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

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

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

MS DUNLOP: Oh, yes.

THE CHAIRMAN: I think perhaps everybody might just benefit
from reading the whole letter anyway.

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

(2.57 pm)

(Short break)

(3.23 pm)

THE CHAIRMAN: Yes, Ms Dunlop?

MS DUNLOP: I think, Professor Cash, we have had a chance to look at the letter and perhaps in a nutshell, what do you think this letter illustrates?

A. I think in a nutshell it illustrates that the notion that the UK is made up of transfusion people in terms of departments that are working closely together, this is not so. And that we need to actually look to the future to see how this could be improved.

Q. Right.

A. I think I offer it only -- the notion that I was totally passive in this particular period may be a little of an exaggeration.

Q. I don't think anyone is suggesting to you that you were totally passive, Professor Cash.

A. Really?

Q. No.

A. I'm beginning to get seriously paranoid.

Q. Or even without the "totally", I don't think anyone is suggesting to you that you were passive.
I really did just want to look at what happened over the summer as testing was implemented. Can we have a look, please, at [SGH0027802]? This seems to be the formal chain of communication. This is a letter from Mr Panton to Mr Donald at the Common Services Agency, dated 8 August 1991:

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

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

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

Q. Yes.

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

Q. Well, you told me last time, Professor Cash, that you didn't find it profitable to nitpick over words. I suppose I might suggest to you that all that means is to facilitate the commencement of testing from the beginning of 1 September. Isn't that all it means?

A. Yes.
Q. Right.
A. But I think the word "allow" is well chosen. That's all I'm saying.
Q. All right. Let's just look further down the letter, if we could, please, if there is any reference to copying. It doesn't seem to be, on its face, a letter copied to others but let's have a look at the next letter, which seems to be a sort of reply. [SNB0083956].

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

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

"West BTS as part of the UK BTS major evaluation exercise has been undertaking full [underlined] screening since early July 1991. This programme ..."

Can we read over, please:

"... apart from providing valuable data for the UKBTS, has enabled the SNBTS to consolidate its
arrangements for the HCV confirmatory (reference) service based in Dr Follett's laboratory at Ruchill Hospital."

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

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

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

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

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

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

A. Yes.

Q. Right. There is slightly more of a critical analysis of the process contained in further letters from the end of August onwards. Can we look at [SNB0020457],
please? And this is a letter which you sent to Mr McIntosh on 29 August 1991. You have recently had access to minutes of ACVSB and you have noted that the chairman is recorded as stating that. And then an underlined passage:

"The policy for a uniform starting date has been endorsed by all UK health ministers. "I think we made the right decision at our board meeting on 11/12 June 1991."

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

A. Absolutely.

Q. Right. And being --

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

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

A. Yes.

Q. Right.

A. That's all.

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

A. Not at this point.
Q. And you are not picking that up with Mr McIntosh in this letter?

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

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

A. Including Harold Gunson, as I recall.

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

A. Yes.

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

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

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

Q. Right.

A. That's not relevant to the Inquiry.
Q. So at least parts of what he is talking about appears to be a bit of a lack of clarity about policy. And that comment in the final paragraph about a certain amount of inherent ambiguity being required by civil servants has also been discussed on a number of occasions at this Inquiry.

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

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

And you said:

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

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

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

I actually would only add to "failings", "severe
failings". That's really -- that's all -- in response
to your question.

Q. Failings of what type?

A. Of communication, of very important transparency.

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

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

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

I wasn't aware of Mr Hart other than the odd comment
that Harold made, until he arrived up here, and I have
since had a look and done a bit more research. But
I think there is a failing of the central team down in
London -- I get very twitchy about the using the word
"territorials", which is all about Scotland and Wales and so on, but I mean, I think that's just a problem I have that doesn't need to be shared.

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

Q. Right.
A. Could have done better.
Q. You didn't actually reply to Mr McIntosh for some time.
A. Yes.
Q. If we can keep the statement open, please, but look at [SNB0140418].
A. I think it was in December, wasn't it?
Q. It was, yes. You wrote back to him on 16 December 1991 and you have obviously found it difficult to compose your response. That's what you seem to be saying.
A. "Calm down", I think, probably.
Q. Oh, to calm down?
A. Maybe.
Q. Did the letter provoke you?
A. David's? No, not at all.
Q. No?
A. I mean -- no, I have no recollection of that. And if I went line by-line, I would probably be saying, "Hear hear, absolutely right".
So, no, it didn't provoke me. I suspect the delay was me trying to think what are we going to do about it, because I have always argued, and still do, that the interface with very important people whose primary job is to look after the backs of ministers at an operational level, that's very difficult and far from clear to me how we would do it better next time. And I'm told by the current managers that they anticipate Lord Penrose's successor to be doing an Inquiry with CJD, because they tell me it hasn't moved on.
THE CHAIRMAN: I think "successor" is not the right way to put it.
A. I think that's the wrong word completely, sir. I nearly said "replacement".

THE CHAIRMAN: That may yet happen.

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

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

A. No, I appreciate that, sir.

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

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

A. You may, sir, and I would be happy to sit with you.
MS DUNLOP: Right. There was some further discussion, I think. Could we look at [SNB0047207]. Here we are.

That's again Mr McIntosh writing back to you quite promptly, the following day. And interestingly in the third paragraph commenting that he agrees entirely with you and with Dr Gunson about the high desirability of UK solidarity, but he believes that SNBTS support for it should be based on informed consent, not blind allegiance.

A. Absolutely right.

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

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

Q. Right. I think we have seen already that there was some discussion, I think, at a joint Scottish and English liaison meeting in early 1992 of these issues but not really very conclusively. I'm not intending to revisit that. I should, however, take you to your supplementary statement, which is [PEN0172779].
Professor Cash, this is a document which you sent to us at the end of November, I think actually a couple of days before Mr McIntosh was going to be coming to give evidence on the 29th, and he did have it the night before he came and I put it to him.

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

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

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

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

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

MS DUNLOP: Yes. So we can see from page 1 that you set yourself the task of commenting on some specific points
Mr McIntosh had raised. The first of those was that you
were a loud and aggressive advocate of the UK solidarity
camp. Can we take all that as read?
A. Yes, I have nothing to add and wouldn't wish to withdraw
some.

Q. Right. Page 2. You do mention other issues where you
say you pursued a distinctive Scottish policy approach.
Anything to add there?
A. No, but I hope that's taken quite seriously because it
involved some quite tough work and I might add, just in
passing, looking at David's trip up here, I had a great
high regard for Jim Donald, before David arrived, as my
next line manager. In the context, in a lot of these
areas that I have just highlighted, Jim did a fantastic
job of interfacing very productively with senior civil
servants on our behalf, and so if there is any credit in
this, it goes to many other people than myself.

Q. Right. Then on to the next page. I think we have
examined that paragraph numbered (c), or at least its
general thrust, very thoroughly, including the reference
there to "intolerability", and we have already looked
today at what Mr McIntosh said in response to that.
Anything further that you would wish to add or
anything indeed that you would wish to depart from?
A. No, but I had hoped, when you saw it, you would have
been beavering in the Scottish Office and discovered for us that David had in fact had regular meetings and there were notes and so on and so forth. I have to say, I have not seen anything and was not aware that much had taken place. I'm now talking in relation to the Hepatitis C story.

Q. Yes. Yes, we have looked very thoroughly at the communings between Mr McIntosh and SHHD in 1991 on the topic of Hepatitis C.

A. Yes.

Q. Then on to the following page, back to another reference to UK solidarity.

A. Yes.

Q. And --

A. Can I just add something which might interest you? If you take the City of London, Greater London. As you know I did this major study down there. You talk about people going alone, Marcela in the North London, vast amounts of money relatively speaking, could have complemented anything at any time but the Essex lot and, worse, South London, were appallingly badly funded by the RHAs. So you could have had a situation for instance in London in which Marcela and John Barbara with her could have introduced Hepatitis C testing without any problems and would have been funded by RHA,
whereas the poorer RHAs wouldn't have had that.

So you would have had people in London going to the
Kings College Hospital south of the Thames getting
hepatitis contaminated blood, whereas wow, if you were
a little further north -- so I saw the potential and got
heavily involved in their problems -- nothing to do with
hepatitis -- of the need -- ultimately I proposed in my
report -- you may have bothered to look at it -- that
they should all be working together and moving blood
around. This was about blood shortage and severe blood
shortages, and with a very heavy private sector as well.
So these had major impacts on my views, not about the
sacredness of UK solidarity but it was sensible.

Q. Of course, each of the principles has much to commend
it, namely the idea of UK solidarity and also the idea
of a particular unit thinking for itself and setting out
a distinctive policy when circumstances require. The
definite part is in detecting when one applies or the
other.

A. Absolutely right.

Q. Yes. If we look on to the next page, and plainly you
have wanted to respond and have responded to some of
what Mr McIntosh has said, and we can read for ourselves
your position on some of the more personal comments.

Again, is there anything that you want to add to
this section of the statement?

A. No, all I would add on that page is -- not add but just emphasise -- is that I really found it quite difficult for Dave to claim that all was going harmoniously, it had been a struggle from the word go and I was satisfied that David knew about that. But I don't think it alters anything to over emphasise that.

Q. Right. Then on to the next page. This is reference to May and June 1991.

A. Yes.

Q. To events in Newcastle.

A. Yes, I don't have anything to add.

Q. Right, and then the following page, back to the suggestion that SNBTS should follow Dr Lloyd's lead and commence HCV donation testing immediately and without informing CSA and SHHD.

A. I don't have anything to add. I think we have covered that.

Q. Yes, we have covered it and we have covered the questions you are posing about the drafting of the letter.

A. Yes.

Q. The notion of hijacking. Then on to the last two pages, please.

A. Yes, I don't have anything to add. I don't think there
is anything we haven't touched.

Q. Perhaps I should just say for the record that Mr McIntosh did say that Ms Corrie retired around about this time, that's why Mrs Porterfield took over.

A. Yes, I think that's a very good point. I should say that the plan -- and we have got documented evidence of this, which is nice -- the plan for Morag to retire was in the autumn of 1991. If you ask, as I have done, did this actually happen, nobody can give me any information at all, which I find very sad, in the HR records of the organisations. There is no evidence whatsoever.

All I know is I was alerted to the fact that Morag was in difficulty with regard to this particular minute and I went to, I thought, rescue her and she told me to clear off. It was a matter between her and David and that must strictly be absolutely right.

Q. Then the last page, there is some information from you -- or perhaps not information but some discussion of the mysterious letter, and we have obviously had evidence from Mr McIntosh about that as well.

A. Yes, I don't have anything to add.

Q. And then finally this discussion of what's meant by "disaster".

Finally -- I hope you are pleased to hear that -- something else that I think perhaps we should take as
read, if we go back to the main statement, please and
can we go to page 2106? We, probably I, was under,
I think, a bit of a misconception that the establishment
of the microbiology department had something to do with
Hepatitis C testing, and we asked you about this and you
said, no, that really this is to do with the quality of
HIV confirmatory services.

A. I think initially, yes.

Q. And you have given a lot of information about the
circumstances surrounding the establishment of the
laboratory and a number of documentary references which
we do have.

   And I wonder, sir, if we can just take this as read
also because I don't think it really bears on the
questions which are raised by this topic.

THE CHAIRMAN: None of this is terribly controversial. It's
just a straightforward narrative.

MS DUNLOP: It's not controversial at all. Yes. Excuse me
a moment.

   Thank you very much, Professor Cash.

A. Thank you.

THE CHAIRMAN: Mr Di Rollo?

MR DI ROLLO: Sir, I do not require to ask any questions,
thank you.

THE CHAIRMAN: I note how you say what you say, yes.
Mr Anderson?

Questions by MR ANDERSON

MR ANDERSON: Yes, I'm obliged. I just have some questions for you.

Good afternoon. Ms Dunlop has covered the vast majority of the issues that I wish to discuss with you but there are one or two matters remaining, if I may. Could we have up on the screen, please, the letter of 5 April. That's [SNB0063958]. We have looked at this just recently. This is your letter to Harold Gunson, which, as Ms Dunlop suggested to you, has, on the face of it, quite unequivocal support, being presented; that is to say the SNBTS directors full support. Do you see that?

What was being suggested to you was that essentially there is no hint whatever within that letter, or any other letters to Harold Gunson, of any private reservation that you may have about the desirability of the September 1991 start date. Do you understand that?

A. Yes.

Q. Is this letter, I wonder, an example of some sort of presentation of a united front, as far as SNBTS directors are concerned?

A. Yes, yes, indeed. I'm claiming now -- but I can't imagine I would have written it without ringing the gang
just to find out their views. I think the problem
I have with that is that there is always the danger,
when you are ringing people, of explaining something
and -- you are asking them, "Do you agree?" And you
have actually not given them an opportunity to sit and
think about the thing properly.

But, yes, I'm absolutely certain that Harold was
very anxious that whether the Scots or one of the Scots
was going to break, and whether they would support what
in fact was being proposed.

Q. But, as I understand it, the position in reality was
that notwithstanding the expression of support, a number
of individuals within the SNBTS directors had their
reservations.

A. Oh, never any doubt about that, sir; as I did.

Q. Do I take it that although you were seeking to present
a united front to Harold Gunson and the English, you did
not see that as precluding the SNBTS approaching the
SHHD with suggestions of alternatives?

A. Oh, absolutely. Absolutely.

Q. Can we turn now to this discussion that you had with
David McIntosh about approaching the SHHD with a view to
their reconsidering their policy? I just wonder, do you
feel that you had put yourself in a difficult position
with Harold Gunson, given that you have apparently
committed yourself to supporting his position and yet at the same time you have private doubt? Did you find yourself in some sort of a cleft stick about this?

A. Not that I can recall, sir. I felt on the day -- this is the Monday of this TTD meeting -- I had a duty, after this awful phone call, to not rock the boat and allow the decision to proceed. But I also felt I had another duty to the SNBTS to -- rather than duty for me and Harold in our personal -- you know, that we fell out, I had a greater duty to the SNBTS to ask the question: is this whole process now flawed and we need to get into the department to begin to look at it objectively, with either changing the process or Scotland pulling out or whatever?

Q. I just --

A. And in that sense, you know, you may say I was running contrary to what I had agreed with Harold. I accept that.

Q. I just wonder if there may have been an element of convenience, notwithstanding the change in regime that the arrival of David McIntosh brought in February 1990, that there may have been an element of convenience in having David McIntosh approach the SHHD rather than you doing it, given your --

A. Sir, I can assure you, after ten years or 12 years at
the mast, in which I had been threatened with the sack from the Department of Health -- and I actually -- there is a record in files of me writing to David and the first paragraph is to say how absolutely delighted that he is here, and how at a personal level he has taken great weights off my shoulders and, you know, thanking him.

So, yes, when I have suggested that he took over all the interactions, my query about that was whether that was a wise decision. When Jim Donald said, "Yes, that's okay," I was greatly relieved. That sounds very selfish but I was very greatly relieved that David would shoulder these, I thought, pretty heavy responsibilities.

Q. We can all understand that. Can we look together, please, at another document, [SNB0024627]? These are the minutes of SNBTS directors' meeting held on 13 February 1990, and I think we heard from David McIntosh that this is more or less as soon as he was in the door, as it were. Is that right?

A. I think David sat in on it, didn't he?

Q. I think we see him being present in the third line.

A. Yes, absolutely.

Q. I think we know that he started in February 1990. So this was very early on in his tenure. Is that correct?
A. I think this would in effect be the last of the directors' meetings. We then moved to a board.

Q. Right. Can we look at page 9, please, which I think will be page 4635, I think. Can we see at paragraph 6 a heading "ALT donation testing"? Do you see that?

A. Yes.

Q. It's recorded there:

"It was noted that there would be a problem if ALT testing commenced in England and Wales and not in Scotland. Mr McIntosh reported that Dr McIntyre of SHHD had reported to him by telephone the reasons why ALT testing should not be commenced in Scotland. Dr McIntyre had undertaken to contact the Department of Health for a corporate British stance."

It then states:

"Mr McIntosh to ask Dr McIntyre for written confirmation of this telephone call."

Do you see that? Is this the beginning of the change in the regime?

A. Yes, I think so, and in a sense why not? I mean -- and there you are, that's within days of David arriving. I should add that the change in the regime had been made very -- I think I said this this morning -- evident to me because David came and saw me. We had a long, long chat the night before he was interviewed and got the
job, and he was very up front and honest and said,

"Look, this is what's going to happen, if I'm appointed
tomorrow, John. This is what's going to happen in terms
of your reporting lines and so on and so forth."

So yes, this is David picking up the ball pretty
quickly. I did not have a problem with that by then.

Q. Can we look at a much later set of minutes,

[SNB0101108], which we have looked at already this
afternoon.

These are the minutes of the SNBTS/NBTS liaison
committee, held on 13 April 1990, and it's on the next
page at paragraph 2.4. I know you have been taken to
this already but I wonder if you can help me with this.
In the second paragraph it says:

"In view of the implications for the rest of the UK
Blood Transfusion Services, David McIntosh immediately
informed Scottish Home and Health Department officials."

I'm just interested in the use of the past tense.
Can you remember this or not, or do you just infer from
what is written here what happened?

A. Yes, I certainly recall -- but the trouble is, when you
see the thing written down there, you have to be very
careful. I recall that David signalled this is very
important, this is very serious, once he had been
briefed by Harold Gunson. "I must immediately inform
the Scottish Home and Health". And as we discussed it was, you know, we need to look and see whether the whole -- there needs to be clarification policy. So that's my understanding of it.

Q. Well, if we come on to the last paragraph, over the page, you will see that it says:

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

Now, would I be right in thinking that what that envisages is different individuals writing to different departments?

A. Yes, Harold would have gone back to -- because he was the DHSS adviser -- he would have gone back there and the plan was that David would go to the Scottish Office. Looking at seven to ten days, that's miraculous timing.

Q. I just want to be sure I understand your evidence on this. Do you remember this meeting and do you remember David McIntosh being tasked, as they say nowadays, to go and do this or do you simply infer this from what you see in front of you?

A. I wouldn't imagine David would be tasked. He in fact volunteered. I have a very clear memory. He would volunteer and get in there and make the moves necessary.

Q. I know that matters changed rather rapidly during this
period and there was, of course, the news had just
arrived from Newcastle, as Ms Dunlop put it. But this
was an attempt at least to get clarification from the
SHHD of a policy within a certain period. Did that ever
happen? Did you ever get a clarification of policy?
A. No, not to my knowledge but -- not to my memory and my
knowledge, sir, no. The real question is -- and this
begs the question again: did David go steaming into the
Scottish Office? And I honestly, genuinely don't know.
Q. David McIntosh was at all SNBTS board meetings, was he
not, from February 1990 onwards?
A. Absolutely, he was the chairman.
Q. And he also attended the SNBTS/NBTS liaison committee
meetings. Is that correct?
A. Indeed, he was the senior Scottish person.
Q. And I think you have already told us today that he had
fairly frequent contact with Archie McIntyre. Is that
right?
A. He did and I don't want to use the word "boast". He
often told me he had frequent contact with
Donald Cruickshank, who was then chairman of the CSA and
chief executive to the Scottish Health Service. So we
did take the view in the service that we were very lucky
we had a general manager who was very well connected.
Q. You see, I don't want to go into the differences between
you and Mr McIntosh too deeply but he did say in his
evidence that he essentially had no knowledge of the
SHHD policy, that it was all rumours and gossip was the
way he put it.

A. I saw all that and I prefer not to get into -- it gets
pretty messy. I was just astonished. I mean, the thing
that's haunting me with all this with David was that he
was sacked. Now I was told by a very distinguished
lawyer that you don't sack senior health service
ministers and he was eventually sent down the road with
a hefty package with strings attached, and I just do not
know today, not that he is not telling the truth but
what in fact he is able to say. All I know is when
I read that, I just couldn't believe it.

Q. Well, let's just try and make this as confined as we
can. I take it you simply don't accept the assertion
that he did not know what the SHHD policy was?

A. No.

THE CHAIRMAN: Could I ask: was there an SHHD policy as far
as you were concerned, as far as you knew?

A. If I understand -- the answer to that is yes, sir, but
I need to check what I'm saying yes to, and
unequivocally, and it was in writing, from
Archie McIntyre, that in terms of donation testing --
new donation testing -- you will defer in terms of the
clinical trials and field trials and so on, to the Advisory Committee On the Safety of Blood that we have established, and that Archie McIntyre is on and in due course, which is the point I was trying to make to Ms Dunlop -- in due course, if all goes well, you will receive an instruction to start and with it a cheque.

THE CHAIRMAN: Which is what you say you eventually got in August?

A. Yes, I don't know whether that's a policy. But that was my understanding of the nature of the beast and I made that terribly clear to David because we discussed soon after he was appointed, my anxiety that we had got the Ortho kitted running in late 1989 and we could have run it.

THE CHAIRMAN: Yes. I didn't intend to take you into that sort of area.

A. I'm sorry.

THE CHAIRMAN: Mr Anderson, I think my only concern is that when we talk about a policy, we try to have some definition of what it is that's in mind, but on you go.

MR ANDERSON: Yes.

A. I'm sorry, I hope that helps.

MR ANDERSON: I do accept that, sir.

Yes. The policy that I refer to, of course, Professor Cash, is the policy of adherence to a DHSS
lead in relation to the introduction of screening.

A. Well, that's the message I got from -- unequivocal message I got from -- and he copied that letter -- you are maybe not aware. He copied that letter to me, which confirmed what he had said to me to Jeremy Metters. Which is very right and proper, but I think it made it very clear as to both parties' departments were clear in what they were thinking of.

Q. Right. Can we turn now to the meeting on 11 and 12 June 1991 in Stirling. I know that this has been ventilated already today but I would like to ask you some questions about this. You say that the very terse minute that we see, strictly sneaking is not a correct resume of the decision that was taken?

A. We never actually said we are going to stay with the September -- I'm sure if we had said -- if we had discussed it, that would have been an outcome, it was all about the Newcastle ...

Q. The situation in Newcastle and the situation in Scotland were different from a funding point of view, were they?

A. Absolutely.

Q. You told us already, I think, today, that the discussion on 11 and 12 June was essentially whether Scotland should do some sort of unilateral declaration of independence, a la Newcastle. Is that right?
I just want to discuss that because the protagonists for an earlier start, if I can put it in the most general of terms at the moment -- the protagonists for an earlier start we understand to be Dr McClelland and Dr Perry and Mr McIntosh. Is that fair?

A. Yes, I'm very interested you introduced Dr Perry. You may well be right. For other reasons I say that. But it's very interesting that you say this, that that could well be so, yes.

Q. Well, if we look at the minutes of that meeting, which are [SNB00027666], we can see set out there those who are present.

A. Yes.

Q. We see there is Mr McIntosh, who is chairing it, we see you there and then we see Dr Whitrow. I think he was the north of Scotland --

A. Inverness, sir, yes.

Q. Dr Urbaniak was?

A. Aberdeen.

Q. Dr Brookes was?

A. Dundee.

Q. Dr McClelland at SNBTS. Dr Mitchell from the West of Scotland?

A. Glasgow.

Q. Dr Perry --
A. Bob, PFC.

Q. Remind us, who is Dr Prowse?

A. Christopher was -- he is a very senior distinguished scientist and I think at that stage was still in the Edinburgh centre. He eventually became director of the National Science Laboratory.

Q. The Edinburgh centre, what we have been calling the headquarters laboratory?

A. Yes, southeast, Prowse.

Q. I think Mr Francis was the director of finance. Is that right?

A. Yes, he was, sir.

Q. And Mrs Thornton?

A. Was the national donor manager.

Q. And Ms Corrie was the secretary?

A. She was the national administrator and was the secretary for the meeting.

Q. Can you help us with getting some feel as to -- if the proposal was, "This is what Newcastle has done, what do you think about it, should we contemplate something the same?" Can you remember what contributions, if any, those attending the meeting made to that debate? Do you have a recollection of that or not?

A. My best recollection -- and I'm not sure it's a very good one -- is that we initially got into a general
debate with Brian in a sense responding to the points he was making in his letter saying, look, this is a very difficult situation and we need to get into the department initially and talk about it and then -- and so Bill Whitrow, Stan Urbaniak and all of us said this is an important debate that we are going to have. And at some point -- and the proposition was made then, why don't we follow the Newcastle team, and it was then -- I'm sure I take full responsibility -- then the meeting deteriorated because I got into the whole business which I have already referred to. And I do not know, to be absolutely honest, whether it was Brian or David. It certainly wasn't Bob Perry. He may have been very supportive. But it was either Brian or David McIntosh that made the move, that triggered off the sad deterioration in the meeting.

Q. All right. You described earlier today a rejection of that proposal on the basis that many of the members felt it would be a breach of trust as far as the SHHD was concerned. Do you remember that?

A. Yes, I do.

Q. Do you remember who might have voiced that sort of concern?

A. Yes, I remember vividly. Bill Whitrow is an ex-lieutenant commander in the navy, and he had a very
strict view of discipline and doing as you are told, and so on. Stan Urbaniak was again very supportive. Mitchell, of course, you could expect it because he was already on board. I do not recall, to be honest, Chris Prowse or John Francis, Marie Thornton being involved. But there is no doubt -- being involved in the debate, but it was pretty evident that a number of them, when they heard Bill Whitrow and myself, Stan Urbaniak. Ewa Brookes is a very gentle, super lady who wouldn't say boo to a goose, but I remember her vividly being strongly supportive of the point that I was trying to make.

Q. What was the point you were trying to make?

A. The point that I was trying to make was that we -- that any move for us to do something independent a la -- do our own thing, we should touch base first and get clearance from the Scottish Office for the policy decisions that had already been made.

Q. You will no doubt have read David McIntosh's testimony?

A. Yes.

Q. Part of the gravamen of his complaint seems to be this decision ignored the central question of patient safety. You have seen that. Was the question of patient safety either expressly mentioned at this meeting or do you think it was simply a given that the medical individuals
involved would realise that that is what the other side
of the equation might be?

A. I think it was a given and the reason I raised the issue
of the letter about what was going on in Paris, okay,
because that was a very orientated issue about patients
and so -- I don't mean "given", I think it was discussed
in the background of Brian's general debate, that -- so,
yes, it was included in the discussion.

Q. So --

A. And the view was, if we get into the department quickly,
we might be able to move quickly.

Q. Simply to play the devil's advocate again, it seems
strange that if the decision was there are undoubtedly
good principal reasons for a UK-wide starting date but
we are able to go ahead but we can't do a Newcastle
because that would be a breach of trust with SHHD, let's
go to the SHHD and see what they say about it, can you
help us with why that relatively straightforward
decision isn't minuted in the minutes?

A. Well, I can't, and I have already explained that the
original draft minute had to be amended and I received
advice that this was the area that the amending took
place, that the original -- the original draft submitted
to David as chairman, quite rightly, before it went on
its way, did include some of the stuff that you have
alluded to and I have to say, to this day I do not for
the life of me know how we got that one-liner or, as
I said earlier, that we put up with it, that when we all
met in August -- we are all -- by August, I should point
out -- I think it was 20 something of August -- we were
nearly into the 1 September, and really the view of all
falling out again really didn't turn us on, to be
honest.

Q. It may simply be an example of people not being terribly
interested in the minutes of the previous meeting when
they have got a forthcoming meeting to deal with --

A. I honestly -- it would be speculation --

Q. All right --

THE CHAIRMAN: Mr Anderson, can I interrupt you. It's now
20 past four and I think I have to find out how long you
and Mr Johnston are likely to take.

Mr Johnston, it seems to me that you do have an
interest in some of the matters that are being raised.

MR JOHNSTON: I do, sir, but I would like to say that
Ms Dunlop has covered a great deal of the ground so
thoroughly that I would be surprised if I really want to
explore it further.

THE CHAIRMAN: Well, I can understand that but of course,
one knows that as soon as one question is asked, the
ripples continue to extend to the outer edges of the

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Mr Anderson, I can't go on beyond half past four and I'm sure I don't want to put the stenographer to the difficulty of continuing. She has already gone beyond the time we would normally break.

MR ANDERSON: I'm reasonably confident I might make half past four.

THE CHAIRMAN: I'll throw you out at half past four.

MR ANDERSON: I would welcome that.

A. So would I.

THE CHAIRMAN: Again, it depends how you interpret the comment.

MR ANDERSON: Let's deal with this as quickly as we can, professor. Can we look again at the letter [SNB0083956]? This is a letter by you to Jim Donald of the CSA:

"The communication from Rab Panton has triggered off the final phase."

Can you help us with that, can you help us with what that means:

"The letter from Rab Panton has triggered off the final phase."

A. No, I can't. "Phase 3, see below". Commencing -- yes, phase 3 is commencing Monday, 2 September. I make that assumption. Does that help?
Q. I'm just wonder what the communication from Rab Panton was?

A. This was his allowing us -- his letter to Jim Donald saying:

"I hereby declare that you are allowed now to start on 1 September."

Q. I'm much obliged to you. That letter, which I don't think we need to go to in view of the time, was one which was copied not to you but to David McIntosh. Am I right?

A. I presume it was just photostatted in Jim's office and sent up to David, presumably.

Q. What we see here in the letter of 12 August 1991 is three phrases:

"1. Commencing 15 July 1991 ... arrangements to purchase kits ..."

"2. Commencing mid August 1991 ... 'dummy runs' ...

[and then] commencing Monday, 2 September ..."

You have told us earlier that the decision at the June meeting was not to stick to the September date. But just taking this as quickly as I can, do I take it that this is the plan if any communication or approach to the SHHD did not bring about the change?

A. Yes. I mean, the instruction we had had for months actually, it's going to be 1 September. The view
after June was, could we in fact get that -- in other words, was the department prepared to change that, if necessary? But otherwise it was 1 September; yes.

Q. This is a hypothesis, professor: if the decision at the June meeting had been to not simply voice concerns with the SHHD or to say, "Look, we are in a position," but to make some sort of forceful recommendation, if you like, a submission, that Scotland should start ahead of the rest of the UK; can you help us with how you think such a submission is likely to have been received? Do you think such a submission would have been successful?

A. It has to be speculation.

Q. Of course.

A. But through all the interactions I had previously with Dr McIntyre, with Rab Panton, with George Tucker, with Harold Gunson, I don't think I had any interactions directly with Jeremy Metters at all -- my view had been -- this is speculation -- that it would have been rejected.

Q. Even if those making the submission were or might perhaps be thought to be those with the greatest expertise in the matter?

A. Yes, but this is speculation.

Q. I accept that.

A. This is very much speculation but I mean, the -- and you
know, for me -- bizarre episode in which the deputy chief medical officer in London felt he needed to reiterate after the Newcastle debacle the need for solidarity UK, as I say, I would speculate that we wouldn't have shifted them, and time was rapidly running out.

Q. Well, it would require, wouldn't it, the SHHD to persuade their minister to go separately from the rest of the UK?  
A. Yes, and no doubt consult with colleagues in London, you know, which would be the normal, courteous thing.  
Q. Let's hypothesise further, if we may; and think about a situation where such a submission had been successful.  
A. Yes.

Q. In other words, you had persuaded the SHHD to persuade their minister to go ahead in Scotland before the rest of the UK. When do you think realistically testing was likely to have started in Scotland?  
A. This would have been in June. I have a feeling I would need notice of that to talk to the boys again. But I would have thought, you know, there we were earlier saying -- the Edinburgh set saying, "We will go for February". I would have thought we could have moved pretty quickly.

An accurate answer to your question is a little
difficult and if I'm right that already by the
11/12 June Brian had decided Edinburgh were going to go
and that would mean 15 July, which appears on bits of
paper we have looked at, so it looked like a month, but
in terms of testing, I have a gut feeling we could have
been up and running really within three/four weeks. The
question of counselling donors is another issue, as
Glasgow were not doing that.

Q. We still have in front of us this letter of
12 August 1991. Would the phases that we see there not
have to have been gone through? Am I wrong in that?

A. Yes, I think in principle, I think -- yes, but I think
this was -- this was our best option of starting -- for
starting at 2 December, and so we were saying, "Well,
mid-July we would commence talking in terms of contracts
for kit purchases".

Now, that was done by Mr John Francis the director
of finance. I think the familiarisation with staff with
associated technology would have been quite quick
actually. They are pretty sharp characters, and then
actually doing a few dummy runs, you know, this is
a leisurely thing but I think the idea that we needed to
get this right and take our time and do it properly,
that's the basis of these phases, I think.

Q. Does it come to this -- and I'm not trying to put words
in your mouth but the difference is essentially a matter
of weeks between --

A. Oh, yes -- no, no. We were running out of time by the
time the June debate happened, we were rapidly running
out of time, but I say that -- I think we need to be
sensitive in saying that, to the extreme concern of the
directors about their patient responsibility, about what
was going on down in Paris, the great sensitivity. And
for them I sense it wasn't just the process, it was
comfort, it was knowing that we were doing the right
thing, and it may have made no great differences in
terms of weeks but, you know, that's, I sensed, how they
felt.

Q. Thank you very much, professor, I'm obliged to you.

THE CHAIRMAN: Mr Johnston?

MR JOHNSTON: Sir, thank you. In the circumstances, I'm
ccontent to rely on the examination that the Inquiry
counsel have carried out and I'm grateful to her, and
I therefore would not wish to ask any questions.

THE CHAIRMAN: Thank you very much.

Well, thank you very much. Au revoir, I think, is
the best I can say.

(4.31 pm)

(The Inquiry adjourned until 9.30 am the following day)