We have given anxious consideration to whether individuals should be criticised in relation to their response to BSE and vCJD. It is a necessary part of our Terms of Reference – but it is not the most important. We would put the lessons to be learnt from BSE at the forefront. Nevertheless, we recognise that the identification of individual criticisms is an important part of our remit, and we have therefore set out this information in this annex. We draw attention to the fact that the areas where we have criticised individuals are relatively few. We have listed the individual criticisms below so that their nature and limitations can be clearly seen. Cross-references are given to locations in the Report where precise details will be found, along with information needed to set the matter in context.

The Report comments on the response of Government Departments and others, and identifies inadequacies. The mere fact that a response on a particular issue was inadequate, or that some part of the response was regrettable or unfortunate, does not mean that individuals are criticised. Only on those occasions when we consider that somebody should have acted differently, in the light of knowledge at the time, have we criticised that individual. In this volume we point out that these criticisms must be set in context. At this point we would invite the reader to turn to paragraphs 1245–1259 in Chapter 13, for what is said there is highly relevant to the remainder of this annex. If those criticised were misguided, they were nonetheless acting in accordance with what they conceived to be the proper performance of their duties. The overall value of the contributions that they have made should not be lost from view. Those who were most active in addressing the challenges of BSE are those who are most likely to have made mistakes. It is in that context that the Report makes the following criticisms:

The early years

- Dr Watson should have sought the assistance of the NPU from the outset (Volume 1, paragraph 175; Volume 3, paragraphs 2.137–2.148).
- Dr Watson and Dr Williams should have urged the merits of publication of information about BSE, and Mr Rees should have permitted it (Volume 1, paragraphs 176–178; Volume 3, paragraphs 2.137–2.194).
- Mr Rees should have permitted publication of a proposed article which compared BSE with scrapie (Volume 1, paragraph 179; Volume 3, paragraphs 2.137–2.194).
- Mr Meldrum should have ensured that proper consideration was given to the impact of cross-contamination on the ruminant feed ban (Volume 1, paragraph 214; Volume 3, paragraphs 4.116–4.157).
- Dr Watson, Mr Rees and Mr Cruickshank should have sought to involve the Department of Health in consideration of the risk to human health from BSE prior to March 1988 (Volume 1, paragraph 234; Volume 3, paragraphs 5.114–5.159).
The Southwood Working Party

- The Working Party should have made it plain that the section of their report dealing with epidemiology had been provided by Mr Wilesmith and was based on data which they had not been able to review (Volume 1, paragraph 260; Volume 4, paragraph 10.28).

- The Working Party should have made it clear that, in describing the risk as remote, they were intending to indicate that steps should be taken to reduce the risk so that it was as low as reasonably practicable (Volume 1, paragraph 272; Volume 4, paragraphs 10.35 and 10.36).

- The Working Party should have pointed out the possible risk to the human food chain from cattle incubating BSE, and pointed out the need to consider identifying such steps as were reasonably practicable to prevent potentially infective tissue being eaten by humans generally, not just babies (Volume 1, paragraphs 273 and 275; Volume 4, paragraphs 10.53–10.82).

- The Working Party should not have allowed their Report to give the reader a false impression of their assessment of the risk relating to medicinal products and occupational exposure (Volume 1, paragraphs 278–279; Volume 4, paragraphs 10.83–10.109).

Protection of animal health, 1989–96

- In May 1990 Mr Gummer was informed of a cat that had come down with FSE, and understood from Mr Meldrum that there was no likely connection between this cat and BSE. Mr Meldrum should not have given Mr Gummer that impression (Volume 1, paragraphs 363 and 650; Volume 6, paragraphs 4.687–4.702).

- While we do not say that Mr Meldrum and Mr Lowson should have identified all the answers to the considerable problems posed by the ban on SBO in animal feed, they should at least have identified that serious problems existed (Volume 1, paragraphs 415–416; Volume 5, paragraphs 4.789–4.853).

Protection of human health, 1989–96

- Sir Donald Acheson and Mr Clarke should have ensured that the Department of Health reviewed the Southwood Report, and in particular considered the question why, if offal was not safe for babies, it was nevertheless safe for adults (Volume 1, paragraphs 542 and 550; Volume 6, paragraphs 3.63–3.134).

- Mrs Attridge should have pursued the question ‘Why should we take action on baby food and not on hamburgers?’; Mr Cruickshank should have taken steps to find out why the Southwood Report drew a distinction between babies and others and between clinical and subclinical animals; and
Mr Meldrum should have pursued these questions (Volume 1, paragraph 552; Volume 6, paragraphs 3.102–3.116).

- Mr Andrews should have raised with Mr MacGregor the need to have an answer to the question why action should be taken on baby food and not other food, and Mr MacGregor himself should have seen that the question was pursued (Volume 1, paragraph 553; Volume 6, paragraphs 3.63–3.124).

- Mr MacGregor is commended for introducing the SBO ban, but he should not have agreed to a presentation of that ban which played down its importance as a protection for human health (Volume 1, paragraph 569; Volume 6, Chapter 3, paragraphs 3.358–3.320).

- Mr Colin Maclean was responsible for inaccurate statements to the public in material prepared on behalf of the MLC in 1990. These statements, which exaggerated the safety of beef and suggested that precautions that had been put in place were unnecessary, were capable of misleading and Mr Maclean should have been more careful (Volume 1, paragraphs 645 and 654; Volume 6, Chapter 4, paragraphs 4.729–4.743).

- Sir Donald Acheson should have appreciated that his public statement about the cat was likely to give false reassurance about the possibility that BSE might be transmissible to humans; the possibility of BSE having been transmitted to a cat was cause for concern and needed to be investigated by scientists (Volume 1, paragraph 660; Volume 6, Chapter 4, paragraphs 4.170–4.724).

- Dr Metters told colleagues they should avoid the implication that ‘somehow the disease poses a risk to human health’; he should not have adopted this approach (Volume 1, paragraph 672; Volume 6, Chapter 4, paragraphs 4.725–4.728).

- Sir Kenneth Calman should not have made statements in 1993 and 1995 without ensuring that they fairly reflected his appraisal of the risk posed by BSE (Volume 1, paragraphs 721–724 and 770; Volume 6, paragraphs 5.337–5.349 and 6.341–6.351).

- Dr Kendall should not have made a public statement in 1995 which did not make it plain that the safety of eating beef was dependent on strict compliance with the precautionary measures introduced by the Government (Volume 1, paragraph 773; Volume 9, paragraphs 11.40–11.53).

- Mr Colin Maclean, as Director-General of the MLC, was responsible for the vigorous advertising campaign that the MLC ran in 1995. In the course of that campaign there were occasions when hyperbole displaced accuracy. Mr Maclean should not have allowed this (Volume 1, paragraph 781; Volume 6, paragraphs 6.370 and 6.354–6.377).

- Mr Colin Maclean sent Dr Kimberlin a list of model answers which the MLC would have liked SEAC to give to questions which Mr Hogg had posed to the Committee. Dr Kimberlin was both a consultant to the MLC and a member of SEAC. Mr Maclean should not have asked Dr Kimberlin to provide this assistance; Dr Kimberlin should have told the members of SEAC of the request that the MLC had made (Volume 1, paragraphs 784–788; Volume 6, paragraphs 7.5–7.52).
• Dr Wight sent minutes to Sir Kenneth Calman of SEAC’s meetings on 5 January and 1 February 1996 which were inadequate in certain respects. Her January minute should have communicated the concerns expressed at the SEAC meeting by Dr Will. Her minute of the February meeting should have communicated the concerns expressed by Professor Pattison and Professor Collinge (Volume 1, paragraphs 798–800 and 805; Volume 6, paragraphs 7.100–7.107 and 7.160–7.164).

• Mr Eddy circulated a minute about the SEAC meeting on 1 February to Mr Hogg, Mrs Browning, Mr Packer, Mr Carden and Mr Meldrum. He should have included a clear warning of the concerns that had been expressed about the young cases of CJD and the possibility that they might prove to be linked to BSE (Volume 1, paragraph 804; Volume 6, paragraphs 7.139–7.159).

• Despite the shortcomings in Mr Eddy’s minute, on reading that minute Mr Hogg and Mrs Browning should have sought to discuss its implications with Mr Packer, Mr Carden and Mr Meldrum. Similarly, on reading that minute, those officials, after discussion among themselves, ought to have raised its implications with Mrs Browning and Mr Hogg. Each of these five individuals should have considered the action that might be required should the scientists advise that BSE had probably been transmitted to humans, and they should have recognised the need for MAFF and DH to address the implications in conjunction, for example by seeking the views of Sir Kenneth Calman and by discussion between Mr Hogg and Mr Dorrell (Volume 1, paragraph 837; Volume 6, paragraphs 7.390–7.482).

• When Sir Kenneth Calman and Dr Metters received Dr Wight’s minute about SEAC’s meeting of 1 February 1996, albeit that it was couched in sedative terms, they should have initiated discussions with MAFF officials to discuss the implications of the new evidence and Sir Kenneth should have alerted Mr Dorrell (Volume 1, paragraph 842; Volume 6, paragraphs 7.390–7.482).

• Mr M B Baker and, to a lesser degree, Mr Jacobs should have taken steps to avoid the delay that occurred during parts of 1991 and 1992, in circulating advice to schools about dissecting bovine eyeballs (Volume 1, paragraph 1045; Volume 6, paragraphs 9.141–9.151).

Medicines and cosmetics

• Dr Gerald Jones was responsible for deciding the priority to be accorded to BSE in relation to other work within Medicines Division and setting in hand appropriate action. He should have asked for the paper for the Biologicals Sub-Committee (BSC) to be prepared for the September rather than the November meeting (Volume 1, paragraphs 890–891; Volume 7, paragraphs 4.127–4.141).

• Dr Pickles and Mr Lowson should have alerted DTI in 1989 to the need to consider cosmetics products in relation to BSE (Volume 1, paragraphs 1006–1008; Volume 7, paragraphs 8.147–8.159).
Potential pathways of infection

• There was a need for an overview of the uses of bovine tissues. Mr Lowson should have ensured that this matter was promptly and properly addressed (Volume 1, paragraph 1078; Volume 7, paragraphs 9.124–9.173).