HEALTH COMMITTEE

Tuesday 31 January 2006

Session 2

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HEALTH COMMITTEE

3^{rd} Meeting 2006, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
*Kate Maclean (Dundee West) (Lab)
*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)
*Mrs Nanette Milne (North East Scotland) (Con)
*Shona Robison (Dundee East) (SNP)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Stewart Maxwell (West of Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)
Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Carolyn Leckie (Central Scotland) (SSP)
Lewis Macdonald (Deputy Minister for Health and Community Care)

THE FOLLOWING GAVE EVIDENCE:

Philip Dolan (Scottish Haemophilia Forum)
Andrew Gunn (Scottish Haemophilia Forum)
Mr Andy Kerr (Minister for Health and Community Care)
Andrew MacLeod (Scottish Executive Health Department)
Robert Mackie
Frank Maguire (Legal Adviser, Scottish Haemophilia Forum)

CLERKS TO THE COMMITTEE

Lynn Tullis
Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 1

Scottish Parliament

Health Committee

Tuesday 31 January 2006

[THE CONVENER *opened the meeting at 14:01*]

Hepatitis C

The Convener (Roseanna Cunningham): I welcome everybody to this afternoon's Health Committee meeting and ask them to take their seats as quickly as possible. I welcome Carolyn Leckie MSP to the meeting.

Agenda item 1 is consideration of the case for an inquiry into infection with hepatitis C that has resulted from national health service treatment. Members will recall that an evidence session on this subject was postponed last year because a petition for judicial review in the Court of Session had been lodged on the day that it was to take place. The situation has now been clarified, so we are in a position to hear from the Scottish Haemophilia Forum and, thereafter, from the Minister for Health and Community Care.

I remind members in advance of the minister's evidence that it is possible that he will be restricted in responding to some questions because of the outstanding court proceedings. He has been given a general indication of what we are likely to ask and will, as far as I am aware, have a legal adviser present. I hope that we do not stray into matters that will cause legal difficulties. Nevertheless, we are pleased to hear evidence from the Scottish Haemophilia Forum, as well as from the minister, on the case for an inquiry into hep C infection as a result of NHS treatment.

I suggest that we try not to go over all the ground that was covered in earlier Health Committee meetings, particularly the 2003 meetings. We are considering new evidence on how things have changed in the past couple of years, so that we can deal with the renewed call for an inquiry.

Members have received a number of submissions. We will hear first from the Scottish Haemophilia Forum and its legal adviser. I welcome the representatives of the forum: Philip Dolan, who is chairman of the forum; Andy Gunn, who is from the Highland Haemophilia Forum; Robert Mackie, who is a haemophiliac; and Frank Maguire from Thompsons solicitors, who is the legal adviser to the forum. We have received apologies from Dave Bisset, who is the vice-chairman of the forum, and from Suzanne Potter and Kevin McGonagle.

I know that the various representatives want to make a joint opening statement. I ask them to keep that statement to no more than 20 minutes so that we have sufficient time for questions. I have allocated about an hour for the forum witnesses. I invite the witnesses to begin their opening statement; they may speak in whichever order they wish.

Philip Dolan (Scottish Haemophilia Forum): Thank you, convener, for the opportunity to appear before the committee again. Over the past seven years, I have given evidence to the committee on several occasions. I have done so in the company of various members of the forum, two of whom are now dead. Three other members of our forum who campaigned on the issue are also now dead. We do not know the total number of people who have died from hepatitis. I am thinking in particular of people who may have had blood transfusions.

The question for me is this: why are the Minister for Health and Community Care and the Scottish Executive so afraid of an independent public inquiry? Inquiries have been held into the Holyrood building, train crashes and—of course—BSE. Perhaps the BSE inquiry holds the answer. Lord Phillips, who chaired the inquiry into BSE, pointed the finger at senior Department of Health advisers, many of whom were around at the time of the hepatitis C infections. Perhaps those advisers have failed in their advice to ministers in the past and the present.

It is with a heavy heart and mixed feelings that I speak today. I am aware of the general support that the committee has given us over the years, which the majority of members of the Scottish Parliament from all parties have also given us. However, although some members will hear what I have to say today, others are not listening to our plea. I find myself asking what the point in speaking is. I find it sad and frustrating that, no matter what we say, some MSPs will already have decided how they will vote. They will base their decision not on their consciences, but on their political allegiances. In doing so, they will be ignoring 500 or 600 of their constituents who have hepatitis C and who suffer as a result.

Lord Robert Winston, the Labour peer and distinguished scientist and doctor, has said that hepatitis C is the worst tragedy in the history of the national health service. It is a tragedy, and it is one that could have been prevented if Governments had not put finance before safety. Recently, when Lord Patrick Jenkin attempted to locate files that relate to contaminated blood, he was told that the files had been destroyed. Lord David Owen sought to look over his ministerial minutes from the period when he was Labour's minister of state for health, only to be informed that the minutes had been destroyed. Why did that happen, given the 30-year rule for holding on to such documents? Were the papers destroyed accidentally or are there more sinister reasons for their destruction? Who is trying to cover up the facts?

Our plea to the committee is that its members act according to their consciences. I believe that the committee's members must be the voice in the Parliament of hepatitis C sufferers and their families. We must not be left in the wilderness. Today, committee members can help to ensure that the Scottish Parliament again shows its independence from the Executive by persuading the minister to set up an independent public inquiry. Hepatitis C sufferers must not be left like Japanese prisoners of war were left—it must not be another case of waiting until everyone is dead before someone decides to act.

Malcolm Chisholm, the former Minister for Health and Community Care, appeared before the committee on 9 September 2003. In response to a question on the need for a public inquiry, he stated:

> "If new evidence emerges, I am happy to consider it with an open mind."—[*Official Report*, *Health Committee*, 9 September 2003; c 163.]

Prior to today's meeting, I had the opportunity to see the submission that Andy Kerr, the Minister for Health and Community Care, will make to the committee. He seems to be ignoring the new evidence. His comments are an insult—they beggar belief. Is what he will say really what he thinks of people who have died or who are seriously ill as a result of NHS treatment? Are they his views or the views of his advisers?

As the convener said, in advance of the meeting the committee received our submission, to which we have added an addendum. Robert Mackie has also prepared a submission, in which he gives a summary of points that relate to papers that have been released under the freedom of information scheme. He will be happy to answer questions. I am sure that the committee took the opportunity to watch the BBC "Frontline Scotland" programme on hepatitis C that was broadcast last June. The programme raised issues to which the forum relates.

The documents that have come to light as a result of the passing of the Freedom of Information (Scotland) Act 2002 demonstrate that there was concern as far back as the 1970s about hepatitis and the effect that it would have on the haemophiliac population. At that time, it was assumed that people who had haemophilia did not have the life expectancy of the general population. Perhaps that was wishful thinking, that we would all be dead soon. Fortunately, some of us are still alive—at least, I believe that I am alive. The documents record that from the late 1960s to the early 1980s, the Scottish National Blood Transfusion Service was obtaining blood from high-risk sources including prisoners in Scottish prisons and United States troops who were based in Scotland. Perhaps it is a coincidence that it was during the same period that people developed non-A, non-B hepatitis.

In his submission, the minister completely ignores and fails to comment on the sourcing of the blood. It is also recorded in the documents that the blood transfusion service failed to meet the required standard that had been laid down by the Medicines and Healthcare products Regulatory Agency. Perhaps that is why, during the past few weeks, the Scottish Executive has suggested that the blood products section should be sold off to commercial firms. Is there a problem in that even today the service is not meeting the required standards?

During the debate that took place on 22 December, the deputy health minister mentioned another 50 documents that had been released under the Freedom of Information Act (Scotland) 2002. On 6 January, I requested those documents; to date, I have not had even an acknowledgment of my request. During that debate, the deputy health minister mentioned that the documents were "internal communications" from advisers to ministers. Given that we, as members of the Scottish Haemophilia Forum and the Haemophilia Society, have reservations about whether correct advice was being given to ministers, it is important that those documents be made available to us, so that we can see what advice—right or wrong—was given to ministers. If there is not a problem, why are the ministers so resistant to a public inquiry?

There are previous examples. Is it the type of wrong advice that was given to the minister, the previous Health Committee and to expert groups relating to cases in Ireland? The details of that and documents relating to it are in our submissions, which include documents from the Department of Health and Children in Ireland.

The minister has said that hepatitis C is in the past. That is nonsense. There are young men in their late teens and early 20s who have haemophilia and who were infected in the late 1980s. Does the minister regard them as yesterday's men? They are part of our future. They have the same needs as others in their peer group and they wish to develop relationships and have families. According to the Executive's SNAP—Scottish needs assessment programme—report on hepatitis C, there is a 5 per cent risk of sexually transmitting hepatitis C and there may be a risk of a child being born with hepatitis C to an infected couple. The minister is wrong or is receiving incorrect advice from his advisers. As a result of a failure of the NHS, hepatitis C is with us today and will be with us tomorrow and in the future.

I am tired of the knock-backs that we have received over the years. Despite that—and not only because I believe that we have a just cause—I will continue with our campaign. We owe it to the people who have died and those who are suffering from the physical and social effects of hepatitis C, as well as to the families and young people of our present generation. Parliament has acknowledged the human rights of prisoners and has granted them compensation, but the Government has not accepted that it has failed some more vulnerable people who have suffered as a result of NHS treatment. Are we of less value than prisoners? I urge the committee to lodge a motion in Parliament, and I hope that MSPs of all parties will be able to vote according to their consciences.

That is as much as I want to say at this stage. I am happy to respond to questions on the submissions that have been made. Frank Maguire will present the next part of our evidence.

14:15

Frank Maguire (Legal Adviser, Scottish Haemophilia Forum): I have nine minutes, so I will get straight to the point.

The Convener: Do the other two members of the panel want to say anything at this stage?

Philip Dolan: They will answer questions relating to the submissions.

Frank Maguire: In his submission, and consistently over the years, the minister has set the most store by the report "Hepatitis C and Heat Treatment of Blood Products for Haemophiliacs in the mid 1980s". He has suggested that it is the definitive report on the issue, in which answers are to be found and on which he rests. Paragraphs 5 and 6 of his submission refer to the report. The minister states:

> "Some may question the report because it was conducted by the Executive but as far as I am aware no one has disputed that the evidence and documentation supported the findings of the report."

He also says that the report was put before the Health Committee and contends that its members were persuaded of its findings.

I would like first to consider the status of the report. On what is the minister resting his ideas regarding new evidence and his entire view of hepatitis C? What was the investigation? It was not an inquiry. It was not independent—it was carried out and commissioned by the minister who has responsibility for the NHS. It was not impartial—or, it did not give the impression of being impartial—because it was conducted by some civil servants who were responsible to the minister. Only a select number of the interested parties were heard. The evidence was directed in a certain way, and not all of it was heard. It was not tested by examination and cross-examination, and it was not judicial. "Judicial" means having someone examine all the facts, without fear or favour and without considering who is or is not interested. It means having someone find out what the facts are, assess and weigh the evidence and make recommendations. Against that, we have a minister who presides over the NHS and liaises with the Department of Health, under whose auspices documents that would be pertinent to an inquiry have been destroyed.

If Occidental, which was the petroleum company that was involved in the Piper Alpha disaster, had said to us that it would carry out the inquiry into its role, the roles of subcontractors and others associated with the disaster, would we have been satisfied with that internal so-called inquiry? We would not. Would we be content for a council to carry out an inquiry into an outbreak of E coli—which has happened—when the council itself might be in the frame? We would not. Would we be content for BP oil exploration to carry out an inquiry into explosions at its facilities? We would not. I could go on.

Why be content with a narrow internal investigation that has been carried out by a minister who might be in the frame and who might be asked questions about his role and that of his predecessors at the Department of Health with regard to hepatitis C? The report is just a report by some civil servants to the minister. In my view, it does not carry sufficient weight to determine what our stance should be in relation to hepatitis C and all the issues that arise from it.

Let us consider the scope of the report. What did it not deal with? It did not deal with 3,500 transfusions that occurred before September 1991 that did not involve haemophiliacs. Those statistics come from the Government's statistician at the Department of Health and were given to the expert group of which I was a member. They suggested that 4,000 people were infected with hepatitis C, 500 of whom were haemophiliacs—the group with which the report dealt. The report did not deal with the other 3,500 transfusions: there is not a single word about them.

What else did the report not do? It examined how fast heat treatment happened in Scotland compared with England. That is a very narrow compass. It did not deal with how the blood was infected in the first place. The argument was that if the blood was not infected, heat treatment was not required. What has come to light since? Blood was taken from Scottish prisoners, inmates in borstals and members of the US Navy. Where else did the blood come from? Was blood taken from, say, Arkansas or other American states? The report did not deal with any of these questions.

The most shocking aspect of the report is that it did not deal with what I call the fall-out from hepatitis C infection. If there had been exposure to radiation in England and Wales but also in Scotland, it would not be enough to say, “It wasn’t us” or, “We didn’t do it” or that we were not the cause of radiation before England said it. We would have to examine the effects of that radiation and minimise them.

What are the potential effects for people who are infected with hepatitis C? Time is not on their side. As hepatitis C progresses, it begins to damage the liver. Treatment becomes less available and less effective. Those individuals must be informed about hepatitis C infection at the earliest opportunity. Alcohol, even when consumed in moderate amounts, in conjunction with hepatitis C will cause further liver damage.

Secondary exposure is another important issue. As is stated in the Government’s literature on hepatitis C, an infected individual can transmit it to others by sharing a toothbrush, a razor or needles, or through sexual intercourse.

What has been done about the fall-out? We do not know because the report did not deal with it. Nearly every week I receive clients who inform me that they have just found out that they have hepatitis C and have found that out during holiday vaccinations or through incidental medical treatment. In some cases, it has been discovered 10, 15 or 20 years after the individual became infected. There have also been long delays between the discovery of infection and informing the individual concerned. In one case, the infection was discovered in 1991 but the individual affected was not told until 1999. Why was there a gap of eight years between discovery and informing the individual concerned? What damage has occurred to that person over those eight years because they were not told? The report did not deal with that. Those issues cry out for an inquiry, which we need in order not just to minimise the damage to the people who have been affected and to ensure that they are treated and counselled, but to prevent others from being infected.

I have a case of a widow whose husband died of hepatitis C. He got it from her. I have other cases of people who have caught hepatitis C from their partners who were never told that but discovered it only later through incidental medical treatment. With 3,500 blood transfusions, how many people are unknowingly infecting others and causing further damage? The ripples that have been caused have not ceased.

We must also consider the lessons that are to be learned. We are entrusting the minister with the welfare of 37,500—from his figures—hepatitis C sufferers in Scotland. The minister’s literature claims that the two main sources for those 37,500 infections were blood transfusions before September 1991 and drug abuse. Can we accept what the Minister says when he has missed the matters I have raised and has relied on a narrow inquiry? Can we turn round and say that we know all that we need to know? Are we happy that everything possible has been done and that everything is fine with regard to the health service, blood transfusions and hepatitis C?

On behalf of the hepatitis C sufferers, I submit that it is irresponsible to claim that everything is fine because we, and the minister, do not know the full extent of this problem. The only way to ensure that we do not have a disaster with the 37,500 people who are infected is to have an open inquiry.

The minister talks about the cost of an inquiry, but what does truth cost? The truth is a good in itself, whatever its repercussions and whatever it means. We have to take the repercussions. We do not know the truth of what happened with hepatitis C sufferers and, until we have an inquiry, we have no means of finding out the truth. All we have is a minister’s word—based on inadequate evidence—and his assurances. In my view, that is not enough.

The Convener: We now move to questions. Not every member of the panel is required to answer every question. If that was the case, it would obviously take quite a long time. I ask you to confer among yourselves and to designate the most appropriate person or couple of people to answer each question.

Robert Mackie: I would like to speak.

The Convener: Just a second. I did say that we wanted to spend a total of 20 minutes on opening statements and I understood that you had agreed that Philip Dolan and Frank Maguire were the two who were going to speak. We are going to move straight to questions, Mr Mackie. You can decide among yourselves who will answer questions.

Mrs Nanette Milne (North East Scotland) (Con): I will kick-start our discussion. I fully understand everything that has been said and I have a great deal of sympathy with the witnesses. Given all that has gone before, what would be the optimal outcome of an independent inquiry, should one take place? Why would an independent inquiry be better than your taking a test case to court? I foresee that, even if there was a public inquiry, you might then have to proceed to a court case.

Frank Maguire: First, people who have hepatitis C—those who are not deceased—do not have any legal right to an inquiry. They cannot go to court and have a judicial inquiry—never mind what Parliament says. A medical negligence case would be extremely difficult because we do not know the facts. It would be time barred and there would be prescription problems, so a court case is not appropriate for those people. With the fatal cases, we are going to court and saying that there is a legal right under article 2 of the European convention on human rights, but we are not here to discuss that.

What I am asking for is a judicial inquiry by an independent judge who is commissioned by the Government, by the Parliament, to exercise his or her judicial functions. That is what happened in the Piper Alpha inquiry and various other inquiries. A judicial inquiry would have powers to put people under oath and to command and obtain evidence. The judge would publish the findings and recommendations and state the lessons to be learned. I want the Scottish Parliament to commission a judicial inquiry like the Fraser inquiry, the Piper Alpha inquiry or the Cullen inquiry. A judge in the Court of Session should be given the remit to investigate hepatitis C and to do what they have to do to get to the bottom of the matter.

Mrs Milne: Are you certain that a specific test case could not be brought to court, perhaps on a no-win, no-fee basis?

Frank Maguire: I cannot go to court and say, “Could you please have a test case on hepatitis C?” I can go to court and say, “I have a medical negligence case,” and if I am offered some money the case will be settled, but I cannot go to court and say, “Can I have a test case to look into a hepatitis C inquiry?” That would have to be done by the legislature or the Executive, who would commission an inquiry.

The Convener: Are you saying that a medical negligence case involving a living hepatitis C sufferer would not uncover sufficient information to be used as a precedent for others?

14:30

Frank Maguire: The circumstances of a case would remain specific to that case alone. For example, if one took a haemophiliac case, one would not be able to deal with transfusions, and vice versa. Moreover, one would deal only with the specific facts of the case.

The case could also be bought off. The person bringing the case might be told, “Here’s an offer for your injuries; that’s an end to the matter. You don’t need to go to court.” If they then decided to proceed to court, the court could find, and award expenses, against them.

The Convener: It is useful to put that on the record, because I think that people misunderstand how efficacious court cases might be.

Do any other witnesses wish to comment on what they hope to get out of an inquiry as opposed to what they might hope to achieve by going through the courts?

Andrew Gunn (Scottish Haemophilia Forum): This is what the Parliament is for, and it is why we spent £500 million. You are supposed to represent and help us. We want the truth. You should not be trying to pass the buck by telling us, “Can’t you go and phone one of these no-win, no-fee lawyers?” We have come to you for help, so I would appreciate—

The Convener: We need to establish on the record what you hope to achieve by this inquiry. So, by having this inquiry, what are you basically hoping to achieve?

Andrew Gunn: In a nutshell, we want truth and justice. I do not think that that is too much to ask. We do not want heads to roll just for the sake of it.

The Convener: Okay. Jean Turner has some questions about the diagnostic delays that have already been mentioned.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): As you have already made clear, one of the biggest worries is the delay in diagnosis. Andrew Gunn has sent most members details of the case of Chris Bishop, who did not know that he had chronic liver disease until a year ago, when he discovered that he had contracted hepatitis C from a blood transfusion after a car accident. I know that the number of undiagnosed cases has been estimated, but do you have any idea how many people might be affected?

Frank Maguire: According to the Government’s figures, of the 3,500 transfusions that have led to infection, 60 per cent have resulted in serious deteriorative conditions, such as cirrhosis of the liver and liver cancer, and in death.

One reason why we do not know the number of people who have contracted the disease is that, despite its own rules, the Crown Office and Procurator Fiscal Service does not investigate deaths that arise from hepatitis C. It is a chicken-and-egg situation: we do not know the figures because the Crown Office and Procurator Fiscal Service does not look at the cases. However, we certainly know that there are 3,500 cases as a result of transfusion, and that 60 per cent of them have contracted the conditions that I mentioned. Of course, the number of people whom those 3,500 have cross-infected is a complete unknown. One statistic is that about 5 per cent of people in the haemophiliac population—not the transfusion population—get secondary infections.

Dr Turner: So you do not think that any lessons have been learned.

Frank Maguire: My evidence shows that no lessons have been learned. For example, although one lady contracted hepatitis C at Stobhill hospital in 1985 from a blood transfusion and blood products, she was told only in September 2005. She is now married and is worried about her husband and the rest of her family. Another person, who contracted hepatitis C in 1990 at Edinburgh royal infirmary through a blood transfusion, was told only in 2002. I am not making that up; my information comes from medical records that clearly show when those people were told of their condition. In other cases, the medical records clearly show that people were found to have hepatitis C in 1991, but were not told until 1999. I can send the committee affidavits or statements relating to those cases.

Dr Turner: Each of those people would probably be able to bring a case of medical negligence if they pursued the matter individually. However, the bigger picture that is emerging from the evidence that you have sent us is this unknown factor. Are you now confident that no blood is being taken from prisoners anywhere in the world? I take the point that either you or Philip Dolan made, that if private sector companies were allowed to sell blood products, there would not necessarily be the same control over where they sourced them.

Frank Maguire: We know that there was a delay in cutting off the supply of blood from Scottish prisoners, people in borstals and members of the US Navy. However, we do not know about anything else.

Medical negligence cases presume fault, but those who have been infected are not saying that there was fault, because they do not know. They need to know the facts. Many of them are not concerned about compensation or bringing medical negligence cases; they want to know what happened for their own peace of mind. The relatives of those who have died want peace of mind too. They also want to know, for the benefit of the rest of society, that lessons have been learned, so that other people will not be infected and acquire one of these conditions. A medical negligence case would have all sorts of problems and presuppose something that we do not know.

Dr Turner: I fully understand that. You are saying that those who have been infected sometimes do not even know that there is anything wrong with them, or they do not look at their condition from a medical negligence point of view.

Frank Maguire: Yes.

Dr Turner: From what you say, a medical negligence case is not the way to go.

Frank Maguire: No.

The Convener: You say that the person who was most recently told that they had hepatitis C was told in 2000, and that she was told that she must have had it for quite a long time. Are people still being told, in 2006, that they have been infected? Have there been instances since 2000?

Frank Maguire: The latest case was in September 2005.

The Convener: In 2005. I am sorry; I must have misheard you earlier.

Frank Maguire: Another case came in the other day.

The Convener: So people are still being told that they have been infected.

Frank Maguire: I cannot give information about cases more recent than September 2005.

The Convener: That is fine. It is important for the committee to know that.

Robert Mackie: I am a severe haemophiliac and I was infected in the late 1970s or early 1980s with hepatitis C, but I did not know that I had hepatitis C until I started to get treatment for full-blown AIDS at the Western general hospital in 2000. My AIDS specialist at the Western general hospital told me that I had hepatitis C. I had told him that I was not well, to say the least, and he said that it was unlikely just to be AIDS, and that it could be hepatitis C. Until then, nobody had told me that I had hepatitis C.

The Convener: Did he see that in your notes or did he make a diagnosis?

Robert Mackie: He was in correspondence with my haematologist; I do not know where he got the information.

The Convener: There are two issues here: one is late diagnosis, the other is failure to advise people.

Frank Maguire: There is a failure to trace. What have we done to trace the 3,500 people who had transfusions to find out whether they received a transfusion from a batch of blood that was infected with hepatitis C? Those people are going about their business and have not been traced.

Another issue is how long it took to tell infected people that they had hepatitis C.

Carolyn Leckie (Central Scotland) (SSP): My question follows on from the theme of when patients were told. I made many freedom of information requests beyond the Executive—to the Scottish National Blood Transfusion Service and to health boards—and got stuff that the Executive did not release. That brings into question whether it has released everything it has on the matter, but that is another story.

In relation to HIV, the failure to tell people that they have been infected has been endemic since the early 1980s. Can you comment on Council of Europe recommendation R83(8), which was adopted as policy, that anybody who has been infected by blood products—hepatitis B, as was the case then, or HIV—should be informed? Patients might have been infected in 1984 but not informed until 1987. I have not found anybody who was told immediately. It happened too often to be accidental. Can you comment on the failure to implement the Council of Europe recommendation? I recently had an acknowledgement from a senior haemophilia director that he was not aware of the recommendation. Have you examined that?

Frank Maguire: If organisations had been aware of the recommendation, many people would have been informed earlier. However, despite the recommendation, people are still not being told that they are infected. The time period involved is from 1991 right through to 2005. It seems to me that a lesson is not being learned somewhere. The recommendation has not been looked at or followed. No tracing has been done; no one has gone after those people to prevent damage. The situation spans that whole period of time and it is still continuing. It is ironic that the minister would say that it all happened so long ago, in the past, when it is happening now.

Andrew Gunn: Roseanna Cunningham talked about moving things on. We are talking about the small print. The bottom line is that no one was told that they had hep C. I have HIV and hep C, but I was not told. A link was established between haemophilia and hepatitis in 1972, according to one paper I read. No one was told for years and years. I signed the HIV waiver that relinquished my legal rights should other viruses be found, when the Government, all my doctors and even the lawyers who represented me knew that I had hepatitis.

The Convener: But you did not know.

Andrew Gunn: I did not know. We were always the last to know. Let us not kid ourselves here; it was hidden from us. Let us move things on.

Helen Eadie (Dunfermline East) (Lab): I have listened to the numbers that have been quoted about people who have died or who are still unknown. This question relates to Mr Dolan's opening statement and to the figures that Mr Maguire quoted.

Mr Dolan said that there are between 500 and 600 affected constituents for each MSP in the Scottish Parliament—I believe that was what you said at the outset. That comes to 35,000 people, so I wonder where the figure of 3,500 comes from. If it turns out that we are talking about 35,000 people, is it not possible to raise a class action, rather than just a simple negligence case? I understand that there are differences between English and Scottish law.

You both said in your opening statements that documents have been destroyed, but is it not the case—as I have read in the newspapers and other documents—that all the documents that were thought to have been destroyed are available at national level, because there are duplicates of all the files at United Kingdom level? Any documents that you need to access can therefore be accessed.

Frank Maguire: The figure of 3,500 refers to the people who had transfusions before September 1991 who it is estimated have been infected with hepatitis C. That figure is based on a paper by Dr Kate Soldan, an epidemiologist at the Department of Health's Public Health Laboratory Service communicable disease surveillance centre. That evidence was led before the expert group that considered the eventual payments upon which the Skipton Fund was based. The Government has used those figures and estimates, so I cannot see how it can dispute that figure of 3,500.

The figure of 37,500 is the number of people who are currently affected by hepatitis C infection, either through receiving a transfusion before September 1991 or because of drug abuse. That is the Government's figure in its draft guidelines.

On class action, there is no competent procedure in Scotland for raising a class action; there might be in the United States of America or elsewhere. There might be talk of reforming the law, but there is no competent procedure to raise a class action in Scotland. If there was, I would have raised many a class action but, as things are, I have to deal with each case individually and hope that there is a binding precedent; of course, that can be distinguished on the facts.

If the documents are available, why was there all that fuss about them being destroyed? If they are available, then they are available, but the documents that we are looking for are not available. Even the compact disc that the Minister for Health and Community Care made available has bits scored out and bits missing. There is something there that we are not allowed to see, and we have to ask why.

14:45

Helen Eadie: I am sorry to interrupt you, but could I clarify something on that point? We are told in documents that we have received, in the newspapers and in other places that the documents are available at a UK level. This is a big UK issue; it is not just a Scottish issue. Can you say that that is absolutely not the case with regard to the UK documentation?

Frank Maguire: Yes. Susan Deacon's report, which is the civil service's internal investigation, said that documents had been destroyed, and it could not give an account of why that was the case. I presume that the investigation considered the Department of Health. I presume that it was asked, as that is where everything came from before the Scottish Parliament. We are talking about destroyed documents in the Department of Health. Lord Jenkin in the House of Lords also told us that he conducted a complete review of the documents and found that some had been destroyed. So we have it from a UK source—the House of Lords—that the Department of Health allowed documents pertinent to the hepatitis C question to be destroyed.

Philip Dolan: A debate took place two weeks ago in the House of Lords, in which various people spoke, including Lord Winston. Lord Jenkin spoke about the problems. Correspondence shows that Lord Jenkin was going through some of the records, which appear to have been in the Houses of Parliament.

The Department of Health decided to move offices—or something like that—and the documents had to go. According to the letter and the statement by Lord Warner, who is the minister of state for health in the House of Lords, during that period the documents were accidentally destroyed. You can read into that whatever you want. In a minister's statement today, there is reference to the fact that, in 2000, documents were placed in the library at Westminster—we presume. For the past five years, the UK Haemophilia Society has sought to access those documents, but they are accessible only by members of Parliament or their researchers. That is why Lord Jenkin was pursuing the matter.

In terms of the statistics, all I will say is that we looked at people who got hepatitis as a result of blood transfusions or blood products, whatever the actual figures are—Frank Maguire spoke about 37,500 people being infected. I attend a conference about the hidden epidemic of hepatitis C, and Government officials say that we can expect 50,000 people in Scotland to be infected. However, that is as a result of people's lifestyles—the use of drugs, et cetera. We have campaigned largely on behalf of people who got hepatitis C through no fault of their own, as a result of the treatment that they received from the NHS. I was tested and found to have hepatitis C in the 1970s. Nobody asked for my consent. I asked why they suddenly wanted to look into hepatitis C, or non-A, non-B hepatitis as it was at that time. Was there a reason for suddenly doing that? It was not until 1992, when I asked, that I was told that I had hepatitis C.

I made a statement in a committee a few years ago, the impact of which was that, a few weeks later, someone who had seen me on television said, "I didn't know you had hepatitis C. Does that mean that every time you come to the house we have to sterilise our cups?" All right, they were being facetious, but that is the stigma that anybody with hepatitis C faces. Some of our people who were going to come here today are not here because of that, although it would be extremely difficult for anybody to admit that—it was not from apprehension at appearing before this wonderful committee.

The Convener: It is worth remembering that there is more than one source of infection, and that this is about infection that arose out of the NHS. That goes back to some of the things that Frank Maguire said.

Robert Mackie: Can I say something about AIDS?

The Convener: I want to continue on the issue of the destroyed documentation. I know that another member of the committee wanted to ask about that, although I do not know whether there are still some outstanding issues.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I would like to pursue the matter a bit further. Philip Dolan's written evidence states:

> "In 1975 Lord David Owen, who was Health Minister, set aside money to improve the screening of blood, but shortly after this"

he moved on. The evidence states that David Owen later said that he had subsequently found out that the screening project had not taken place and said that

> "he was concerned to find that the minutes of the 1975 meeting had been shredded given that Ministerial minutes should be kept for 30 years."

I am taken by the fact that you think that the evidence that you seek has disappeared for one reason or another. The previous Minister for Health and Community Care is on record as saying that if there was new evidence, he would hold a public inquiry. From what Frank Maguire said earlier, it seems that you are saying that we do not know the truth or the facts. Have you been able to bring up any new evidence that would satisfy the minister? Is it the case that you cannot get new evidence because the material is not there, which is why you want the inquiry?

Frank Maguire: A good analogy is that the minister thinks that he is sitting on a gigantic platform of evidence on the basis of which he can pronounce what happened with regard to hepatitis C, but in fact he is sitting on only a footstool. All he is sitting on is a piece of evidence, from his civil servants, to do with whether heat treatment happened sooner in England or Scotland. It seems a bit ironic for him then to turn round and say that he will hold an inquiry if he gets new evidence. The new evidence is all round him, but he did not look at it in the first place. He did not look at the evidence on the transfusion problem, the fall-out problem or the source of the blood, which is the evidence that we want to be looked at. We can call it new evidence or evidence that he should have looked at, but it is evidence that needs to be looked at.

Philip Dolan: The minister told the committee and the expert group that the Irish system was not relevant and therefore did not need to be looked at, because it was a fault system. The documents that were issued for the meeting last May and today's meeting include letters from the Department for Health and Children in Ireland and from lawyers, which say that the Irish system was a no-fault system. Perhaps the minister was misled about the information that he gave to the committee and Parliament and to us as members of the expert group, which was wrong.

Secondly, the question about the sourcing of blood was not asked at the committee. Witnesses from the SNBTS sat beside us at the meeting three years ago and talked about blood from Arkansas, but they did not mention the source of blood.

Robert Mackie requested documents under the Freedom of Information (Scotland) Act 2002, which were released to him. I received documents in December, although the minister had made the promise to provide them in February. As Frank Maguire said, there is a lot of information out there, but the gatekeeper for the evidence is the minister and his department. If we cannot get past the gatekeeper, how the heck can we get anything? If there is nothing to hide, why is there such resistance?

We have been coming here for seven years. Several of the members sitting round the table signed the motion calling for a public inquiry. The minister in his submission suggests that everything is in the past. We first asked for an inquiry seven years ago. The convener asked questions about the matter during her time in another place. There are reports of debates in 1998 and before in which members of different parties asked the then health minister Sam Galbraith about it. There are ministers in the Scottish Government who signed motions in the past. People will wonder why things suddenly changed. I have my views on that.

There is evidence, but there must be an independent inquiry, as Frank Maguire has outlined. If there is no evidence, that is fine, but let us have the opportunity. This committee is our gatekeeper into the Parliament and we hope that your voice will carry our concerns.

Frank Maguire: To clarify matters, I will quote what was said in the House of Lords on the matter of documents. Lord Warner, replying on behalf of the Government to a question from Lord Jenkin, said:

> "We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s. Officials have also established that a number of files were marked for destruction in the 1990s. Clearly, that should not have happened."—[*Official Report, House of Lords*, 12 January 2006; Vol 677, c 300.]

Lord Warner also said that an internal review has been undertaken to establish why that was done. He was admitting that documents were destroyed, that they were relevant to questions around hepatitis C and that that should not have happened.

Mike Rumbles: One of the things that has struck me most markedly about your evidence so far is the claim that there has been a failure to trace those who have been infected. That would suggest a very serious situation. Are you aware of what that situation is? Has any investigation been commenced by the Scottish Executive or the health service to find out why there has been a failure to trace infected persons? I want to ask the minister that question, more pertinently, but do you know whether anybody is conducting such an investigation? What is happening in that regard?

Frank Maguire: We are not aware of any investigation being conducted. In their individual practices, individual hospitals are left to their own devices to act on what they think, but they are under a lot of pressure with MRSA and various other things, and I doubt that the situation is being adequately addressed.

A joined-up approach is needed. The situation requires an action group; it requires the minister, the Scottish Haemophilia Forum, and consultants from each hospital to trace those people who had transfusions prior to 1991. I am not aware of any such exercise going on. The evidence that there is not one is that people are coming forward.

Shona Robison (Dundee East) (SNP): Some of the issues that I was going to raise have been covered, but I want to focus on two elements. First, I wonder whether Frank Maguire could, for the record, tell us what evidence he has for the Crown Office and Procurator Fiscal Service not investigating deaths due to hepatitis C, despite the fact that that is required.

Frank Maguire: Of the five or six deaths concerned, four were not investigated by the procurator fiscal. He is investigating them now, however, because I brought the matter to his attention. One of the cases is a secondary infection case. In that case, I asked the procurator fiscal why no investigation was carried out, and I got the bureaucratic answer that no one reported the matter to the Procurator Fiscal Service. It is a ping-pong between the health service and the procurator fiscal as regards the investigation of those deaths. The Lord Advocate should ensure that his instructions are being carried out. He should be giving instructions to hospitals and everybody else concerned to report deaths to him, so that his service can investigate them.

Shona Robison: You are saying that there is a breakdown in legal responsibility here.

Frank Maguire: Yes. The Lord Advocate has issued instructions—which I can give the committee—that state the circumstances in which deaths should be investigated. They mention all the different circumstances, one of which is hepatitis.

The Convener: I am aware that we are beginning to talk about court cases.

Shona Robison: The discussion is about an on-going duty.

The Convener: Okay, but let us keep it out of the courtroom at this stage.

Shona Robison: Okay. Turning to my second, substantive, point, I have a question about the scope of the inquiry that you seek. What would Frank Maguire suggest the scope of the inquiry should be in light of the various comments that have been made today? One of those comments was that, despite the wealth of evidence out there, none of it, or very little of it, has been tested. Perhaps you could confirm my impression that the suggestion is for the inquiry also to address the here and now and the failure to trace and act on live cases. Would you suggest that the scope of an inquiry should include that? That would constitute new evidence, as that was never considered in the Health Department's internal document, presumably because the department did not know about that. Should such consideration form an integral part of the inquiry that you would like to be established?

15:00

Frank Maguire: The issue of transfusions would have to be central to any inquiry, because it has not been considered in any accountable way, although civil servants may have considered it informally. There has certainly been no mention of it. That would bring into the consideration general knowledge of surrounding matters such as hepatitis C, haemophiliacs and heat treatment. Transfusions are probably the most urgent issue, but some people have had transfusions and received factor VIII, so that would bring into consideration haemophiliacs who have received factor VIII. However, the most urgent issue is the estimated 3,500 people who have been infected through transfusions. If that issue is investigated, the issues regarding the source of the blood will have to be considered.

The Convener: Mr Mackie has a comment about HIV/AIDS infections.

Robert Mackie: In June 1983, the Council of Europe issued a mandate, in recommendation R83(8), that haemophiliacs in this country were to be warned of the risk of AIDS. I would like to know why that was never implemented in this country, even though the Government here warned the Irish Government, which went on to warn haemophiliacs in Ireland about the risk of AIDS. Why were we never informed about that?

The Convener: We will have to put that point directly to the minister.

Andrew Gunn: I want to make a quick point. We are talking about what happened in the past, although we are still dealing with it now. We cannot look to the future until we have dealt with the past. We have no faith in many members of the medical profession and I have no faith in the political process, because every political avenue has been closed to us. I wrote to all MSPs at the start of this month, but I got replies only from Jean Turner and Mike Rumbles. I have also written to all MPs and MEPs. I wrote to the Association of Chief Police Officers in Scotland, which resulted in an investigation that went to the Crown Office and was then closed. I sent a letter to the General Medical Council, but that was put in the bin. We have written to the parliamentary ombudsmen on the issue of the documents that were destroyed and the ministerial notes that were shredded.

The issue goes on and on and new evidence comes out every few months, but it is always somebody else's responsibility. None of us has any money, so we cannot get a lawyer and you will not give us legal aid. Nobody will do anything and it is always somebody else's responsibility. Jean Turner mentioned the bigger picture. I know that we are in Scotland, but let us look at the bigger picture and not be so insular. In other countries, investigations and public inquiries have been carried out and people have been put in jail. In France, a former health minister was put in jail for manslaughter, although there was less negligence there than there has been here. What happened is screamingly obvious to everyone with half a brain, so let us drop the façade for a minute. We all know what is going on. The public knows it, we know it and you know it. The only issue is whether you are going to do something about it.

There are two groups of people in the room, bar the clerks and the sound engineer: the people who will help us and the people who will not. I recently read a book that said that decisions are rooted in either fear or love. There are the people who have the compassion to give us truth and justice and the people who are too scared to do what they know to be right because there would be too many ramifications. Too many high-ranking politicians, civil servants, medical professionals and pharmaceutical companies would be involved—it really would hit the fan. That is the bottom line, so let us not kid ourselves. I am not an expert in anything and I am not a public speaker; I am just somebody who was infected and all I want is to get to the bottom of it.

There is a bigger picture. The Scottish Parliament is a great building and everything, but it has no real power, because the bottom line is that Westminster is in control. When I go away from here, the situation will be the same. I am sorry, but I have no faith in you.

The Convener: Carolyn Leckie has a question. I ask her to keep it brief, because the minister is waiting.

Carolyn Leckie: Another aspect that has not been examined relates to the thousands of rhesus negative women who have had anti-D. The risk of infection from that has never been examined. I have recently obtained documents from the Executive—not all of them directly—concerning an internal debate on compensating people who were involved in clinical trials. There were delays in providing safe or safer products. Do you know about those incidents? How much did the Executive claim to know? Do you feel that that constitutes new evidence?

Frank Maguire: I confess that I do not know about the anti-D cases.

An anti-D inquiry was held in Ireland. That has been pointed to by the Minister for Health and Community Care, but he thinks that it is somehow to do with hepatitis C. He is pointing to the wrong inquiry; we are not talking about that inquiry.

You asked about compensation. I do not know whether this is what you were referring to, but there was a product liability case. However, such cases are now proscribed under European legislation. Even if someone did not know about a problem, if 10 years have passed they cannot bring a case under product liability legislation. They are barred from doing that, whether they knew or not.

Carolyn Leckie: I was wondering about the weight of the arguments demanding a public inquiry. Between 1983 and 1987, clinicians were arguing for compensation for people taking part in clinical trials. There is evidence that the Government resisted that and therefore delayed the production of safe or safer products.

The Convener: If you do not know about this, just say so.

Frank Maguire: I have not looked into the product liability aspect.

Robert Mackie: In evidence that I accessed under freedom of information, I read that one of the clinicians in the blood transfusion service, Dr Cash, said that patients' lives had undoubtedly been endangered by issuing this product. That was in 1987, after the AIDS disaster and after the hepatitis disaster, but they were still playing Russian roulette with our lives. In correspondence between Dr Ludlum and Dr Cash, Dr Ludlum did not want to use the product but Dr Cash said, “You will use this product.” I find that absolutely unacceptable.

The Convener: Okay, can I—

Andrew Gunn: Just a—

The Convener: I am trying to bring this discussion to a close because the minister is waiting and we want to be able to ask him questions. I will allow you just a final comment.

Andrew Gunn: I was a child at Yorkhill hospital in Glasgow where they were using American products that were banned in America. They knew for a fact that the products were dangerous—that was documented—but they were using them even though there was a surplus of Scottish products. It all points to one thing. I cannot say any more.

Robert Mackie: I would like to say something about that. We should not have been importing those products. Under European Commission recommendations, we should not have been importing those high-risk sources after June 1983.

The Convener: Right. I need to bring this discussion to a close because we have to bring in the minister to answer questions—including some of the questions that have arisen out of the evidence of this past hour. I thank the four panel members for attending. You are of course free to sit in the public area to hear the next hour, during which the minister will be questioned.

15:08

Meeting suspended.

15:12

On resuming—

The Convener: I welcome Andy Kerr, the Minister for Health and Community Care, to the table. He is accompanied by Andrew MacLeod, Sylvia Shearer and Jan Marshall, who are all officials from the Scottish Executive.

The minister will make a short opening statement.

The Minister for Health and Community Care (Mr Andy Kerr): I welcome this opportunity to give evidence on the issues surrounding the infection of people with hepatitis C through national health service treatment with blood and blood products.

As I have always said, like other ministers, I have the greatest sympathy for those affected by the situation and for their families. It is hard to imagine how difficult it must be to come to terms with a serious and distressing condition such as hepatitis C and the knowledge that the infection occurred through medical treatment.

I also pay tribute to the Parliament—especially the present Health Committee and the Health and Community Care Committee in the first session of the Parliament—for the interest that has been taken in the issue. Members will also recall that the issue of a public inquiry was fully debated in the Parliament on 22 December 2005.

The purpose of today's evidence session is to consider whether there is now a case for an independent public inquiry into the reasons for the events that took place. There have, of course, already been a number of inquiries—by the Scottish Executive Health Department, by this committee and by the Lord Ross expert group—into various aspects of the tragedy.

In addition, on 12 December 2005, the Executive released a large volume of documentation on hepatitis C related issues that covered the past 30 years. That action was taken as a direct result of the promise to release that information that I made to Scottish representatives of the Haemophilia Society when we met in February 2005.

15:15

I remain unconvinced of the benefits of a further inquiry. The events took place mainly between 20 and 30 years ago, when there was not an understanding of the basic science involved. There were indications of an unidentified virus that affected blood supplies, and a scientific debate took place about how important that was and the precautions that should be taken. However, as you know, convener, it was not until 1989 that the hepatitis C virus was specifically identified. Heat treatment of blood concentrate products meant that those were safe from hepatitis C from 1987. By 1991, measures were in place to screen blood donations and safeguard the blood supply.

I understand that some of those affected contend that they were not informed by their clinicians that they had the disease. That is a matter for the personal and professional relationship between patient and clinician. However, I believe that the way in which such relationships are conducted and the responsibility of professionals to communicate with and involve patients have changed radically, so it is unlikely that that would ever happen again.

I do not say that an inquiry would be impossible, but I believe that it would be difficult to carry one out after such a time lapse. Perhaps more important, when we come to consider responsibility, we need again to take account of the state of knowledge and understanding that professionals and patients had at the time. If we had known then what we know now, this tragedy could have been avoided, but we did not. As I have said, there were reasonable people who worried that something was wrong, but there was not a universal view in the medical and scientific communities until 1989.

We also need to consider what people are looking for from a public inquiry and what benefits would follow it. An inquiry might bring us a greater understanding of some aspects of what happened and might establish more clearly some roles and responsibilities. However, the real question is whether there would be practical lessons that would help those who have suffered and been affected and improve our health services for the future.

We have already taken steps to ensure that, as far as possible, hepatitis C cannot now be transmitted through NHS treatment with blood or blood products. We live in a very different climate and there is now a precautionary approach to health care. We also operate in a much more open and transparent environment than we did 10 or 20 years ago. I understand that an inquiry would offer patients and patient groups an opportunity to set out their position and to question those whom they believe to be responsible for what took place. I understand and do not underestimate that desire. However, it cannot in itself justify the time and human and financial resources that would be involved in carrying out such a task.

Clearly, patients want to know who was responsible. Understandably, they want to see accountability and closure, if those are possible. I really do not believe that that would happen as a result of a public inquiry. There would still be unanswered questions and difficulty in determining where responsibilities really lay. We cannot now right the harm that was done. I do not believe that an inquiry would help or ultimately bring real benefits to those who live with hepatitis C as a result of the unfortunate events that we are discussing.

I do not believe that there was any deliberate intent to deceive patients. I believe that decisions then, as now, were taken in the patients' best interests, based on the prevailing level of scientific knowledge that was available.

Mike Rumbles: I have been moved by the personal evidence that has been given to me in letters, as well as in oral evidence. I wrote down that you said that you do not feel that a public inquiry can be justified because of the time and human resources that would be involved. Can you put yourself in the position of an individual who has been affected by what has happened? I also wrote down some of the phrases that were used in evidence to us this afternoon. Witnesses said that they do not know the truth or the facts. Do you accept that those who suffer from hepatitis C want to know the facts? This is a very human, personal issue, and it is difficult for those who are suffering to understand why the Executive does not want to hold a public inquiry.

I will add one more comment. Today witnesses told us that there has been a failure to trace those who have been infected. I was not aware of that and consider it to be new evidence. I would like you to address the point. We heard that as recently as November last year someone was told that they have hepatitis C. It is a very personal, human emotion for people to want to know the truth, as far as we can get to it. You have just said that we might never know the truth, but surely we have a duty to find it for the people who have been so badly affected that they are dying or have died. We should do what we can to help them.

Mr Kerr: I preface my remarks with your closing remarks: I do not believe that we will get to the truth regardless of whether a public inquiry is held. I too have received the letters and have heard the personal testimonies—indeed, I heard some of the comments that were made in evidence to the committee—and, therefore, I too share the concerns. However, my analysis is based on whether we would achieve what we want to achieve, which is closure. As I said in my opening remarks, I do not think that we would.

The evidence that was available at the time of infection was mixed. Discussions were going on within the health service and the scientific community and we did not trace the virus until 1989. Clinicians made the best judgments that they possibly could in that climate. We must put ourselves in the position of those clinicians, who had to make choices and take risks when they were treating haemophilia, which is an extremely serious disease, and were faced with articles in *The Lancet* and other journals saying that there might be a risk associated with non-A, non-B hepatitis. They had a choice about how to treat the patients whom they had in front of them, but my understanding from my research and discussions—I have others here to assist with that—is that the other treatments were not as good as the one that the infected patients ultimately received. The balance of knowledge and understanding at the time led the clinicians to make the decisions that they made and, as I said, they made those decisions in the best interests of the patients.

What would a public inquiry bring to the situation after 20 or 30 years? Remember that I voluntarily published every piece of information that the Executive holds on the matter under the freedom of information legislation. That was not because of a freedom of information request by Mr Dolan and his colleagues; I offered to get out in the open everything that we could within the ambit of the freedom of information legislation so that we could provide a degree of confidence on where the fault and responsibility lie.

I have considered the other evidence bases on the matter. I have examined the Irish judgment—I will happily read into the *Official Report* the findings of the judge in that case. That judgment sits well with our position, which recognises, bluntly, that we did not know what we were dealing with until 1989 and that the decisions that the clinicians made were made in the best interests of the patients.

The substantive issue is whether a public inquiry would resolve any of the concerns that you cite. My strong view is that it would not achieve closure. If I thought that we could get closure on the matter, I would happily try to achieve that, but I do not think that we could get it.

I will ask Andrew MacLeod or Sylvia Shearer to comment on your point about the subsequent research. I think that it was on the identified—

Mike Rumbles: It was about the failure to trace those who have been infected.

Andrew MacLeod (Scottish Executive Health Department): On the lapse between knowledge that people were infected and their being told that they had the infection, two kinds of circumstances came up in the committee's discussion with the previous witnesses this afternoon. The first is that it is possible for people to have hepatitis C and to carry the virus without the symptoms being present or being identified as symptoms of hepatitis C. Therefore, there can be quite a long time lag between contracting the virus and having symptoms that are diagnosed.

A number of cases of the other set of circumstances have been cited this afternoon. In those cases, a diagnosis has been made but has not been communicated to the patient for a period of time.

Mike Rumbles: The real point that I am getting at is traceability. Once such cases appear, surely there is a duty on the health service or the Government to do something about it. Why have the batches not been traced? Have they been traced?

Andrew MacLeod: Yes, that would have happened.

Mike Rumbles: Are you certain of that?

Andrew MacLeod: Yes. We can—

Mike Rumbles: In that case, there should not be any new cases, should there?

Andrew MacLeod: We must make the distinction in this afternoon's debate between the cases that are contracted through NHS treatment with blood products and hepatitis C more widely. On new cases from NHS treatment with blood products, the best measures have been taken in the treatment of blood products to make the supply safe.

The Convener: We are running the risk of getting matters confused. Mike Rumbles is referring to the 3,000 who received transfusions but who have not been traced through the system to establish whether they have contracted hep C. All medical predictions suggest that about 60 per cent will have contracted hep C. That is what we are concerned about.

Andrew MacLeod: As was explained earlier, the 3,000 figure is an epidemiologically based estimate of the number of people who might have contracted hepatitis C through a blood transfusion.

Mike Rumbles: That is my point. That is exactly what I am trying to ask you about. Surely somebody has traced all those people. If they have not been traced, why not?

Andrew MacLeod: On blood transfusions, if someone contracted hepatitis C, clinicians would clearly need to look into the cause. It could have happened through blood products, blood transfusion or another reason. My understanding would be that we could not be sure why it had been contracted.

Shona Robison: I think that what Andrew MacLeod has just said proves the need for an independent inquiry. The minister talked about the problem in the past tense, as if it does not exist anymore. However, we have heard evidence this afternoon that the problem is very much in the here and now. In addition, a woman who came to my surgery a few weeks ago had sought a vaccination for hep C because she was going abroad, but was told that she did not need one because she was already infected. She thinks that that was due to a post-birth blood transfusion in the 1980s. There was therefore a 20-year gap between that being put on her record and someone telling her. She received no counselling or information and asked whether her husband might have been infected during that time.

That happened only a few weeks ago, minister. The problem is not in the past; it is in the here and now. Surely there has been a failure to trace and act in her case and in the many other cases that Frank Maguire and others have cited. The fact that Andrew MacLeod does not know whether the figure is 3,000 or 3,500 is the reason why we need an inquiry to establish independently what the current situation is and whether the health service has acted and is acting properly in terms of its responsibility to those people.

Mr Kerr: First, I do not think that you have ever heard me say that this problem was in the past.

Shona Robison: You talked as if it was.

Mr Kerr: No. I am trying to demonstrate that we cannot judge today's health service in the same way as we judge the health service of 30 years ago in relation to the debates that we have now, the information that we have available and, indeed, the conduct and actions of the health service then. Clearly this problem is not in the past because we have people with us today who are living with this tragic condition because of medical treatment. The way that we worked in the past and the medical understandings of the past have been resolved because the virus was identified in 1989.The treatment of blood products from 1987 onwards—albeit that that was done for another purpose—treated out hep C from blood products.

I am not saying that the hep C problem is in the past—it is with us now. That is why we have a hep C strategy in Scotland, which we are working to develop. We are consulting on such issues. A public inquiry would be looking at a health service that is 20 or 30 years out of date. Clinicians' engagement, clinical governance and arrangements, science and methodologies are now completely different. That is my definition of the then and the now, which does not suggest that hep C issues are in the past. It would be wrong to suggest that. The way that we do things now and the way that they were carried out 20 or 30 years ago are completely different.

We have learned from those processes. Evidence that has been given to the committee by a variety of organisations shows that the health service has learned from the different processes that are involved. Would a public inquiry change our actions tomorrow? Would it change the ways in which we examine blood supplies and protect our blood collection system here in Scotland? All the available evidence tells me that the answer is no.

15:30

The Convener: Before I bring Mike Rumbles back in, I have a question for Andrew MacLeod, which he should be able to answer with a yes or a no—I say that with some trepidation. Some 3,000 to 3,500 people received blood transfusions at that inopportune time. Is it possible, through NHS records in Scotland, to establish who those people are? Yes or no.

Andrew MacLeod: My understanding is no.

The Convener: Why would that be?

Andrew MacLeod: We are talking about individuals who received a blood transfusion before the test for hepatitis C was introduced in 1991. They received blood at a time when there was no way of knowing that the blood was infected.

The Convener: So nobody keeps a record of who gets a blood transfusion in the national health service.

Andrew MacLeod: It will be known that they had a transfusion, but at that time there was no test to determine whether the blood was infected.

The Convener: But it would be known that they had a transfusion.

Mr Kerr: As I understand it, those records exist, but the point is that we do not know whether the transfusion that they got came from a supply that contained—

The Convener: But that is the whole point, surely. If those people are traced, identified and tested, we will know—

Andrew MacLeod: We can test people to determine whether they have hepatitis C and we can find out whether they had a blood transfusion during the period in question. If they have hepatitis C and they had a blood transfusion at that time, there might be an inference that the hepatitis C followed from the blood transfusion, but we could not demonstrate that.

Mike Rumbles: I address my question to Andrew MacLeod because I think that he is the best person to answer it. I find it incredible that people can find out later in life that they have hepatitis C. You might say that that is a matter between the clinician and that patient, but we are considering the big picture. We are considering the responsibility of the national health service—and ultimately the Scottish Executive—to make sure that we provide full information to people. Are you telling us that there is no national system for tracing people? People find out that they have contracted hepatitis C through the blood transfusion service. They know when that happened, but other people who had transfusions at the same time are not alerted. You told us that the records are kept, but nobody is alerting people.

Andrew MacLeod: There are two situations here. One is the situation with batches of blood products and the other is the situation with blood transfusion. If it emerged that a batch of blood products contained the virus, that could be tracked back, but, on blood transfusions, these things happened at a time when no test was available to determine whether or not the blood contained the hepatitis C virus, so the connection cannot be made.

Mike Rumbles: Excuse me. Nobody is talking about whether the test was available or not. You have the facts. The records are there. You know that people are being identified as having hepatitis C through blood transfusions but you are telling us that no action is being taken to alert other people who had transfusions at that time.

Andrew MacLeod: We do not know who has contracted hepatitis C through a blood transfusion. We—

Mike Rumbles: For goodness' sake.

The Convener: Can I bring Kate Maclean in, just before everybody begins to get a bit restive?

Kate Maclean (Dundee West) (Lab): My question is on the same issue. In recent years, I have heard on the radio about cases in which, for example, a dentist has been identified as being HIV positive and people who attended that dentist have been recalled and offered a test or whatever. Obviously, if they are HIV positive, there is no way of proving that they contracted it from the dentist—it could have been contracted in other ways—but people are still recalled and offered a test so that they can be offered guidance, medical reassurance or medical treatment.

All that we are trying to identify is whether, when it was discovered that it was possible to contract hepatitis C from blood or blood products, people who had had transfusions or had received blood products were recalled to be tested for hep C. How they contracted hep C is irrelevant to a certain extent—

Mr Kerr: Completely.

Kate Maclean: I want to know whether they were recalled so that they could be offered medical treatment, advice or reassurance. That is what we are trying to ascertain. That might take us slightly away from the question of whether we should have a public inquiry, but did that happen? If not, why not?

Mr Kerr: We have moved from a broader agenda. If I have got things right, Mike Rumbles's question is about the public health agenda, not about an inquiry into hep C contamination. I do not know the answer to his question, but I am happy to come back to the committee on that point. He is asking, "Is it physically possible to go back through every transfusion and every transfer of blood products in the health service, to trace every patient and to do a test?"

Carolyn Leckie: Yes.

Mr Kerr: Others say yes, but I would rather seek the evidence and then come back to the committee with advice on the possibility of doing that. That is a fair and legitimate point.

Our difficulty centres on the context of the link between that line of questioning and a public inquiry. From a public health perspective, I am more than happy to consider the matter and come back to the committee to discuss the value of that process and whether it can physically be done. Let us remember that we are also dealing with a pretty long traceability period for products. I need to look at the machine and see what I can find out.

The Convener: A number of people still appear to be getting diagnosed, or being told of a diagnosis, although they may have had a transfusion 20 years ago, so it is a live issue.

Carolyn Leckie: The failure to answer that question adequately, and the continued failure to deal with the whole population yet to be diagnosed—including, perhaps, women who received anti-D prior to 1991—demonstrate the need for an inquiry. If somebody reports to a sexually transmitted infection clinic with chlamydia or some other sexually transmitted infection, they are put under an obligation to tell the clinic about their sexual contacts, and those contacts are traced. Why is a similar obligation still not being placed on the NHS, and why was an obligation not placed on the NHS throughout the period when it was known that people were being infected? Some people are being charged in the criminal courts for knowingly infecting people through sexual contact. Why is the NHS excluded?

Mr Kerr: The NHS did not knowingly infect anyone, and I resent any suggestion that that might have been the case, so that part of your question is not valid. On your substantive point, I have said that I am happy to come back to the committee and to look, from a public health perspective, at the value of carrying out what Mr Rumbles is asking for, and at our ability to do that. That would involve going through a substantial number of previous records to try to find out about everyone who received a transfusion or blood product from the NHS and to see what can be done to recall patients and investigate cases. I must say, however, that that needs to be balanced against a judgment about the effect on individuals.

The Convener: Perhaps I can interrupt you to ask you to consider, when you are looking into that, whether it is possible to establish why a decision was not taken to do that at the time. Once it was conclusively realised that there had been a problem with blood and blood products, why was a decision not taken at that time? That might not be an easy question, but it is pertinent.

Mrs Milne: Yes, given the example that Shona Robison cited of her constituent’s case and that there are clearly people whose diagnoses have been made. We are not talking only about people whose diagnoses are not known, although we know that there are people who are living with hepatitis C and do not know about it. In some cases, the diagnosis is known to the authorities. I know what the ethos was like in the early days, because that is when I worked in the medical profession. Given that the ethos has changed, it is wrong that some individuals are still not aware that they have hepatitis C although it is on their medical records. The matter needs to be addressed.

The Convener: Although that point is not necessarily related to the inquiry, it is about the current practice where people diagnosed with hepatitis C have not been told about it.

Mr Kerr: I am happy to examine that.

Dr Turner: A no-fault inquiry is needed as a duty to the nation, as well as to people who may not know that they are infected. People who are infected and come on the scene also deserve an inquiry. There is much doubt in everyone’s minds. An inquiry would restore people’s faith in the NHS, and in the people who work in it. I am astonished that patients who received contaminated blood transfusions were not traced and that serial testing has not been carried out. Allocating blame must be removed from the situation; treatment must be concentrated on. It is unfair to allow an individual go on, not knowing that they have hepatitis C, which can develop into liver cancer or disease at a later stage.

The business of where blood products came from may be in the past. Are we still receiving blood products from outside the country, for example from prisoners? As Frank Maguire and Philip Dolan pointed out, have we guarantees that the blood products sold to the NHS by the private sector are not contaminated? Can the minister reassure us on that point?

Mr Kerr: This is not about allocating blame, and I do not think that the Haemophilia Society is seeking to allocate blame either. We are speaking a different language if you think that I am trying to avoid blame, because I am not. The substantive issues are whether a public inquiry would provide value, what it would achieve and whether it would provide final closure, which many people quite rightly seek. I do not believe that it would. There are lessons to be learned. However, would an inquiry be able to trace individuals from 20 or 30 years ago to hear their evidence? It must also be remembered that, sadly, many of those involved have passed away.

Would a public inquiry change the systems that we have in place? Would it make a difference to present and future patients? From looking at the conduct of the NHS, during and after these tragic events, I am convinced that proper clinical governance procedures and systems have been put in place to ensure that such events will never be repeated in the health service. I do not share Dr Turner's views on the blame issue. I do not believe that an inquiry would be of value, make a difference to the future conduct of the health service or give closure to those affected.

Blood product purchases are governed by procedures. Scotland has self-sustainable supplies of blood products. There is no evidence of any difference in the quality of supplies between those that come from a private supplier and those that come from a public supplier. I can give the committee further evidence in writing on that matter. There was no evidence available at the time that the decisions were made, although some medical journals carried articles on the issue. However, some clinicians opted for private supplies because they believed that that provided a better treatment for their patients, who had difficult and challenging medical conditions. I am happy to come back to the committee on the matter of public and private supplies.

15:45

Dr Turner: Andy Gunn stated that although there were Scottish supplies of blood products, foreign ones were chosen in preference.

Just to clarify, I was not suggesting that you were trying to avoid blame; I was thinking that the whole point of the inquiry should be to avoid blame. A no-blame approach should be taken so that people know that they can talk freely. That would enable evidence to be given that would leave us less in the dark than we are at the moment and would give answers to the people who feel that there are no answers at the moment, including us.

The Convener: I am not sure that the idea of a no-blame inquiry works. An inquiry is an inquiry is an inquiry. Subsequent to what an inquiry finds, people might consider that there is an element of blame to be attached. I do not think that you can rule out that possibility in advance. Any inquiry that finds evidence of gross misconduct or negligence will result in someone being blamed.

Mr Kerr: I was trying to point out that the motivation of the campaigners is not to blame and that my motivation is not to avoid blame. The issue is to do with whether an inquiry will do any good.

The Convener: I want to ensure that we do not end up circling around exactly the same point, so I suggest that we move on to something different.

Carolyn Leckie: Minister, you say in your submission that lessons have been learned. I want to pick up on two issues and ask whether lessons have been learned in relation to them. It is not clear what lessons you thought it was necessary to learn and what has been learned.

In 1983, the Council of Europe made a recommendation in relation to patients who were infected with HIV. The disease was not identified as HIV at the time, although it was agreed that it was a problem. Further, it was believed that 100 per cent of people who were receiving blood products were probably infected with hepatitis B; non-A, non-B hepatitis had certainly been identified. The Council of Europe recommendation said that people should be informed but we have plenty of evidence from patients who say that they were not informed. Indeed, a senior haemophilia director confirmed to me recently that he was not aware of the recommendation, even though it was supposed to be policy. Is that a lesson that has been learned or is it an issue that has not been examined?

Some of the information that has been obtained under the Freedom of Information (Scotland) Act 2002 has been published by the Executive and some has been published directly from other sources. Have you examined the other information or are you relying on advice?

We have received submissions from senior people in blood transfusion. One of them quotes a document from 1987 that says:

> "Only failure of the manufacturing process and QC could cause difficulty and cause damage to the patient."

It acknowledges that

> "risks have already been taken with patients lives"

and goes on to say:

> "The PFC has and is operating outwith the standards of the pharmaceutical industry … PFC has manufactured product which has unequivocally endangered the lives of patients."

Do you agree that such evidence merits an inquiry?

Finally, around that issue, I have obtained internal communications between clinicians, blood transfusion workers, haemophilia directors and so on that show that, since 1983, clinicians were raising concerns about the failure of Government to agree a compensation scheme for patients participating in clinical trials. The Government did not agree to that until 1987, under pressure. Meanwhile, thousands of people became infected and there was a delay in developing safe or safer products. Is that a lesson that has been learned? Have you examined that situation?

Mr Kerr: I will try to cover the issues that you raised. I hope that my officials can assist with the points of detail.

In relation to your point about guidance, I revert to what I said about clinical awareness. In my view, those issues were being debated regularly in the health service and meetings were held between haemophilia directors, the SNBTS and others about those issues. Further, individual clinicians made choices about the information that they provided to their patients; I do not think that that would happen in today's clinical governance environment, in terms of the way in which we seek to relate to patients.

Risk was constantly being debated at that time. Product information leaflets and labelling on bottles indicated the potential of risk. However, the substantial point, which was recognised by the Irish inquiry, is that not until 1989 did we have substantive evidence that enabled us to identify the virus. In my view, at that time clinicians were asking what the greater risk to their patients was. Was it the risk that there might be something wrong with the treatment, or was it the risk of not giving the treatment at all? There are few alternative treatments for haemophilia and those that exist are much less effective, so clinicians made a clinical judgment and a risk assessment. They were aware of the risks—that is why discussions took place—but individual clinicians took decisions off their own bat, based on the experience that they and their patients had gained.

The member mentioned the protein fractionation centre. Clearly, I view any failure in procedures with great concern. I go through the evidence and examine the actions that are being taken now and those that were taken then. I ask myself whether preventive and corrective action is being taken to resolve matters. Systems are designed to ensure that that happens. I suggest that a public inquiry would not have made any difference to the corrective actions that are being taken as a result of our findings. The corrective actions would have been taken regardless of whether a public inquiry had been held.

I will need to come back to the committee on the compensation schemes. I am happy to look at the evidence that the committee has received. My colleagues do not have any further information that they can provide to members, so I will need to get it for you.

Carolyn Leckie: You are not able to answer our questions, but we are relying on your judgment on whether an inquiry is necessary. It is clear that you have not looked at the primary sources. Does not the fact that you have not examined all the evidence and you do not know everything refute your claim that an inquiry is not necessary?

Mr Kerr: With respect, I believe that I addressed and answered your first two questions. Your third question, if I understood it correctly, was based on a piece of information that I do not have.

Helen Eadie: I want to ask about the information that is available in the public domain. At the beginning of our discussions, you kindly pointed out that you have made everything available in the public domain. However, the Scottish Haemophilia Forum says that significant information is still not available to it. When I asked questions today, I made the point that that information was available at UK level, because we had been led to believe that that was the case. This afternoon the forum told us that there is information in the library at Westminster that it cannot access and which it would like to be made available in the public domain. Is there a way of doing that for the forum, to ensure that there is a perception that absolutely everything is in the public domain? There still seems to be a perception that that is not the case.

Mr Kerr: I can say only that we have released everything that I as a Scottish minister can make available under the current legislation. My instruction to officials was for them to go through every piece of information that the Executive had and to get it out; that took eight months to do. That was not a direction of the freedom of information regime, but it was done under the auspices of freedom of information. We have put out 100 per cent of the information that we think we can put out under the freedom of information legislation.

I cannot address the point that related to the library at Westminster, because I do not have responsibility for that matter. The committee can express a view on it, but it is not for me to do so.

Helen Eadie: Can we make representations to Westminster to request the information?

The Convener: I will cut the discussion short. You need only ask a member of Parliament to get the information. Members of the public cannot e-mail the House of Commons library from outside to request the information, but there is no reason why it should not be obtained through an MP.

Helen Eadie: I have a small follow-up question from the Scottish Haemophilia Forum. I understand that a court case is on-going, but in my opinion the forum made a reasonable point this afternoon when it said that it would be very valuable to have a forum involving ministers, consultants and haemophiliacs in on-going work, once the court case is out of the way. Will you respond positively to that suggestion?

Mr Kerr: Let the record show that I will not go near the issue of the court case.

The Convener: I would stop you if you looked like you were going to do that.

Mr Kerr: I will be happy to meet the society when I am asked to do so. I have met the society in the past. If the society asked for another meeting, I would be happy to have that meeting and to organise it such that I could continue to try to assist in the process and to get out there all the information that we have, to reassure those who are involved and the rest of the Scottish population about the responsible actions that the Government has taken.

Shona Robison: I ask the minister to confirm a couple of points for the record. Will you confirm that none of the information that has been released and none of the evidence that you and everybody else has given has been tested independently in a judicial context?

You have probably seen the Irish letters—those from Malcomson Law and from Anne McGrane of the Irish Department of Health and Children—which clearly state that the Irish tribunal system provides a no-fault compensation scheme. Do you acknowledge that? You have said previously that the system was fault based, but the letters clarify that.

Frank Maguire said in his evidence that some cases of hep C deaths had not been investigated by the Crown Office and Procurator Fiscal Service, although I understand that that is required in law. He has brought cases to the Lord Advocate's attention. Are you aware of that? If not, will you please investigate that?

Mr Kerr: I have just taken legal advice on the last point. I am advised that the matter is for the Lord Advocate and that the point should be addressed to him.

As for the Irish situation, we need to understand that two completely different systems were in play. I have looked at the views that Judge Alison Lindsay gave us. She said:

> "The Tribunal has formed the view from this evidence that the consensus which existed in the late 1970s and early 1980s that"

non-A, non-B

> "hepatitis was relatively mild or benign did change as the results of studies became available showing the condition to have potentially serious consequences for some people infected by it. A number of experts came to regard it as a serious disease with significant long term consequences, especially and increasingly in the period after … 1985. That view did not, however, come to be universally held in the relevant medical and scientific communities until after 1989."

The Irish case supports the position that I have tried to reiterate to the committee.

The no-fault scheme to which the member refers is absolutely a fact, but the point is that the two inquiries would be into two entirely different sets of circumstances. In the Irish case, a process deficiency was clear—in my view, people did not do their jobs right and a mistake was made, which is why a no-fault scheme was established. In Scotland, I contend that the clinicians, the health service and the SNBTS were acting on the best possible information that was available, although that information was not right.

Shona Robison: The Malcomson Law letter says:

> "At no juncture has the Irish Government, in relation to any claim by a person with Haemophilia before the Irish Courts, accepted liability, i.e. filed or delivered a Defence admitting responsibility."

Mr Kerr: My substantive point about what we are discussing and about any public inquiry in Scotland remains. I do not know whether Andrew MacLeod wishes to make another point on that.

Your first point was that none of the information that has been issued has been tested in the courts. I am not sure about that; I will seek advice. All that I wanted to do was to ensure that the Executive released everything that it had on the subject that could be released. I am not sure whether any of that has been contested—I will come back to you on that.

Shona Robison: We can all cite evidence, but the point of an inquiry is that it would test the evidence, which has never been tested. Will you acknowledge that that is the case?

Mr Kerr: I do not acknowledge that that is the case. I have considered the evidence that nations that have conducted inquiries have come up with and considered the evidence that I have. You discussed the Executive investigation. My response is that the evidence in relation to that inquiry was not contested; it was accepted. In my view, evidence is widely available. Whether or not that evidence is contested in the way that you would like it be, the value, benefit, gain and closure that individuals seek desperately would not arise from a public inquiry.

The Convener: Thank you. I think that we have probably exhausted everything that we need to do at this stage. A little later this afternoon, the committee will consider the evidence that it has heard and what its response will be. The committee has not yet decided whether to hold that discussion in private, so people might want to wait until they know what that decision is.

I thank the minister and his officials for coming.

Subordinate Legislation

Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (draft)

16:00

The Convener: We have an affirmative instrument to deal with under agenda item 2. The Deputy Minister for Health and Community Care is coming in one door as the Minister for Health and Community Care is going out the other.

I welcome the Deputy Minister for Health and Community Care, who is accompanied by Joanna Keating and David Palmer. Members of the committee have papers that indicate that the Subordinate Legislation Committee has considered the instrument. That committee had comments on the instrument in relation to the inclusion of substantive legislative requirements in a definition regulation, which constitute a failure to follow proper legislative practice. We take note of the Subordinate Legislation Committee's comments. Does any member want to seek clarification from the deputy minister on the instrument?

Members: No.

The Convener: Does any member want to debate the instrument?

Members: No.

The Convener: I therefore invite the deputy minister to move motion S2M-3802.

Motion moved,

That the Health Committee recommends that the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 be approved.—[*Lewis Macdonald*.]

Motion agreed to.

The Convener: I thank the minister and his officials for their presence.

Item in Private

16:02

The Convener: Under item 3, we will consider whether to take in private item 4, which is consideration of the case for an inquiry into infection with hepatitis C following the evidence that we heard this afternoon. We will review that evidence and agree any follow-up action.

In the normal course of events, we would take such an item in private, but I know that Mike Rumbles has an issue with that. We therefore need to discuss whether we should proceed to take the item in private or whether we should leave the committee open.

Mike Rumbles: Even before we had taken today's evidence, I contacted the clerks and said that we needed to debate the issue. This is such an important issue that we need to discuss it in public. On a previous occasion, we discussed the hepatitis C issue in private session. That unfortunate set of circumstances resulted in various issues being debated when people did not know what the committee or individual members of the committee had said.

From the evidence that has been given to us this afternoon, we know how important the issue is to individual people. We owe a duty to those individuals to make it clear where we stand. They have gone out of their way to come here today—I am thinking of the hepatitis C sufferers—and have put themselves forward in public view and we owe them a duty to do the same.

Shona Robison: I do not have a fixed view on this matter; each case should be considered on its merits. There has been too much privacy surrounding this issue and that would be compounded if we discussed it in private. The item should be discussed in public.

Dr Turner: I agree with what has been said.

The Convener: I have no strong views and I do not get a strong feeling from the committee. Is anyone vociferously opposed to the issue being discussed in public?

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): No. I think that we all understand the reasons.

The Convener: Are we therefore agreed that we will not take item 4 in private?

Members *indicated agreement.*

Hepatitis C

16:04

The Convener: We move on to item 4, which is to consider the evidence that we have received and any follow-up action that members may wish to take. If members are minded to pursue the issue, we can make time available in the committee's forward programme—there are some spaces in the programme. I would ask members to keep that in mind. I invite views on the evidence. The intention is to reach consensus on what we want to do, so I ask members to keep their comments relatively brief.

Mike Rumbles: I was taken with the open, reasonable position that Malcolm Chisholm took back in 2003 when he said that if there was any new evidence, the Executive would call an inquiry. On balance, that was a fair position to take, and it has been maintained by his successor. I was appalled when I heard what I consider to be the brand new evidence that was presented to us this afternoon about the failure to trace those who have been infected by hepatitis C. I was shocked when Andrew MacLeod, on behalf of the minister, said that the Executive does have the records. People are finding themselves with hepatitis C years after the event and no apparent effort is being made to trace others so that we can tell them that they are at risk. As Kate Maclean pointed out, when we have had scares involving dentistry and so on, the automatic reaction has been to trace people. Why has that not happened? I cannot understand it. If new evidence has just been given to us, what other evidence is there? The point is that we do not know.

I am struck by the application of the witnesses; they said that they were not blaming anybody and that they just want to know the truth. What has swayed me quite strongly is not only that appeal, but the fact that we have what I consider to be new evidence. A public inquiry is overdue. The balance is heavily in favour of such an inquiry and I would fully support a call for one. It is such an important issue that we must get to the bottom of it.

Mrs Milne: I was not around when the previous evidence was taken, but some impressive evidence was given today. Given that the minister said that he would come back to us on a significant number of issues, I would be inclined to defer a decision until we have his response.

Shona Robison: My longstanding support for an inquiry is no surprise to anybody, but if I had not already held that view I think that I might have been persuaded by today's evidence alone. For such a long-running issue, the minister was shockingly ill-informed. The civil servants, who must be even closer to the detail of the issue, seemed unable to answer even the most basic questions. To the people listening in the public gallery it must have confirmed more than ever the need for an independent inquiry to consider all aspects of the issue. The minister kept talking about what has happened in the past and about many of the technical aspects of the issue. It is true that some of those aspects have been fixed, but what he did not seem to get was that people are concerned about what is happening now. He did not appear to recognise that that could be part of the scope of an inquiry. The evidence on both sides has not been tested—not contested, as the minister seemed to keep saying—in a judicial context. That needs to happen. I am more persuaded than ever that the issue has to be taken out of this arena and put into an independent arena, where all the evidence can be considered.

Janis Hughes (Glasgow Rutherglen) (Lab): What we have heard today concerns two issues: the issue of the public inquiry, which has been under discussion by the committee, off and on, for many years, and the issue of traceability, on which the minister has said that he will come back to us with further information. Before any final decisions are taken by the committee, we should see what that information is.

Dr Turner: I agree that we should wait for what the minister has to say when he returns to us. I have always been in favour of an inquiry. Even if I had not been, I would have been after today's evidence. There is a duty of care to the people who have not been traced and a duty of care to the nation. The health service must know who the people are who received blood transfusions and blood products. I am appalled that they have not been traced and re-tested, so that they can get an early diagnosis.

From what has been said, I am not convinced that we have learned lessons and that there would be no delay in diagnosis for patients. What has come out of today's evidence is the fact that patients' notes carried information about them and that blood tests were done on patients without their knowledge—they were told of their diagnosis only at a later date. I am not sure that that has definitely been ruled out.

I am also disturbed by the fact that the procurator fiscal might decide not to go ahead with an investigation. There are other issues that are related not to hepatitis C but to blood-borne infection generally, and the procurator fiscal might not carry out an investigation if he did not know that the death was in any way related. That depends on the clinicians' being completely open with the procurator fiscal. In some cases, patients may not know that they are suffering from an infection; therefore, they would not come into it. It is possible that, through nobody's fault, somebody could die of an illness related to a blood-borne infection and the procurator fiscal would not know about it.

I am for waiting for what the minister has to say, but not much could be said that would push me against my feeling that there needs to be a public inquiry.

Carolyn Leckie: I place on record my thanks for the time that you have allowed me, convener, as a non-committee member. I agree with a lot of what has been said so far. It is up to the committee what it chooses to do.

On the issue of waiting for further information, I remind members that this inquiry has been going on for years. Successive ministers have reassured people, on successive occasions, that they have reviewed all the information and judged that a public inquiry is not merited. We have seen today that the minister has not reviewed all the information and is quite badly informed. It was especially striking when he said that hepatitis C was not identified until 1989. Frankly, that is playing politics with health issues. Non-A, non-B hepatitis was identified from the 1970s onwards. It was known as a virus that could be caught from blood products and it was known that patients had it; it just did not get a name until 1989. The fact that the minister did not acknowledge that gives me cause for concern.

I am also concerned that the minister is unable to answer questions about really important issues. Some of those questions concern documents relating to trials compensation that I have obtained from other sources; however, some of the letters about trials compensation to which I refer are among the information that has been released by the Executive. Still, the minister sits there today and says, "I don't know about that." That does not give me confidence that his judgment about the absence of a need for a public inquiry is sound. I think that the case for a public inquiry has been overwhelmingly made. Any more information that could be obtained would be great, but I do not think that it would change that. A public inquiry is long overdue.

16:15

Kate Maclean: I was not a member of our predecessor committee when it considered the issue and I have therefore not sat through all the evidence on the subject. However, I have sat through some of the evidence that this committee has heard. Many questions were raised in today's evidence taking, but it did not reach the conclusion that I thought it would reach.

Before we say that we will go down the road of a public inquiry—

The Convener: Calling for a public inquiry.

Kate Maclean: Before we ask for a public inquiry, we should get some answers from the Lord Advocate on the procurator fiscal service and from the minister on traceability, about which I am very concerned. In previous health scares, people were recalled for tests. I do not understand why that was not done in this case, either at the time or subsequently.

We should discuss the issue further. If we call for a public inquiry, we need to be absolutely clear about the remit and scope of such an inquiry. We may not be able to do that today. I understand that some members may not be happy about this suggestion, but we need to hear more evidence. If we have time, the committee—by way of a small group or a whole committee inquiry—should look at the evidence before coming to a decision on whether to call for a public inquiry and the form that such an inquiry should take. I do not want us to rush into anything today. I am concerned about the lack of answers to some of the questions that were put today. I am also concerned about some of the issues that were raised.

Helen Eadie: I agree with the point that was made on traceability; the issue is vitally important. I also agree with what was said about the Lord Advocate. If other members had not said that, I would have raised the point. We should ask the Lord Advocate for a response to what was said today about the procurator fiscal service.

I am glad that we will wait until another meeting before we decide whether to call for a public inquiry—

The Convener: We have not decided that yet, Helen.

Helen Eadie: We are waiting until another meeting before deciding whether or not to call for—

The Convener: No, I am still hearing views on the matter. After I have heard them, we will decide. Members cannot pre-empt the decision. Do you think that we should wait, Helen?

Helen Eadie: Yes. Clearly, the resource implications of an inquiry are significant. We only need to look at the cost of the many public inquiries that have been held across the land. Saying that does not diminish in any way the concerns that the members of the Scottish Haemophilia Forum brought before us today, but, as Kate Maclean rightly said, there are other ways of addressing the matter. When Susan Deacon was in post, we addressed the equally serious matter of organ retention.

Mr McNeil: Over the time that I have been a member of the Health Committee, and during the time of our predecessor committee, I have seen the very practical approach that members have taken to the issue: they achieved what they could over the time. Those members should be congratulated on their work on the subject. Present committee members have also adopted that practical attitude.

Someone said today that decisions are made out of fear, love or compassion. Sometimes they can also be made as a result of political opportunity. We should not go down that road. Some issues concern everyone on this cross-party committee and give us pause for thought. In the 20 or 30 years from the first instance of the problem, our health service has supposedly moved on and is now treating people in a modern way. However, we would have expected it not to have condemned these people but to have sought out, identified and given help and assistance to them. It is a serious concern that that has not happened. We have made a practical response to the issue and we should continue to work on that basis. Our job is to ensure that people get help and assistance and that the practical issues that have been raised, such as those about the fiscal service, are addressed.

A couple of weeks ago, I voted against a public inquiry. I have little faith in them: no public inquiry or fatal accident inquiry that I know of resolved all the issues and gave people closure. It would not resolve the issues in this case. However, the committee can resolve many of the underlying issues, and it is our responsibility to focus on them.

The Convener: I have heard from everybody around the table. I intend to write to the Lord Advocate to seek clarification on and answers to issues that arose at today's meeting in respect of the Crown Office and Procurator Fiscal Service.

There are outstanding issues that the minister said he would come back on, and we hope to get a speedy response to them. Duncan McNeil is a voice against a public inquiry; five members want to defer a decision on a public inquiry until they have answers from the Lord Advocate and from the minister; only two members want the committee to say today that it will call for a public inquiry. The committee's view is clear—unless members want to take a formal vote—the preponderance of voices says, "Let us wait until we get some of the responses."

Depending on the responses, a number of options might be open to the committee. It may decide to call for a public inquiry. However, it may decide that some of the past issues that a public inquiry would address can no longer be explored but that today's discussions have introduced some new issues that the committee might decide to follow through. Some of the questions about traceability are quite worrying. Whether those questions are a suitable subject for a public inquiry remains to be seen, but they could be viewed as matters for the committee to inquire into.

There are a number of ways forward. However, at this stage, the majority—although not unanimous—view of the committee is that we would prefer to wait for responses from the Lord Advocate and the minister to the outstanding issues that were raised today. The committee wants those responses before it comes to a final decision.

Mike Rumbles: If we are to wait for responses, can you give us a timetable of when we might revisit the issue?

Simon Watkins (Clerk to the Committee): The earliest opportunity would be late February or March after the recess.

Carolyn Leckie: There is no point in people reinventing the wheel, so I suggested to the clerk that I make the documents that I have accessed available to everybody.

The Convener: Thank you. That would be very useful.

Helen Eadie: Putting them in SPICe would allow any member of the Scottish Parliament to access them.

The Convener: That might be a good idea.

Carolyn Leckie: That would involve cataloguing them all.

The Convener: I would not want the documents to go to SPICe, only for people to find that they must wait two or three weeks to look at them.

Thank you very much. The next meeting of the committee will be next Tuesday and will begin the formal part of our care inquiry. We will have a round-table session on a number of care issues.

Meeting closed at 16:23.

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