7. Human health developments from January 1996 to 20 March 1996

Introduction

7.1 This chapter covers the final months of the period with which this Inquiry is concerned. During these months, the CJD Surveillance Unit (CJDSU) was assessing the significance of the growing number of Creutzfeldt-Jakob disease (CJD) cases being identified in young people. These deliberations were reported to the Spongiform Encephalopathy Advisory Committee (SEAC) on 5 January 1996, 1 February 1996 and 8 March 1996. At the last of these meetings, the information supplied by the CJDSU indicated that a new variant of CJD had emerged and raised the possibility that this was related to BSE.

7.2 By 16 March 1996, SEAC had concluded, and advised Ministers accordingly, that the most likely explanation of the cases of CJD in young people was exposure to BSE before the introduction of the Specified Bovine Offal (SBO) ban in 1989.2816 A detailed description of the work and deliberations of the CJDSU can be found in vol. 8: Variant CJD. The formation, terms of reference and the deliberations of SEAC are covered in vol. 11: Scientists after Southwood.

7.3 In this chapter we examine the reaction of the Government to the developing situation both before and after 8 March 1996. During the final days leading up to 20 March there was frantic activity. This provides a contrasting picture to that of January and February when, as contemporary documents show, BSE was less of a concern within MAFF and DH. We examine the extent to which the information provided to SEAC during January and February alerted officials and their Ministers to forthcoming events. Insofar as it did, we consider whether the response was adequate, and insofar as it did not, we examine why this may have been the case. Consideration is also given to the action taken and public statements made in the last few days of the account. We ask whether there was an adequate response to the situation at this stage and whether the delay in responding to the crisis affected matters.

7.4 Before turning to these matters, we continue to chart events from the last chapter. There we described attempts by government and the Meat and Livestock Commission (MLC) to allay concerns about the safety of beef. Further steps to achieve this continued to be taken in 1996. We question whether this was appropriate in the circumstances and explore whether these events also shed light on the extent to which those involved appreciated the storm that was about to break.

2816 YB96/3.16/4.1
Minister’s questions

7.5 The background events in December 1995 which led to questions being put to SEAC in January 1996 are described in detail in Chapter 6. In a meeting on 7 December 1995, MAFF Ministers had agreed that Mr Thomas Eddy (Head of Animal Health (Disease Control) Division, MAFF) would draft questions to put to SEAC with a view to eliciting answers that would be suitable for publication. It was hoped that these would reassure the public that British beef was safe to eat. The questions were prepared by Mr Eddy and provided to SEAC for discussion at its first meeting in January.

7.6 In the interim, on 14 December 1995, MAFF held a press conference with members of SEAC to discuss recent developments in respect of BSE. The MLC, which had been allowed to film the press conference, requested and was granted additional interviews with Professor John Pattison, Chairman of SEAC, and the MAFF Minister, Mr Douglas Hogg, for use in a forthcoming MLC advertisement.

7.7 On the following day, in a routine meeting between MAFF and the MLC, the MLC showed to MAFF the television advertisement footage obtained the previous day and requested that it be allowed to use it in its forthcoming campaign. However, MAFF refused permission, fearing that Professor Pattison’s independence would be compromised by his appearance in a television advertisement put out by the MLC.

7.8 On 22 December 1995, Mr Richard Packer (MAFF Permanent Secretary) met representatives of the MLC to discuss the events surrounding the press conference and the Commission’s proposed campaign to promote British beef. Mr Colin Maclean, Director General of the MLC, has explained that it was during this meeting that MAFF revealed its intention to put certain questions to SEAC for the purpose of meeting public and media concerns. Mr Maclean told us:

MAFF did reveal that it had already decided to deal with the issue by putting some succinct questions to SEAC for its meeting on 5 January 1996 and hoped that equally succinct answers would emerge which could then be used for public information purposes. I believe that Richard Packer ran through (although not verbatim) the list of questions which MAFF then had in mind. I believe that these were jotted down by the Chairman of the MLC’s public affairs company.

7.9 On 3 January 1996, Mr Maclean wrote to Dr Richard Kimberlin, an independent TSE (transmissible spongiform encephalopathies) consultant and member of SEAC. He informed Dr Kimberlin of the outcome of the MAFF press conference on 14 December 1995. He also referred to an earlier attempt to contact Dr Kimberlin by telephone just prior to Christmas 1995 and stated:

The reason for my telephone call . . . was to alert you to questions that MAFF will pose to SEAC at its next meeting. These questions arise following a debacle when MAFF eventually prohibited me from using Professor Pattison on a TV advert made around the material at the MAFF press conference.

2817 YB95/12.08/2.1–2.2 (see Chapter 6)
2818 YB95/12.28/2.1–2.5 (see Chapter 6)
2819 S147E Maclean para. 9
2820 YB96/1.03/12.1–12.7
2821 See Chapter 6
MAFF was concerned about compromising Professor Pattison’s independence. I therefore demanded a meeting with Richard Packer at which I sought answers to three questions:

The independent scientists (most of whom are on SEAC) are the main source for the reassurance of consumers. Who am I allowed to use?

How am I allowed to use them?

What is MAFF doing to help give confidence to education/catering authorities where schools have banned the use of beef?

The result was that MAFF is happy for us to use anything in the public domain (including the press conference), would prefer us to use newspapers/the written word (rather than TV) and is mounting a programme to tackle the schools issue. It therefore recognises the need to get short, unequivocal, answers from SEAC wherever possible.

7.10 Mr Maclean then listed the six questions that he understood were to be put to SEAC:

We agree that we need succinct answers to these questions and my colleagues in our PR company . . . have drafted the sort of answers (Appendix A) they would like to see (although they cannot put words into SEAC’s mouth!) However, this should give you some feel for what we would initially like before you face the questions in SEAC. Anything you can do to help get crisp answers would be a big help.2822

7.11 Appendix A of Mr Maclean’s letter outlined the following questions and answers:

1. Q. What is the cause of CJD and BSE?

A. We support the theory that BSE was caused or stimulated by ruminant feed containing scrapie being used in cattle fodder.

. . .

2. Q. Is there a link between BSE and CJD?

A. Our firm belief is that BSE is not a disease that affects humans. Also, that CJD does not affect animals. There is no scientific evidence to suggest a link between the two diseases.

3. Q. Is beef safe to eat?

A. Yes. We have no doubt about the fact that the beef on sale in the high street is safe to eat.

. . .
4. Q. Are beef products safe to eat?

A. Yes. The Government has banned specified offal from the manufacture of all beef products and controls are rigorously applied. Beef products on sale in the high street are therefore perfectly safe to eat.

...  

5. Q. Are the protective measures for the public sufficient?

A. Yes. The precautionary measures established by the Government protect the public from any remote, theoretical risk from BSE even though no link has been demonstrated between BSE and CJD.

6. Q. What further research should we (the Government) be doing?

...

Unequivocal ‘yes’ answers are preferred for 3, 4 and 5.

7.12 Mr Maclean wrote that ‘an ideal way forward would be for SEAC members to write a letter saying that they have not changed their eating habits...’ and suggested that Dr Kimberlin get them to send the following draft ‘Letter to The Times’:

The recent media-led hype about BSE has not changed our eating habits. We continue to enjoy British beef and the occasional beef burger and other beef products as we have always done.

Our firm belief is that BSE is not a disease that affects humans. Also, that CJD does not affect animals. There is no scientific evidence to suggest a link between the two diseases. Furthermore, the precautionary measures established last year by the Government clearly protect the public from any remote, theoretical risk from BSE.2823

SEAC meeting: 5 January 1996

7.13 At SEAC’s meeting on 5 January, the Minister’s questions formed one of the items discussed. Mr Eddy explained to SEAC that the Minister of Agriculture had asked for its views on a number of questions with a view to publishing the Committee’s answers. The nine questions posed were eventually set out as follows:

i. Is beef safe to eat?

ii. Are beef products, eg, offal such as liver, and hamburgers, sausages and meat pies, safe to eat?

iii. Do the protective measures in place fully meet all the recommendations that SEAC has made?

iv. Is BSE now declining?

v. What is the cause of BSE in cattle?
vi. Why has the BSE epidemic continued?

vii. What is the cause of CJD in man?

viii. Is there a link between CJD and BSE?

ix. What further research needs to be done?2824

7.14 The Committee agreed that it would be sensible to put together replies and that individual members might be asked to give some thought to individual questions with a view to circulating draft replies before the next meeting. The Chairman advised that it would be necessary to have a further meeting at the end of January to take these questions forward.2825

7.15 Mr Maclean’s letter to Dr Kimberlin dated 3 January 1996 (see paragraphs 7.9–7.12) was not mentioned at the meeting.

**SEAC meeting: 1 February 1996**

7.16 By SEAC’s next meeting, on 1 February, some of the members had prepared draft answers to the Minister’s questions. Before considering the questions and the draft answers prepared by members:

the Chairman wished to clarify what the Minister actually wanted: whether it is SEAC’s answers to the Minister or SEAC’s answers on behalf of the Minister. Mr Eddy explained the background to the request. In December last, at a time of extensive media interest the Minister recognised that some consumers and journalists simply do not believe Ministers or officials. The Minister therefore wanted the Committee’s views, in a publishable form to issue as a press release.2826

7.17 The meeting had time to discuss only the first five questions. We shall confine our consideration to the first three, which related particularly to the safety of beef.

7.18 ‘Question 1. Is beef safe to eat?’ had been addressed by Professor Jeffrey Almond, a Professor of Microbiology and member of SEAC from 1995, and Dr Kimberlin. Professor Almond’s draft answer stated:

The Minister should be made aware that this is not a simple question to which we can give a yes/no answer with 100% confidence. Statements such as ‘there is no conceivable risk’ should be avoided because they cannot be scientifically substantiated.

As discussed at the last meeting, spinal cord is not completely removed and much of it may be spread across carcasses at the sectioning stage. We cannot therefore be confident that all ‘beef’ is free from contamination from this high titre source. It is against this background we need to consider the question.

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2824 SEAC 23 tab 7 p. 1
2825 YB96/1.05/1.12 para. 47
2826 YB96/2.01/1.14
His answer then gave a synopsis of the scientific data demonstrating and supporting the ‘uncertainty’ he had referred to. He added:

We should not take the view that beef is *safe until proven dangerous*. In my view to do so would be wrong ethically and morally.

To do the opposite, i.e. to assume that *beef is dangerous until proven safe* is also difficult because the corollary would be the destruction of the national herd. The cost of this would run into tens of billions(?) and even then there would be a chance that BSE would not disappear completely (eg, because of contamination of pasture land, etc). Such a position could not be justified when we know that

(a) there is no evidence that BSE will transmit to humans

(b) we have been eating scrapie-infected sheep meat for at least two hundred years without ill effect.

Both of the two italicised propositions above are unpalatable. Therefore, the only practical option is to adopt the middle ground (as Southwood commendably did) which is to assume a risk, ie, that all carcasses are infected, and then minimise that risk by removal of SBOs.

Dr Kimberlin’s draft answer stated:

Yes. We have no doubts that the beef on sale in the high street is safe to eat.2827

The Committee agreed that a positive response to this question was dependent on full implementation of the SBO Regulations. John Collinge, Professor of Molecular Neurogenetics and member of SEAC, agreed to draft the response and pass it to Professor Almond, Dr Kimberlin and Mr Raymond Bradley, former head of Central Veterinary Laboratory (CVL) Research Department, now BSE consultant and member of SEAC, for comment.2828

‘Question 2. Are beef products, eg, offal such as liver, and hamburgers, sausages and meat pies, safe to eat?’ had also been addressed by Professor Almond and Dr Kimberlin. Professor Almond’s draft answer stated:

To the best of my knowledge, there is no particular risk associated with liver, kidney etc. although I would like to know the reasoning behind the recent Dangerous Pathogens Advisory Group recommendation that liver from an infected animal should be handled only under category II conditions, ie, gloves, lamina flow hood etc.2829

As regards, hamburgers, sausages, meat pies, these are likely to have carried a higher potential risk than prime beef in that they were more likely to contain portions of spinal cord that had been improperly removed. The

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2827 SEAC 24 tab 7
2828 YB96/2.1/1.14 para. 52
2829 Professor Almond was referring to the Advisory Committee on Dangerous Pathogens (ACDP) Working Group. A detailed description of this Working Group can be found in Chapter 8
recent ban on the use of the spinal column for MRM goes some way to alleviate this concern.

7.23 Dr Kimberlin’s draft answer was:

Yes. The only tissues from which there might be a theoretical risk due to BSE are the so called specified bovine offals (SBOs); but these tissues have been banned from all human food products since January 1990.2830

7.24 The Committee agreed that the answer should be: ‘If specified bovine offals are removed completely there should be no greater risk from these foods than from prime beef.’2831

7.25 ‘Question 3. Do the protective measures in place fully meet all the recommendations that SEAC has made?’ was also answered by Professor Almond and Dr Kimberlin. Professor Almond commented:

In light of our discussions last time (and my own ‘inspection’) this is clearly not the case. Some abattoirs are not effectively removing the spinal cord. They continue to smear much of this tissue across other parts of the carcass during sectioning and butchering.

Being somewhat sensitive to precious comments about scientists in ivory towers and the realities of the shop floor, I am not sure how to remedy this situation. We should, however, explore all possibilities for improving current methods.

7.26 Dr Kimberlin’s draft answer was ‘Yes’. 2832

7.27 It is instructive to note the responses drafted to Question 8, which SEAC did not have time to discuss. This question – ‘Is there a link between CJD and BSE?’ – was addressed by Professor Peter Smith, Epidemiologist and member of SEAC from 1996, and Dr Kimberlin. Professor Smith’s draft stated:

It is not known if the agent that causes BSE can cross the species barrier into man and cause CJD. At present, the epidemiological and other evidence available does not establish that there is a link between CJD and BSE.

In general, it is easier to establish a positive link than to prove that there is no such link, particularly for a disease for which the time between exposure to the causative agent and the onset of disease is unknown, and may be many years.

7.28 It then outlined the trends in incidence of CJD, noting that:

The apparent excess risk among cattle farmers is compatible with BSE being a cause of CJD, but other explanations are possible. It has been reported, for example, that in other European countries, without BSE, cattle farmers have a higher incidence of CJD.

2830 SEAC24 tab 7
2831 YB96/2.01/1.15
2832 SEAC24 tab 7
7.29 In conclusion it stated:

There has been an overall increase in the annual number of cases of CJD recorded over the last 25 years and particularly in the period since 1990. This increase has been most marked in older age groups (60 years and above) . . .

The occurrence of several cases of CJD [in people] aged less than 30 years in the last two years is an unusual phenomenon . . . Four or five unusual cases does not constitute proof that BSE causes CJD, but the observation is consistent with what might be expected if such a link exists.

There appears to be an excess of cases of CJD among those who may have been occupationally exposed to the BSE agent. The number of such cases is also small and cannot be regarded as proof of a link, but again the observation is what might be expected if such a link exists.\textsuperscript{2833}

7.30 Dr Kimberlin’s draft answered the question in the following way:

There is no scientific evidence that establishes a causal link between the two diseases although this continues to be investigated by the CJD Surveillance Unit. Our firm belief is that existing precautionary measures are sufficient to protect the public from any theoretical risks due to BSE.\textsuperscript{2834}

The exercise of answering Mr Hogg’s questions was never completed. It was overtaken by events in March which we discuss below.

Discussion

7.31 The time spent by SEAC considering how to answer the Minister’s questions necessarily restricted the time available for consideration of other matters. We discussed with witnesses whether it would not have been a good idea to ask SEAC to consider the implications, should it prove that there was a link between BSE and CJD.

7.32 Mr Richard Carden, MAFF Deputy Secretary and Head of Food Safety Directorate, questioned whether SEAC would have had time to comply with such a request:

SEAC was under very great pressure of other business in January 1996. They were often under such pressure of business that they did not complete their agendas. You can see that from the records of their meetings. They were under particular pressure in January, among other things to answer a set of questions which the MAFF Minister, Mr Hogg, had put to them just before that, wanting quite urgently to have their views on some questions related to safety of beef that could be deployed publicly. That was a high priority for MAFF and, if there had been time to spare at the January meeting where those questions were not debated, or at the February meeting where they
were debated inconclusively, the reality at the time was such that we would have been pressing them to find time for that.

. . .

I and the MAFF Minister and senior colleagues – were giving weight then to the questions that had been put to SEAC about the safety of beef and to obtaining answers from them. That work was in the event overtaken by what followed, but at that time it was still a priority for us to ask SEAC to find time to deal with that.

. . .

We had always, and still have, to tread carefully in what we ask SEAC to do because the members of SEAC have other occupations that are the main call on their time. We have to judge carefully before we impose new questions on them. It is a committee that has been under very heavy pressure for a very long time and that pressure is felt by members, some of whom have quite recently stood down. They do not all live in the United Kingdom. One, at least, is resident in the United States. We always thought quite long and hard before putting new questions to SEAC as to the real need for doing so.2835

Mr Hogg’s questions for SEAC

7.33 The questions that Mr Hogg invited SEAC to answer were not asked for the purpose of obtaining information. It was anticipated that SEAC would answer them in a manner that would reassure the public that beef was safe to eat. The questions were asked with the intention that SEAC’s answers should be used for this purpose.

7.34 When Mr Hogg returned to give evidence in Phase 2 he summarised the position as follows:

. . . the position was we had this crisis in December. I have mentioned it several times. And it became very clear to me two things. One is that people did not trust people like me, and they did not trust the Ministry officials either. It is very embarrassing to face that fact; but I had to recognise that the public did not trust Ministers and officials when they were trying to express what were our best opinions. We were not trusted. That was the first uncomfortable point. So the conclusion that I came to was that it was important to try to formulate kinds of questions that people wanted answered, and then to put it to the people that they were more likely to trust. Therefore, I did formulate a number of questions, with assistance of my officials, for submission to SEAC. And they were thought of, simple questions that I thought were the kind of questions people wanted answers to, because I knew they did not trust me. That seems to me a very respectable and indeed almost modest approach.2836

7.35 We have asked ourselves the following questions in relation to this exercise:

2835 T121 pp. 30–40; see also in relation to this transcript S103 Carden
2836 T137 pp. 71–2
i. Was the use that Mr Hogg sought to make of SEAC an appropriate use of that Committee?

ii. Was it appropriate for the MLC to ask Dr Kimberlin to assist in procuring answers from SEAC in a form that was satisfactory to its advertising agents?

iii. Should Dr Kimberlin have disclosed to SEAC the nature of the assistance that had been sought from him?

The use that was made of SEAC

7.36 We asked Mr Hogg, using hindsight, whether it was a good idea to ask a body such as SEAC to provide what, in effect, were sound bites, as an aid to restoring confidence in beef. He answered that his preferred course would have been to have in place a body such as a Food Safety Council. In the absence of such a body he turned to SEAC:

We were not trusted, I have made that point; and SEAC was the best we had. I am not saying it was ideal, because it was answering in a sort of ad hoc way.2837

7.37 We asked Dr Kimberlin the same question. His answer was that intuitively he was not very happy with that sort of thing:

. . . intuitively my answer to you has to be that sound bite responses from anybody is not likely to be the answer. I am not sure what is. These are difficult issues to address. You know, the public – we must not underestimate the public. People are not stupid. It is a sort of cliché in a way. People are not stupid. They will not be taken in by sound bites, whether they come from the Minister or SEAC or me or anybody else.2838

7.38 We agree with Dr Kimberlin. More fundamentally, we consider that the appropriate role of SEAC was to provide advice to government, not to provide publicity material to bolster the beef market. The limited time of members of SEAC could have been better devoted to advising on other matters, rather than attempting to formulate answers to the Minister’s questions.

7.39 Had SEAC provided the sound bites that were hoped for, we consider that the nature of the exercise would have been apparent to the public and SEAC’s credibility damaged in consequence. In the event, it does not seem to us that all members were prepared to cooperate in a venture of this nature. The draft responses to the questions provided by Professor Almond were neither in form, nor in substance, suitable material for promoting beef.

Was the assistance sought from Dr Kimberlin appropriate?

7.40 This question, also, was discussed with Mr Hogg. His approach was robust. When told that the MLC had sought Dr Kimberlin’s help in securing some of the answers he commented:

2837 T137 p. 75
2838 T135 pp. 109–10
Well, good; we wanted an answer. These characters in SEAC are not going to be dictated to by the MLC. SEAC were professionals, and they gave their professional opinion. They could see a lobby group coming across the garden as well as anybody else. MLC plays a perfectly sensible and decent role in formulating the questions. There is no way that a professional body of people of Doctor Pattison’s distinction would allow the MLC to dictate the answer. 2839

7.41 Despite Mr Hogg’s answer, we question whether it was desirable for the MLC to lobby SEAC, an independent advisory committee. If it was to make such an approach, this should have been done openly. In the event, however, Dr Kimberlin did not disclose to SEAC the nature of the assistance that the MLC had sought from him, nor does Mr Maclean’s evidence suggest that he assumed that he would do so.

7.42 Dr Kimberlin was a paid consultant of the MLC. Mr Maclean told us that he understood that his request to Dr Kimberlin fell within the scope of the consultancy agreement. He said that he was, however, only seeking Dr Kimberlin’s assistance in procuring answers to the questions that were succinct. He was not seeking to influence the content of the answers. He went on to emphasise that it was no part of Dr Kimberlin’s role to assist the MLC by saying, or getting others on SEAC to say, anything which they did not genuinely believe. 2840

7.43 Dr Kimberlin said this about Mr Maclean’s letter:

What this letter is, if you like, is part of the consultancy in the sense that this is the way that Colin Maclean often communicated with me. He was indeed in the habit of letting me know what was going on, expressing his views, often very forthrightly, regardless of whether I agree with him or disagree with him. He believed the best use to make of consultants is to keep them informed at least of his views and his concerns, rather than keeping me in the dark.

If that is part of a consultancy, then letting me know these things was part of the consultancy. It was not by any sort of agreement. It is just something that happened. 2841

7.44 It was pointed out to Dr Kimberlin that Mr Maclean had sought his help. Dr Kimberlin answered that this placed him under no obligation. 2842

My conduct, the way I drafted those answers would be, if you like, wearing my SEAC hat. What MLC said or anybody else said would by itself have no influence whatsoever. I would make up my own mind. I made my own submission and acted accordingly, treating SEAC now as the client, not MLC. I really saw no problem there. In fact this sort of situation happened to me all the time as a professional consultant, these things do happen. You simply draw the lines. I have no difficulty in drawing the lines as to whom I was working for now. Once these questions came and Tom Eddy invited me to submit a response I was now working for SEAC, not working for the MLC. 2843

2839 T137 p. 73
2840 S147E Maclean paras 14–17
2841 T135 pp. 84–5
2842 T135 p. 88
**7.45** It is not apparent to us, and we do not believe that it was apparent to Dr Kimberlin, that he was only being asked to seek to ensure that SEAC’s answers were succinct. We think that the request would naturally have been understood as going to both form and the substance of the replies.

**7.46** We accept that the request would not have led Dr Kimberlin to seek to procure a response from SEAC that he did not believe was accurate. We further accept that Mr Maclean would not have expected his request to have such a result. Nonetheless, we do not believe that the request should have been made. There could well have been a conflict between the answers that the MLC and its advertising agency were looking for and the answers that members of SEAC were minded to give. Indeed, so far as Professor Almond was concerned, that proved to be the position.

**7.47** In a late additional comment to the Inquiry, Mr Maclean said, in relation to the possibility that Dr Kimberlin’s interest in assisting the MLC might conflict with his duties as a member of SEAC:

Next, the Committee asks whether, if Dr Kimberlin were found to have had an actual or apparent interest in assisting the MLC as far as was reasonable, I accept that my request put him in a position whereby his interest in assisting the MLC conflicted, or might reasonably have been perceived to conflict, with his duties as a member of SEAC. I do not accept that there was any actual conflict between Dr Kimberlin’s position (as a paid consultant of the MLC) and his duties (as a member of SEAC). The MLC never asked Dr Kimberlin to do or say anything which he would not otherwise have been prepared to do or say. Thus, the position and the duties were complementary not inconsistent. In a limited sense, however, I do accept that there could have been an apparent conflict. The acceptance is limited because any conflict would have been apparent only to an observer who knew none of the surrounding circumstances and who read in isolation my letter dated 3rd January 1996 to Dr Kimberlin. I certainly do not agree that a conflict might reasonably have been perceived.

**7.48** We consider that Mr Maclean’s request put Dr Kimberlin in a position where he might have an apparent conflict of interest and that, for this reason, the request should not have been made.

**Should Dr Kimberlin have disclosed the request to SEAC?**

**7.49** As to this question, Dr Kimberlin said:

I neither replied to that letter, nor did I notify anybody about it. I saw no need whatsoever, because at the end of the day what I did would be determined by what I thought was appropriate in the context of SEAC. SEAC is now the client, not MLC . . .  

But my role was very clear. No matter what Colin Maclean said to me; no matter what MLC sent, once I started drafting those responses for SEAC, I was now working for SEAC. SEAC was the client. It is a very easy switch for me to make. It is something I did all the time. I worked for many, many
different organisations, different companies; often they were competitors. It was not a problem. 2845

All I can say is that in my mind I had no trouble whatsoever in making these distinctions, and behaving in a manner which I thought was appropriate for an independent consultant. Outside maybe it did look different. Clearly it did, because you have picked it up. You have picked it up now, not earlier. 2846

I have to be honest and say that I was rather less concerned with appearances and much more concerned with doing a job as a professional. 2847

7.50 We are in no doubt that Dr Kimberlin should have disclosed the nature of the request that he had received from the MLC. The fact that he was a paid consultant of the MLC was known. This had formally been declared to the House of Commons on 18 October 1994. 2848 On this occasion, however, in his capacity as consultant, he had received a specific request for assistance with the form of the answers to the questions that SEAC had been asked to give. Mr Eddy then asked him to draft some of those answers. In respect of one answer the wording he chose to use was almost identical to that suggested by the MLC’s advertising agency. We do not suggest that any of Dr Kimberlin’s draft answers failed to reflect a response that he considered appropriate to the question. Nonetheless, some of those answers were in marked conflict with those that Professor Almond considered appropriate. There was in this situation a potential conflict of interest and, to anyone who did not know Dr Kimberlin, an appearance that his draft answers might be influenced by the interests of the MLC. It is unfortunate that Dr Kimberlin did not pay a little more attention to ‘appearances’.

7.51 Dr Kimberlin’s solicitor submitted to us on his behalf lengthy arguments as to why he was under no obligation to disclose the request made by Mr Maclean. We identified the following as the two main strands:

i. Dr Kimberlin’s disclosure in October 1994 of his consultancy with the MLC was a sufficient disclosure of interest. No principle required repeated disclosure of interest.

ii. It was absurd to suggest either that Dr Kimberlin would be biased, or that he might appear to be biased, in performing his duties as a member of SEAC by conflicting interests.

7.52 We reject both these submissions. We are not here concerned with legal duties but with ethical behaviour. The special circumstances that we have described above might well have led anyone becoming aware of them to suspect that Dr Kimberlin’s answers had been influenced by the interests of the MLC. There was a potential conflict between his duty to advise impartially and the interests of his client, the MLC, which was capable of giving rise to an appearance of bias. We think it no more than obvious common sense that Dr Kimberlin should have disclosed the request that had been made to him.
The MLC briefing paper

7.53 On 3 January 1996, Mr Don Curry (Chairman of the MLC) wrote to Dr Eileen Rubery (Under Secretary, Head of Health Aspects of the Environment and Food Division in Public Health, DH) enclosing an MLC ‘briefing paper’ on BSE.2849 He stated:

In view of renewed public concern about the supposed risks to the human population from BSE, the Meat and Livestock Commission has prepared the enclosed briefing paper, which I hope you will find useful when addressing this and related issues.

. . .

MLC is concerned that recent media hysteria over the issue has posed an irresponsible threat to the livelihoods of the many thousands of people in this country whose jobs depend on the production of beef and beef products. It is our view that this industry is making a positive and beneficial contribution to the economic diversity and strength of the UK food industry. We hope this is a view you will share with us.

7.54 The briefing paper stated:

British beef is safe to eat. The existence of BSE in cattle and the similar disease in humans, CJD (Creutzfeldt Jakob Disease) does not imply any link between the two . . .

The most eminent scientists who are involved in studying and seeking to understand the disease do not believe that there is a significant risk to humans. They include: Professor John Pattison, Dean of University College Medical School and Chairman of the independent Spongiform Encephalopathy Advisory Committee; Dr Robert Will, Head of the CJD Surveillance Unit, and a world authority on this disease; Dr Richard Kimberlin, a world authority on scrapie and similar diseases.

[SEAC] has itself found no evidence to suggest that there is an emerging CJD epidemic. The Chief Medical Officer, Dr Kenneth Calman (Sir Kenneth Calman), is satisfied that ‘there is no scientific evidence of a link between meat eating and CJD and that beef and other meats are safe to eat’.

7.55 On 15 January 1996, on behalf of Dr Rubery, Mr Mike Skinner, DH HEF1C Division2850 drafted a letter to Mr Curry (in response to the MLC letter of 3 January 1996). In his covering note to Dr Rubery, Mr Skinner noted that the MLC paper ‘takes a very strong pro-safety of beef line and overstates the weight of interim conclusions from current scientific evidence’.2851 He said that the paper mentioned Professor Pattison, Dr Will and Professor Collinge:

. . . in a way which appears to associate them with the conclusions in the paper. We do not feel these are altogether legitimate and they may well

2849 YB96/1.03/4.1–4.2
2850 Health Aspects of the Environment and Food Division (Microbiological Food Safety, including Food Poisoning), responsible for TSE policy
2851 YB96/1.15/7.1 para. 2
agree. The best way forward would be to let them have copies of the briefing paper and invite them to comment.\[2852\]

7.56 Mr Skinner sent the MLC paper for comment to Dr Will and Professors Pattison and Collinge on 12 February 1996.

7.57 On 18 January Dr Rubery replied to Mr Curry’s letter of 3 January, saying that the MLC briefing paper was ‘in line with current Government advice’ on the safety of beef. ‘However,’ she said:

. . . you have misquoted the Chief Medical Officer. The statement you quote is taken from our press notice of 5 October 1995 (copy attached) and should have read ‘I continue to be satisfied that there is currently no scientific evidence of a link between meat eating and the development of CJD and that beef and other meats are safe to eat’. In our view, the reference should continue to be to current scientific evidence until the results of further research and surveillance become available and this may not be for some years. However, I need to also point out to you that CMO has revised his advice since 5 October 1995 and this is now set out in the MAFF press notice of 28 November 1995. Again I enclose a copy and you will see the relevant section reads: ‘There is currently no scientific evidence that BSE can be transmitted to humans or that eating beef causes CJD’.\[2853\]

7.58 On 12 February 1996 Mr Skinner forwarded to Dr Will, Professor Pattison and Professor Collinge the MLC briefing paper and a copy of Dr Rubery’s letter to Mr Curry of 18 January. In his covering letter Mr Skinner said:

Dr Rubery has replied saying that as regards to the safety of beef, the briefing paper is in line with current Government advice. However, the CMO’s advice should have read ‘there is currently no scientific evidence that BSE can be transmitted to humans or that eating beef causes CJD’.

Dr Rubery has asked if you could give your views on the briefing paper . . . Could you let me have your comments by 4 March.\[2854\]

7.59 On 23 February 1996 Dr Will replied to Mr Skinner’s letter of 12 February about the MLC’s briefing paper. He said:

My view is that there is a remote theoretical risk that BSE in cattle might cause disease in humans. The risk from beef and beef products is likely to be negligible provided statutory measures are fully enforced. I would also agree with the statement that there is currently no scientific evidence that BSE can be transmitted to humans or that eating beef causes CJD.\[2855\]

7.60 Mr Skinner had been present at SEAC’s meeting of 1 February, when concerns were being expressed about the possibility that the young cases of CJD might evidence the transmission to humans of BSE (see paragraphs 7.139–7.147). It would have been better if he had invited Dr Will, Professor Pattison and Professor...
Collinge to consider carefully whether they wished to be associated with the MLC briefing paper.

**MAFF publicity**

7.61 On 12 January 1996 Mr Packer minuted Mr Hogg and copied the minute to Mrs Angela Browning (MAFF Parliamentary Secretary), Mr Carden, Mr Geoffrey Hollis (MAFF, Head of Livestock Group), Mr Meldrum, Mr Martin Haddon, Mr Johnston McNeill (Chief Executive, Meat Hygiene Service (MHS)), Mr Eddy, Dr Tim Render (Animal Health (Disease Control) Division) and others. Among other matters he informed the Minister about his meeting earlier that day with Mr Colin Maclean. He told the Minister that ‘it is clear the MLC are very worried and believe PR action on BSE is needed urgently’. The MLC had proposed two courses of action. The first involved a ‘conventional’ advertisement campaign, which Mr Packer thought ‘did not seem to present any problems’ but he asked that MAFF be kept ‘in touch with their intentions’. The second course of action proposed by the MLC was to ‘put positive messages into the public domain’. The MLC had proposed a seminar to ‘educate a range of “reasonable” scientists on BSE’ in the hope that they would ‘subsequently put forward a more positive line on beef’. Mr Packer regarded this strategy as ‘more complex’. The MLC also proposed a more proactive approach to schools through the Local Education Authorities (LEAs), especially those which had banned beef. In regard to this approach Mr Packer ‘made it clear we would not envisage joint MLC/MAFF approaches’.

7.62 Mr Hogg met Mr Packer and other MAFF officials on 16 January 1996. In the discussion of the MLC’s proposals Mrs Browning did not want to back a seminar for scientists. She suggested that contacts with LEAs should be followed through with further written material and oral briefings if necessary. Mr Hogg concluded as follows:

(i) [MAFF’s] principal role was to put factual information into the public domain. We should take opportunities to repeat the press conference we had held in December. This could be done, for example, at the launch of the next six-monthly report, or when we published the answers to our questions to SEAC;

(ii) we should not be involved with the MLC campaign. However, we should be prepared to support a bid to Brussels for EU money;

(iii) we should prepare an up-to-date pack of written briefing material. [Mr Eddy] should discuss this with the Information Division;

(iv) we should identify nationally particular groups where briefing would bear fruit. This would include both written material and oral briefing. The team for the latter might be Mr Kimberlin, Mr Bradley, Mr Taylor and, possibly, a CJD expert. [Mr Eddy] should submit to Mrs Browning a list of the groups we should target;

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2856 YB96/1.12/4.1
2857 YB96/1.17/3.1–3.4
(v) at the local level, we should, at least initially, concentrate on the LEAs. We did not for the time being have the resources necessary to provide anything other than written material for other groupings.\textsuperscript{2858}

7.63 On 18 January 1996 Mr Eddy minuted MAFF’s Chief Press Officer Mr John Smith, and his colleague Mr Wagstaff. He copied the minute to Mr Carden, Mr Meldrum, Mr Haddon, Mr Kevin Taylor, Assistant CVO, and Dr Render.\textsuperscript{2859} He said:

It is clear from the meeting which we had with the Minister earlier this week that we need to produce a document aimed at the intelligent layman on BSE. One potential audience would be local authority education committee members who we need to persuade to drop bans on beef in schools. Very roughly I think we are talking about aiming at Telegraph rather than Times readers and at people who have an interest but not a scientific background or the inclination to wade through a large amount of technical detail.\textsuperscript{2860}

7.64 He said the information pack might include ‘a new version of the document “BSE and the Protection of Public Health”\textsuperscript{2861} which Mr Kevin Taylor had drafted, which again is probably a little long and upmarket for the more general reader’.\textsuperscript{2862}

7.65 Mr Eddy asked for the Press Office’s views on:

. . . what might go in an information pack, (b) whether we should produce such a note. There seems to be a general view amongst senior management that we should (c) if so, how do we go about doing it and (d) in conjunction with the CVO and Mr Haddon’s Groups, what it should cover.\textsuperscript{2863}

7.66 On 19 January 1996, in response to a request by Mrs Browning for a background note on BSE and CJD to circulate to MPs, Dr Render sent her a set of Questions and Answers plus a draft cover letter to be signed by Mrs Browning.\textsuperscript{2864} He copied it to, among others, Mr Hogg, Mr Packer, Mr Carden, Mr Haddon, Mr Meldrum, Mr Kevin Taylor, Mr Eddy and Mr Skinner. The Questions and Answers were based on the note that Dr Render had circulated for use in replying to letters from members of the public.\textsuperscript{2865} The note now quoted from Professor Pattison’s and Dr Will’s letter of 13 December: ‘If there was any risk to human health from BSE, and there may be none, then we have no doubt that that risk is very much less in December 1995 than it ever has been’.\textsuperscript{2866}

7.67 In February 1996, MAFF revised and reissued two booklets called ‘BSE and the Protection of Human Health’\textsuperscript{2867} and ‘BSE and the Protection of Animal Health’.\textsuperscript{2868} Mr Kevin Taylor had originally drafted these booklets in August and October 1994 respectively, and they had been in circulation since then.\textsuperscript{2869} Mr
Taylor told us that ‘the original impetus for writing these was my perception that some practising veterinary surgeons had little understanding of the measures which were being taken or the rationale for those measures’. In conclusion, the booklet on human health stated:

Fear of the unknown is understandable, and easily encouraged by irresponsible and inaccurate reporting. Despite the claims which have been made, there is no current scientific evidence to indicate a link between BSE and CJD.

This does not, however, mean that BSE could not be transmitted to humans if a determined enough effort were made to do so, for example, by direct inoculation of infected cattle brain. The epidemic in cattle is declining, and strengthened controls will ensure that the decline continues. Nevertheless, effective controls must be maintained and enforced to ensure that the human population is not exposed to cattle tissues which may contain the BSE agent, whether in food or in medicines. The control measures which are in place are designed to achieve this, and they are supported by a body of scientific evidence which suggests that, if they err at all, they do so because they are more restrictive than is necessary. Despite the encouraging indications from recent research, we cannot and will not relax our precautionary measures.

SEAC will continue to review the evidence and give independent scientific advice to the Government . . . Its existence and operation provide an independent guarantee to the consumer that all the evidence is constantly reviewed, and that when action is needed it will be recommended, irrespective of the consequences. The Committee has noted the action taken by the Government to protect public health, and is satisfied that British beef is safe.

7.68 Mr Taylor wrote to Mr Brian Kilkenny of the MLC on 15 February 1996 enclosing a copy of a draft of the ‘BSE and the Protection of Human Health’ booklet. He noted that the MLC had offered its assistance in converting this booklet into a much shorter handout which could be made widely available to consumers.

7.69 On 29 February 1996, Dr Ailsa Wight minuted Dr Jeremy Metters (Deputy CMO) about a meeting at which publicity had been discussed with MAFF officials. She stated:

1. Dr Rubery, Mr Skinner, and I met MAFF officials yesterday and one item we discussed was how to address public concerns about BSE.

2. MAFF have produced a detailed ‘information note’ for consumers, industry, food writers etc., which the Department has had an opportunity to comment on and which takes account of comments made by the MAFF Consumer Panel.
3. The attached leaflet is a distillation of the main points for easy consumption, and intended for wide distribution. We considered there was some merit in the leaflet being issued jointly by both Departments . . .

. . .

5. We are considering other routes through which public health information might be disseminated and will keep you informed.\textsuperscript{2874}

7.70 The attached draft leaflet was entitled ‘British Beef and BSE: The Facts’. On its front page it stated:

Two facts should be made absolutely clear at the outset:

Fact 1 There is currently no scientific evidence to indicate a link between BSE and CJD.

Fact 2 The independent expert committee set up to advise the Government on all aspects of BSE is satisfied that British beef is safe to eat.\textsuperscript{2875}

7.71 The draft leaflet also set out a series of questions and answers about BSE.\textsuperscript{2876}

7.72 On 1 March 1996, Dr Metters minuted Dr Wight expressing his concerns about MAFF’s proposed publicity information on BSE.\textsuperscript{2877} He was ‘not in favour of DH being co-authors of the documents’. He said:

. . . some statements are too definite and in time may be seen to be wrong. We should not follow MAFF’s hyperbole of reassurance. We must leave DH Ministers and CMO in particular, an escape route if any of these categorical statements turns out to be WRONG.\textsuperscript{2878}

7.73 Mr Carden told the BSE Inquiry that the work on publicity material was concluded in the early part of 1996 and went to Ministers ‘on the precise day when the first report suggesting there was new variant CJD came through and it was overtaken’.\textsuperscript{2879}

Discussion

7.74 We are about to turn to consideration of the extent to which MAFF and DH were alerted, before the beginning of March, to the storm that was about to break. It seemed to us significant that on 28 February Dr Rubery, Mr Skinner and Dr Wight should have agreed with MAFF officials that DH and MAFF should issue a joint leaflet including the statement ‘despite the claims that have been made, there is no current scientific evidence to indicate a link between BSE and CJD’, and which referred to ‘the encouraging indications from recent research’.\textsuperscript{2880} This does not suggest any apprehension as to the storm that was about to break.

\textsuperscript{2874} The Inquiry has been unable to find any official record of the meeting to which Dr Wight refers in this minute
\textsuperscript{2875} YB96/2.29/2.2
\textsuperscript{2877} YB96/2.29/2.3–2.5
\textsuperscript{2877} YB96/3.01/3.1. He copied the minute to Mr Thomas (Private Secretary to Mr Horam), Dr Harvey (Private Secretary to Sir Kenneth Calman), Dr Rubery, Dr Skinner and Mr M Skinner
\textsuperscript{2877} YB96/3.01/3.1; S116 Metters para. 155
\textsuperscript{2879} T41 p. 121; in relation to this transcript, see also S103B Carden
\textsuperscript{2880} YB96/2.29/2.5
7.75 We suggested to Sir Kenneth Calman that it would be surprising to find Dr Rubery, Mr Skinner and others discussing issuing this leaflet, and Dr Wight saying it would be a good idea to have it going out as a joint leaflet, if this was in the context of joint discussions about how the Departments were going to deal with a possible emergency situation. Sir Kenneth responded:

This leaflet of course had been in preparation for some time and like many things, they grind on and it comes to a point when it is inappropriate. I think Dr Metters’ minute of 1st March makes it very clear that this was inappropriate.\textsuperscript{2881}

The SEAC meeting of 5 January 1996

7.76 We now turn to the first of the important meetings of SEAC: that of 5 January 1996. In respect of this and the following meeting of 1 February, we propose to consider the following questions:

i. What was said at the meeting about the CJDSU findings?
ii. What was reported about those findings and to whom?
iii. Were the reports adequate?
iv. What action, if any, was taken as a result of the reports?
v. Was this action adequate?

5 January update on CJD surveillance

7.77 The minutes of the meeting record:

Dr Will reaffirmed that the incidence of CJD in dairy farmers in Europe showed an excess over the incidence for the population as a whole except in the Netherlands. There was no excess if data for all farmers were used.

He confirmed that there is now a CJD suspect in a 52 year old from York who had a history of having been an abattoir worker . . . Dr Will’s current view was that the patient was ‘no more than a suspect’ at this stage . . . The patient worked in a mixed abattoir for 18 months in 1989, largely in lairage, occasionally stunning cows, where he would wash out the stunning pen and would not normally have worn gloves. He occasionally pithed animals but had much less exposure than other abattoir workers and was essentially a stockman . . . \textsuperscript{2882}

7.78 Professor Smith is recorded as having said that:

with the figures provided by MAFF of 11,500 workers in the red meat slaughterhouse industry, 30 per cent annual turnover, and a potential exposed population of 60,000 over 10 years, one would expect 0.2 cases over a five year period. He felt that it was not possible to come to any conclusions

\textsuperscript{2881} T134 pp. 79–81
\textsuperscript{2882} YB96/1.05/1.6 paras 19–20
on the basis of this case alone even if CJD was confirmed. Nevertheless, taking into consideration the affected farmers as well, and even though the abattoir worker was in an apparently relatively low risk category, the ‘box’ of ‘at risk’ occupations was getting full compared to expectation on pure chance, and could not be dismissed.2883

7.79 The record states that the Chairman agreed but reminded those present that the case was only a suspect at this stage.

7.80 Dr Will then reviewed the age distribution of cases of CJD:

He continued to have no concern about the incidence of disease in those aged over 30 but the number of cases under 30 was worrying. Between 1970 and 1989 there had been no cases under 30 except for those due to growth hormone treatment. Since 1990 there have been four definites and one possible. These comprised the 17 and 19 year olds which were already published, a 29 year old diagnosed on the basis of cerebral biopsy, a 29 year old diagnosed post mortem and a 29 year old who was still alive and classified as no more than ‘possible’. There were also a 30 and 38 year old confirmed and a 35 year old suspect, who now looks unlike CJD. In one of the 29 year olds and the 30 year old the pathology is unique with very extensive plaques in both the cerebellum and cerebral cortex and Dr Will considered there is a very high chance that these two are genetic.2884

7.81 Dr Kimberlin asked whether the lack of previous cases had been due to misdiagnosis. Dr Will replied that he:

. . . thought this unlikely because the disease was unusual in the young . . . Other members were of the view that CJD in patients under 30 would not have been misdiagnosed because of the rarity of symptoms in this age category. When asked if he knew of a second case in an abattoir works as mentioned in the press Dr Will stated that the 30 year old case had visited an abattoir for two days whilst a 38 year old case had worked in a butcher’s shop for a year in 1975 and a 29 year old case had a husband who worked in an abattoir . . . Dr Will reminded the committee that if two of the cases in young adults were genetic, then the figures were perhaps not so worrying at this stage, given the fact that there had been two cases in France, although over a 15 year period, and two in Japan and other cases reported in the Netherlands and Australia under 30.2885

7.82 The final version of the minutes concluded its section on CJD surveillance, as follows:

Dr Will was not unduly concerned at the overall number of CJD suspect cases that had occurred in the under 30 age bracket, what he did find worrying was that all the cases had occurred over a very short period. Professor Collinge was extremely worried at the occurrence of this number of young cases in such a short period, which could suggest a link to BSE. He requested that a formal statistical analysis be carried out to assess this
The Committee concluded that the situation demanded the continuation of the intensive monitoring of CJD.\textsuperscript{2886}

\textbf{7.83} In a statement Professor Will told the Inquiry:

The minutes of the meeting are not a complete account of the discussions that took place. I cannot remember the details of what was discussed, but I am confident that there was a more extended discussion than that recorded and that this included some of the caveats to the interpretation of the data . . .\textsuperscript{2887}

\textbf{7.84} The process of drafting these minutes spanned some two months. The draft seems to have been based on a note prepared by Mr Eddy, which he used in preparing a minute to Mr Keith Meldrum (see paragraph 7.90).

\textbf{7.85} The minuted comment of Professor Collinge was amended at his request. In an earlier draft circulated to Dr Danny Matthews on 22 January 1996, the relevant passage read as follows:

Dr Will was not unduly concerned at the overall number of CJD suspect cases that had occurred in the under 30 age bracket, what he did find worrying was that all the cases had occurred over a very short period. Dr Collinge considered that there was a strong possibility that these cases may be attributable to BSE. The Committee concluded that the CJD situation needed close monitoring.\textsuperscript{2888}

\textbf{7.86} It was only by his fax of 1 March 1996 to Mrs Stephanie Townsend, SEAC Secretariat, MAFF, that Professor Collinge provided the wording which appeared in the final minute.\textsuperscript{2889}

\textbf{7.87} Professor Collinge told us:

. . . I was profoundly concerned by two pieces of information at this meeting. Firstly, by reports that bovine spinal cord was being incompletely removed from some carcasses. Secondly, Dr Will reported that he was now aware of five cases of apparently sporadic CJD in young people. While one, two or possibly three such cases could be argued to be simply a chance phenomenon, five remarkably unusual cases of sporadic CJD over a such short period of time in the United Kingdom seemed most unlikely in my opinion. Although this was not sufficient evidence on its own to conclude a BSE link, and urgent experimental work needed to be performed to examine this possibility, I felt that this was the most likely explanation. I asked that my concerns on both these issues be appropriately minuted.\textsuperscript{2890}
Communication to MAFF and DH of concerns expressed at SEAC meeting on 5 January 1996

Who received the minutes of SEAC meetings?

7.88 As we have seen, production of the final agreed minutes of the 5 January meeting was not completed until March, after Professor Collinge had provided his amendments. Dr Wight told us that this was normal and that drafting the minutes could often take months. This placed an obligation on the officials present at SEAC meetings to draw to the attention of those in their respective Departments any matters of immediate importance.

7.89 When a draft of the minutes was provided to SEAC on 29 January, it was distributed widely within MAFF, including the CVO, and to Dr Rubery and other officials in DH. Mr Eddy told us that this would have been in accordance with the ‘standard procedure, normal circulation list’ of SEAC minutes within the Department. However, Dr Rubery explained that within DH, SEAC papers were given limited circulation because they often contained early preliminary results of research. She informed the Inquiry that initially she did not routinely receive copies of the papers. Dr Wight confirmed that circulation within DH was ‘pretty limited’. She said that neither the CMO nor Dr Metters would have routinely received copies of the minutes of SEAC meetings.

7.90 Following the meeting, on 8 January 1996, Mr Eddy sent a lengthy minute to Mr Meldrum which gave a chronological summary of the Committee’s discussions. The minute was also copied to Mr Haddon, Mr Kevin Taylor, Dr Richard Cawthorne (Veterinary Head of Notifiable Diseases Section), Dr Render, Dr Danny Matthews (Senior Veterinary Officer and Technical Adviser to SEAC) and Dr Wight in DH. A day later Dr Wight sent a minute to the CMO regarding the SEAC meeting, which was copied to Dr Metters, Dr Rubery, Mr Mike Skinner and Dr R Skinner.

7.91 Mr Eddy told us that it was not normal to provide senior officials with a minute summarising SEAC’s deliberations. He explained that the minute he sent on 8 January:

. . . was probably rather longer than the norm, and . . . was replying to a specific request from [the CVO]. So I do not think you could see that as typical. If we go on to February, again that was perhaps not typical . . .

. . .

The normal situation would be if SEAC had reached a significant conclusion, then I would relay that to people who needed to know within the Department. But the word ‘conclusion’ I think is important here. I mean if SEAC were simply continuing their consideration of a subject, and had not reached a particular watershed, then normally one would not bother people...
with saying: SEAC have continued to look at X and have not got anything particular they want to tell you at this time.  

7.92 Mr Meldrum told us that he had specifically requested the information regarding SEAC’s meeting because he ‘still had a running concern about CJD, both in farmers and in the young people’.  

7.93 Dr Wight also regarded the distribution of a minute summarising the recent deliberations of SEAC to officials within the Departments as an unusual occurrence:

The Secretariat was responsible for preparing the minutes following SEAC meetings. In the circumstances, it was not my practice to prepare a separate minute summarising what had taken place at SEAC meetings after every meeting. Indeed, it was unusual for me to prepare such a minute. On the occasions when I did prepare a note following a SEAC meeting, my practice was to record the outcome of the meeting and not separately to record the views of individual committee members.  

7.94 Dr Wight explained that she would consider sending such a minute ‘if there was something that was relevant to public health, or there was a particular action that the Department needed to take forward that senior officers needed to be aware of’. Dr Wight described the matters that would be of particular interest to DH:

I think we were beginning to see increasingly really since 1994 I suppose, perhaps even earlier, 1993 when we had the first case in a farmer, the issues that the Department needed to follow up, rather than MAFF taking the lead and following up, it was for the Department.

. . .

That is really why I wrote the minute because I thought there was something here that I just need to flag up. We do not know what it means but I thought it was worthy of a note.

. . .

They were flagging minutes if you like. One of the main actions that came out of that January meeting, as you will see, was the need for research. And I can remember spending quite a lot of time trying to sort out what we were going to do in terms of developing a good mouse bioassay. That seemed to me a key concern at the time. Certainly if we were going to try to understand more and more what might be going on in the cases, it was crucial that we had some way of assaying those properly.
Mr Eddy’s minute

7.95 Mr Eddy began his minute of 8 January by reminding Mr Meldrum that he had asked for a ‘short note on the main issues and action points arising from SEAC on 5 January’, and saying that he had covered ‘issues as they arose during the course of the meeting and not by importance’. Under the heading ‘CJD Update’ he recorded the information provided by Dr Will regarding a suspected case of CJD in a former abattoir worker and the concern expressed by Dr Smith about the number of CJD cases in occupations linked to the production of meat.

7.96 He then summarised the information Dr Will had given regarding the age distribution of cases. He recorded that Dr Will ‘continued to have no concern about the incidence of disease in those aged over 30 but the number of cases under 30 was worrying’. However, he made no mention of the particular concerns of Dr Will and Professor Collinge that the number of young cases occurring in such a short space of time was worrying and could indicate a link to BSE. In concluding his summary of the discussion of the age distribution in the recent cases of CJD, Mr Eddy recorded:

Dr Will admitted that he could not prove that cases had been missed in the past and that was still a possibility but it would be unwise to assume that it was the only explanation.

7.97 Mr Eddy recalled the manner in which his minute was drafted, as follows:

My minute of 8 January 1996 was dictated from notes I had taken at the SEAC meeting on 5 January 1996 (I no longer have my original notes of the meeting). I usually took notes at the meeting and would use them to cross-check the first draft minutes of the meetings drawn up by the junior officials who attended the SEAC meetings. In preparing my minute of 8 January 1996 I cannot now recall to what extent I supplemented, from memory, my original notes. I also cannot recall whether, and if so to what extent, I selected material from my notes when preparing my minute. However, given the length of my minute and given that that minute was largely reproduced as the SEAC Minutes I consider it extremely unlikely that I would have left out of my minute something that had been recorded in my notes. Similarly, I think it highly unlikely that I would have consciously decided to leave out of my minute something that I recalled at the time.

Discussion

Was Mr Eddy’s minute adequate?

7.98 Mr Eddy’s minute set out a chronological account of the discussion at SEAC’s meeting. An alternative course would have been to order his minute so as to give prominence to the most significant aspects of the meeting. We do not consider that
he is to be criticised for failing to adopt that course; the more so as he made it plain in his minute that he had not attempted to do so.

**7.99** We were concerned that Mr Eddy’s minute did not record Professor Collinge’s concern ‘at the occurrence of this number of young cases in such a short period, which could suggest a link in BSE’. Nor did he record expressly that this was the nature of Dr Will’s concern. We consider, however, that the detailed account given by Mr Eddy made it plain that Dr Will’s concern arose from the occurrence of four definite and one possible case of CJD in young persons, whereas there had been no such sporadic cases in the period 1970–89. It was implicit that the reason for Dr Will’s concern was the possibility of a link between BSE and these cases of CJD. It is unfortunate that Mr Eddy failed to add that Dr Will’s concern was shared by Professor Collinge, but he could not be expected to provide a verbatim note of everything said at the meeting. As head of the CJDSU, Dr Will’s comments were the most important ones to note. We consider that Mr Eddy’s minute adequately complied with Mr Meldrum’s request to be informed of what transpired at SEAC’s meeting.

**Dr Wight’s minute**

**7.100** On 9 January 1996, Dr Wight (DH) minuted Dr Harvey (Private Secretary to Sir Kenneth Calman) about the 5 January SEAC meeting. In respect of the CJD update the minute stated:

> There have been 5 definite and one possible case of CJD in individuals aged 30 years or under in the last 4 years (though two of these may be genetic cases). Although this is a significant increase over the incidence in the UK in this age group during the preceding surveillance period, it is not without precedent worldwide. The Committee will be provided with a more definitive statistical analysis, from Professor Smith, at its next meeting.

**Was Dr Wight’s minute adequate?**

**7.101** Dr Wight had inherited Dr Hilary Pickles’s role as the professional with lead responsibility in relation to BSE. She attended SEAC meetings as DH observer. In that capacity, she saw it as part of her role to minute her superiors in order to inform them of any matters arising at the meetings relevant to public health and that the Department needed to take forward. We consider that it was part of Dr Wight’s duties to see that her superiors were informed of any matters arising at a SEAC meeting that they could reasonably be expected to wish to know about.

**7.102** DH had set up the CJD Surveillance Unit in order to guard against the remote risk that BSE might prove to be transmissible to humans. The incidence of five possible cases of sporadic CJD in persons under 30 when there had been none in the period 1970–89 in the UK, coupled with the fact that Dr Will and Professor Collinge found this worrying, were important facts because of their potential implications for public health.
7.103 The manner in which Dr Wight reported this part of the SEAC meeting was not adequate. Her minute neither suggested that the figures were cause for concern nor disclosed that the head of the CJD Surveillance Unit considered them cause for concern. The cluster of young cases observed within such a short period were without precedent in the world, let alone in a single country, and there had been no such sporadic cases in the UK in the previous surveillance period. Dr Wight’s statement that ‘it is not without precedent worldwide’ was misleading and encouraged false reassurance. When giving evidence she commented that her statement had been ‘not quite correct’. She had meant to say that cases in young persons were not without precedent worldwide. She added: ‘I probably dashed this off too quickly.’

7.104 We are inclined to think that the inadequacy of Dr Wight’s minute reflects a failure on her part to appreciate the significance of the statement made by Dr Will that he found it worrying that all the cases in the under-30 age bracket had occurred over a very short period. She told us that she thought it was more appropriate to concentrate on the outcomes of SEAC’s discussion, not the contributions of individual members. She saw all contributions made by members as equally valid:

Dr Will was always party to the discussions, and I never thought generally it was worth recording his comments over and above anybody else’s.

7.105 We consider that this attitude showed an extraordinary lack of judgement if applied to comments made by Dr Will on the results of his Unit’s surveillance operations. Dr Wight should have communicated the concerns expressed at the SEAC meeting by Dr Will. Had she done so, her unfortunate comment suggesting the existence of precedent worldwide might have been avoided.

7.106 Dr Wight commented on her minute describing the meeting:

One of the main actions that came out of that January meeting, as you will see, was the need for research. And I can remember spending quite a lot of time trying to sort out what we were going to do in terms of developing a good mouse bioassay. That seemed to me a key concern at the time.

7.107 Research was no doubt important, but of greater potential importance were the possible implications of the results of the CJD Surveillance Unit’s findings.

Two further cases in people under 30 years of age confirmed

7.108 On 8 January 1996 diagnosis of CJD was confirmed in two further young cases, bringing the figure up to seven cases under the age of 30 years. The next day a meeting was held of all the UK CMOs to discuss, among other matters, the ‘line to take’ regarding BSE and CJD in the light of increased press speculation on a possible link. It does not appear that the more recent cases of CJD in people...
under 30 were discussed at the meeting. Under the heading ‘CJD and teenagers’ the note of the meeting stated:

It is not possible to draw conclusions about the cases of two teenagers recently reported in the *Lancet* because cases of sporadic CJD in teenagers, although rare, have been found in other countries before the appearance of BSE and the two cases had no exposure to risk factors for CJD and no contact with BSE.\(^{2912}\)

**7.109** On 9 January 1996, in preparation for a forthcoming parliamentary debate on BSE and CJD on 10 January, Mr Skinner minuted Mrs Browning (Parliamentary Secretary, MAFF) with a Q&A briefing for use during the debate.\(^{2913}\) The minute covered CJD (general), government action on CJD (including research), CJD incidence and surveillance, BSE and CJD risks to human health, and CJD deaths in four farmers, two teenagers and an abattoir worker.\(^{2914}\)

The briefing stated that there was no evidence to suggest that there was an emerging CJD epidemic. It explained that the 50 per cent increase in cases of sporadic CJD in one year (from 35 in 1993 to 53 in 1994) and a 100 per cent increase since 1990 (26 cases) could be explained by the fact that monitoring of CJD had become more intensive. It also added that there was no current scientific evidence that BSE could be transmitted to humans.\(^{2915}\)

The brief also pointed out that, although there had been four cases of CJD in UK farmers, there was no conclusive evidence that particular occupations were at increased risk; but that the situation was being monitored. On the cases of the two teenagers with CJD it was stated that it was not possible to draw conclusions:

. . . because cases of sporadic CJD in teenagers, although rare, have been found in other countries before the appearance of BSE and the two cases had no exposure to risk factors for CJD and no contact with BSE.\(^{2916}\)

**7.112** In relation to the possible case of CJD in an abattoir worker, the briefing stated 'this possible case is being investigated by the National CJD Surveillance Unit and SEAC considered the available information at its meeting on 5 January'.\(^{2917}\) The briefing did mention that CJD tended to present in late middle age but did not make any mention of the more recent occurrences of CJD in people under 30 in the UK.

**7.113** The briefing reiterated that one of the measures to safeguard public health was the exclusion of SBO from the human or animal food chain.\(^{2918}\)

**7.114** The adjournment debate on 10 January 1996 focused on slaughterhouse practice.\(^{2919}\) Mr David Hinchcliffe (Labour MP Wakefield) expressed concern about how seriously the Government was treating public concern about BSE and the possible connections with CJD. He stated that the Government had introduced the ban on specified offal as a precautionary measure alongside assurances that any
health risk to humans from beef was remote, but that compliance and enforcement of the regulations was insufficient. He quoted:

Government statements to the effect that the state veterinary service made unannounced visits to 193 abattoirs [in the previous] September and found failings in the handling of offal in 92 of them. The service [had] visited 153 in October and found failings in 52.

7.115 In response, Mrs Angela Browning (Minister for Food, MAFF) stated that:

The Government’s position on BSE and CJD is based on listening to the experts and following the advice of the independent advisory committees, which are made up of leading experts. The opinion of the overwhelming majority of those experts working on BSE and CJD . . . is that the Government’s actions are not only prudent but sufficient to protect the safety of people who eat beef and bovine products. I must say that we have always taken the advice of the SEAC and put it into the public domain as quickly as possible.

7.116 On slaughterhouse practice she explained:

We have recently, for example, taken action to ensure that specified bovine offal is properly stained, separated and disposed of quite separately from materials which might enter either the human food chain or animal feed.2920

The response to the reports of the January meeting

Discussion

Reaction to Mr Eddy’s minute of 8 January

7.117 Mr Meldrum had this to say in evidence about the concerns felt at Tolworth in relation to the cases of CJD in young people:

I also was concerned in 1995, obviously, about the three cases that occurred in young people. I remember very well the occasions when they were brought to my attention. There was extreme concern in my team in Tolworth: Kevin Taylor, myself, Danny Matthews, Tom Eddy and Richard Carden; we were all extremely concerned about these cases.

We were keeping in close touch with the Department of Health and also with SEAC and listening to the advice which they gave us.2921

7.118 He explained that it was because of his continuing concern about CJD in farmers and in young people that he asked Mr Eddy to send him a note of SEAC’s discussions on 5 January.2922

2920 M7 tab 14 col. 169
2921 T132 p. 150
2922 T132 p. 155
Mr Meldrum also told us:

What I would like to point out is that in that report Dr Will said that he considered there was a very high chance that one of the 29 year olds and the 30 year old were genetic and he reminded SEAC that if this was the case then the figures were perhaps not so worrying at that stage, given the fact that there had been two cases in France although over a 15 year period, and two in Japan and other cases reported in the Netherlands and Australia under 30.\(^{2923}\) Also, I would like to refer to the minute I received from Mr Eddy of 8th January, 1996\(^{2924}\) which summarised the meeting of SEAC on 5th January, 1996\(^{2925}\) and which indicated that there was no additional reason for concern. So at this point in time, although I was concerned at the number of cases occurring in young persons, there was no advice emanating from SEAC that further protection measures for either animals or humans was likely to be necessary.\(^{2926}\)

We consider that Mr Meldrum’s reaction to Mr Eddy’s minute was reasonable. While the minute described the concern of Dr Will about the cases in young people, it also recorded the likelihood that the cause for concern would be diminished by the diagnosis of two of the cases as being the familial variety of the disease.

**Reaction to Dr Wight’s minute of 9 January**

Dr Wight’s minute was sent to Dr Harvey, Sir Kenneth Calman’s Private Secretary, and copied to Dr Metters and Dr Rubery, among others.

Sir Kenneth was already aware of Professor Collinge’s concern about the cases in young people, for he had spoken of this to Sir Kenneth on 31 October 1995.\(^{2927}\) Sir Kenneth was asked, when giving evidence, whether it would have made a difference to his reaction if Dr Wight had included in her minute the concerns expressed at the SEAC meeting of Dr Will and Professor Collinge. He thought that it would have made a difference,\(^{2928}\) but added that if SEAC had concluded that the number of young cases suggested a link with BSE, he would have expected their Chairman or one of their number to raise this with him directly.\(^{2929}\)

Sir Kenneth added that Dr Wight’s statement that ‘it is not without precedent world wide’ as:

\[
\ldots \text{reflected the world literature at the time. It could have happened and therefore was not anything particularly significant at the time, especially with the two that might just have been genetic . . .}
\]

But of course the minute itself is one which I noted and waited for further information on.\(^{2930}\)
It seems to us that Sir Kenneth failed to appreciate from Dr Wight’s minute the extent of the concern felt by Dr Will and Professor Collinge about the young cases of CJD. Had he appreciated this, we feel that he would have taken a more personal interest in events over the next months than in fact he did. Having regard to the terms of Dr Wight’s minute, we do not find Sir Kenneth’s reaction surprising or a matter for criticism.

Dr Metters, like Sir Kenneth, was not alerted by Dr Wight’s minute of 9 January to the concerns that the young cases of CJD were generating. In a written statement he commented:

Up to the date of the SEAC meeting on 1 February 1996, the expert advice which DH had been receiving was that the risk posed by BSE to human health was remote and that there was no evidence of a link between BSE and CJD. SEAC had specifically considered the cases of CJD in teenagers (at its meeting on 8 September 1995) and advised that it was not possible to draw any conclusions from them.

The latest factual developments on BSE and the experts’ advice thereon were constantly considered and re-evaluated by officials within DH, especially when SEAC had something new to say, and, as part of that process, consideration was given to whether any specific contingency plans needed to be made. However, in the light of the facts set out above, the position as at 1 February 1996 was that DH had no reason to make any such plans.

Dr Metters is not open to criticism for not being alerted by Dr Wight’s minute.

Dr Rubery told us about her working relationship with Dr Wight:

When I became head of Health Aspects of the Environment Division (in Public Health Group of Department of Health) in April 1995, I realised that Dr Wight kept in close contact with Kenneth Calman (CMO) and Jeremy Metters (DCMO) on CJD and BSE issues. I took care not to disturb this working relationship which appeared to work well. I expected to be routinely copied into all minutes that went from Dr Wight or Mr Charles Lister to Ministers or CMO and DCMO and used these minutes plus formal and informal contacts with Dr Wight and her line manager (Dr Roger Skinner) as the mechanism for monitoring the Division’s handling of these issues.

After a SEAC meeting it is my understanding that Dr Wight usually phoned the CMO to update him on key issues dealt with. This was routinely followed by a minute to CMO from her or one of her team confirming the key issues. The formal minutes of the SEAC meeting would not usually be finalised until a few weeks later. Dr Wight or one of her team would inform me personally or by phone of any decision likely to be of concern to Ministers or CMO. Often I would go down to their offices to ask if there was any news during the afternoon of a SEAC meeting if I was not in a meeting myself.
would expect to always be aware of the outcome of a SEAC meeting by the
following morning at the latest.2935

7.128 Dr Rubery told us that she received a copy of Dr Wight’s minute of 9
January. She said that she was confident that she would have discussed informally
with her line manager, Dr Roger Skinner, and also with Dr Wight and her team, the
nature of the data given to SEAC, how SEAC felt it should be handled and what
advice should be given to Ministers and the CMO. SEAC had asked for further
information from Professor Smith to help them assess the significance of the
information reported by Dr Will, and Dr Rubery considered that she did not need to
initiate any further action until further advice was received from SEAC.2936

Reactions outside government

7.129 On 22 January 1996, Sir Donald Acheson, former CMO, who had visited DH
in November, wrote to Professor Pattison (who was Dean of the University College
Medical School at which Sir Donald now worked part time2937).2938 The letter was
copied to Sir Kenneth Calman. Sir Donald said he had now had a chance to study
the recent reports of the CJD Surveillance Unit (August 1995), the Advisory
Committee on Dangerous Pathogens (ACDP) (1994) and SEAC (1994). He had also
re-read the Southwood Report. He said:

The principal point I want to make is that subsequent events have shown that
the assumption made in the summary of the Southwood Report in 1989…
that the BSE epidemic is due to the presence of the scrapie agent in meat and
bone meal fed to cattle is now less secure than it was then.2939

7.130 Sir Donald then quoted from the Southwood Report:

The epidemiological evidence suggests this new disease has appeared as a
result of contamination of meat and bone meal derived from sheep offal and
fed to British cattle from the early 1980s. Contamination has arisen because
modern rendering practices failed to destroy the agent of scrapie, the
endemic Spongiform Encephalopathy of sheep.2940

7.131 He continued his letter:

At that time the basis for the reassurance that we gave the public (‘beef is
safe’) rested on the analogy with scrapie. Thus, this condition, although it
had been endemic in sheep in Britain since 1732 and sheep’s brain and offal
had been freely available for human consumption; had not led to spongiform
encephalopathies in man. Nor did the global distribution of scrapie bear any
relation to the distribution of CJD.

In the interim, however, it has become clear that the agent of BSE either did
not originate from scrapie material in sheep or, if it did, changed in passage
through cattle. Two lines of evidence point in this direction. In the first place,
while there is no evidence of scrapie having transmitted to the domestic cat it became clear late in 1991 that BSE had transmitted by the alimentary route [ie, orally] to the domestic cat. Later, evidence emerged of transmission to various exotic cats in captivity. In other words the inter-species transmissibility pattern of BSE differs from scrapie.\textsuperscript{2941}

The second line of evidence comes from experiments using the mouse model. These confirm that there are differences between the scrapie and BSE agents. Various experiments have shown that unlike scrapie BSE appears to act as a single strain, appears to be more heat resistant and produces a different and consistent pattern of disease and incubation period in mice.\textsuperscript{2942}

While this does not necessarily mean that BSE is any less innocuous to man than scrapie it means that much of the reassurance which the scrapie analogy afforded and on which the original policy was based has unfortunately fallen away. Happily the potentially serious implication of the successful transmission by cerebral inoculation of BSE to primates (marmoset) in 1993 is offset by the fact that scrapie has also been transmitted to marmosets.

In the circumstances, and bearing in mind that the small number of pathogenesis experiments using tissue from cattle provide at best a weak negative, it seems appropriate for DH and MAFF to review once more its policies in relation to BSE to see whether any further steps should be taken to protect the health of the public. The elimination of calf brain and other offal and of beef liver from food permitted for human consumption including baby food would seem to be matters for reconsideration, and there may be others.\textsuperscript{2943}

\textbf{7.132} Sir Kenneth Calman’s Secretary sent Sir Donald a response dated 26 January 1996. This stated that Sir Kenneth had found the information contained in the letter to Professor Pattison ‘very useful’ and had retained it in his office for future reference.\textsuperscript{2944}

\textbf{7.133} On 24 January 1996, at the twenty-fifth meeting of MAFF’s Consumer Panel, MAFF tabled a paper called ‘BSE: the Government’s Perspective’.\textsuperscript{2945} It presented a brief history and description of TSEs, and discussed BSE in relation to human and animal health. It included the following statement:

\ldots there is no evidence of any link between beef eating and CJD. All cases of CJD in the UK are intensively studied by the CJD Surveillance Unit which publishes an annual report each summer. The number of cases fluctuates from one year to another, but the early data for 1995 shows that the number of cases will be lower than in 1994.\textsuperscript{2946}

\textbf{7.134} The paper concluded:

This paper has been written to explain the control measures taken to protect animal and public health in the light of independent advice and a substantial
ongoing research programme. Government has made it very clear that its overriding priority must be the protection of human health. Economic considerations are secondary. The control measures which have been taken are consistent with this stance.  

7.135 Dr John Godfrey of the Consumer Panel wrote a response to the MAFF paper. His final paragraph stated:

5. However, these cases demand most careful consideration. CJD is a disease of the old. If BSE proves to have been able to jump the species barrier to man it can be expected to present as CJD, or a CJD-like encephalopathy. May I suggest a few initial thoughts?

– These cases will probably prove to have been a cluster of no discernible significance. The history of epidemiology is, largely, a history of clusters that demanded attention, but deserved eventual dismissal.

– The putative importance of these cases has to be judged on the strength of the evidence that they are the first ones here, and among very few worldwide. If numerous cases have died without being diagnosed there is not much to worry about. This is a matter of clinical judgement, that I lack. The authors of the papers quoted write: ‘. . . it seems unlikely that CJD, and particularly cases with a typical clinical presentation and histology, would have been previously missed in teenagers.’ It seems likely that this statement is intended to apply only to countries with an advanced health service. That all the cases have been reported from Europe and North America may well be due to failure to diagnose other cases that died unrecognised elsewhere.

– If the tiny cluster is due to people having been infected, further cases are likely, perhaps many of them. It seems best for government to plan now for this highly improbable possibility. This should include: (a) taking statistical advice on what will be taken as significant evidence, leading to action (did R. A. Fisher work on an efficient test for very small samples?); (b) what advice should be given to consumers. It should be the aim to get advice across to us before the predictable reactions to what would be major tragedy, but also a major news story; (c) what action should be taken, in this hypothetical situation, to make the beef that could be eaten by consumers in the future safe again. This would obviously cost a lot, and be technically difficult, but possible.

7.136 It was Dr Godfrey who had earlier questioned the infectivity of dorsal root ganglia. We consider that his contributions to the Consumer Panel showed commendable perception.

7.137 On 29 January 1996 Miss Jill Wordley (MAFF Consumers and Nutrition Policy Division) minuted Mr Eddy with her thoughts on ‘groups to be briefed on BSE’. She mentioned consumer organisations and the MAFF Consumer Panel, and the disadvantages of relying ‘too heavily on the MLC’: ‘It seems to me that as far as the general consumer is concerned, the MLC are perceived as being in the “save the meat industry” camp. A better impression of impartiality might be given if
MAFF organised as much as possible itself.’ She also mentioned scientists, food and health writers, the internet and schools. 2950

7.138 Mr Eddy said in a written statement, ‘I don’t recall this exercise [ie, publicity] progressing further and believe that it was simply overtaken by the aftermath of the nvCJD announcement.’ 2951

SEAC meeting: 1 February 1996

7.139 We now turn to the second SEAC meeting in 1996 (the twenty-fourth in all), at which the findings of the CJD Surveillance Unit were discussed. SEAC was given a further update by Dr Will. 2952 The developments which had occurred in the Unit’s consideration of recent cases of CJD in young people are described in detail in vol. 8: Variant CJD. Things had moved on since SEAC was updated on 5 January. Dr Will told the Inquiry that by the end of January the Unit had identified ‘what we believed might be a common clinical phenotype’ in the young cases. He stressed that the identification of this possibly novel phenotype was ‘tentative’ at this stage and the possibility that some of the cases might have been genetic had not been ruled out. 2953 Dr Will summarised the views he held at the end of January 1996:

I had become increasingly concerned about the young cases of CJD, but there was insufficient scientific evidence to reach a conclusion about the novelty of these cases, nor to reach a judgement about whether these cases might be causally linked to BSE. The interpretation of the neuropathological findings was of critical importance and I asked Dr Ironside [CJD Surveillance Unit] for his opinion. Dr Ironside said that there clearly were very unusual pathological features in these cases, but that it would be premature to conclude that these cases were linked to BSE on the basis of the neuropathological findings alone. 2954

7.140 As a result of these developments, Dr Will explained in his statement that by 1 February 1996 his assessment of the extent to which some of the scientific criteria were met (in relation to judging the significance of the cases) had changed from the position at 5 January:

i. (a) is there a novel clinical phenotype?: possible (compared with ‘not identified’ on 5 January)

(b) is there a novel pathological phenotype?: possible (compared with ‘not identified’ on 5 January)

(c) are these cases linked to PRNP mutations?: no mutation identified in three cases

(d) is there ascertainment bias or increased efficiency of surveillance?: probable

2950 YB96/1.29/4.1–4.2
2951 S109 Eddy para. 99
2952 YB96/2.01/1.1–1.25. The meeting was attended by Professor Pattison, Dr Will, Professors Allen, Almond, Collinge, and Smith, Mr Bradley, Mr Pepper and Dr Kimberlin. Mr Eddy and Mr Skinner constituted the Secretariat, observing the meeting were Dr Matthews and Dr Wight, and ‘in attendance’ were Mrs M Wilson (BBSRC) and Mrs Townsend (MAFF)
2953 S61D Will para. 30
2954 S61D Will para. 34
ii. (a) are these cases in the UK distinct from previous experience?: possible (compared with ‘not identified’ on 5 January)

(b) are these cases only occurring in the UK?: unknown

7.141 It was in the light of these developments that Dr Will provided SEAC with an update of CJDSU findings at the meeting in February. The minutes of SEAC’s meeting recorded that:

Dr Will referred to the suspect CJD case in a 52-year-old who had worked in an abattoir for 18 months from 1989, and who was reported to have sustained an injury while working. He had in fact been kicked by a steer and had received no hospital treatment.

Dr Will reported that he had been advised of one possible case of CJD in a German who had worked in an abattoir for 10 years, 30 years prior to death, and of one confirmed case in France in 1995 in a man aged 59 who had worked for 36 years in an abattoir.

He reported that the 1995 UK incidence of CJD appears to be about 20% down on the 1994 level and updated SEAC on the now 5 pathologically confirmed individuals under 30 years of age. Three of these patients have died and 2 remain alive. Genotyping is incomplete. Dr Will confirmed that [name not specified] is not one of these 5 cases. Two cases of CJD have been confirmed by pathology in 30–39 year olds and a further patient in this age group has pathology suggestive of GSS. Dr Will also reported a further confirmed case of CJD in a 41-year-old.

In all of the cases mentioned above (except the GSS case and one case where results are incomplete) there was extensive plaque formation in the cerebral cortex, cerebellum and spinal cord. An extensive and unusual pattern of PrP deposition was an unexpected finding. Dr Will reported Dr Ironside’s view that it is premature to decide that these cases are linked with BSE . . .

Dr Will reiterated that the crucial issue is not simply the young age or pathology of recent cases but the short time scale in which 5 cases in individuals under 30 years of age had occurred. The dates of onset of symptoms of the cases were February 94, May 94, June 94, January 95 and April 95 although they were not reported to the [CJDSU] in that order. He advised the Committee that definitive genetic data on these 5 cases would soon be available and that he intended to publish the clinico/pathological data together with that of cases under 40 years of age. Details of the third young case will also soon be published.

7.142 The minutes also recorded that:

Professor Pattison [Chairman] said that information given to the media to date indicates that 1994 was not the start of a major rise in the incidence of
CJD. He concluded that the unusual data on young cases is of greater concern than the cases in farmers which appeared to be classical sporadic cases with typical pathology. He repeated the need to look at young cases in other countries. If these cases shared the unusual pathology it would be comforting. It could be that CJD in young cases was different because of the age of the patient.

... Professor Collinge was of the opinion that 5 cases in people under 30 years old in little over a year must be very significant in statistical terms. Professor Smith agreed.2957

7.143 Professor Collinge told us that his understanding of the information provided to the February meeting was that:

... these young cases showed a unique and remarkably uniform disease pattern. This would be consistent with their being exposed to the same prion strain. I again reiterated my concerns that this was likely to represent BSE transmission to humans.2958

7.144 In a statement to the Inquiry Professor Will stated:

The short time scale in which five young cases of CJD aged less than 30 years had been identified was clearly a matter of concern, but I did not at that time believe there was sufficient clinical, pathological or epidemiological evidence to indicate that we had identified a novel clinicopathological phenotype of CJD.2959

7.145 In oral evidence to the Inquiry, Professor Will was asked why the meeting was considering only five cases under the age of 30 when there had been seven under 40 to date. Professor Will stated:

I gave a very full report of what was happening. And these minutes are not a full record, I think, of what I said. But I did talk about all the cases that we had, I am sure.2960

7.146 When Professor Will was also asked whether he had communicated the shift from the January meeting, where it was ‘not identified’ whether the UK cases were distinct from previous experience, to the position in February, when the answer was that this was ‘possible’, he stated:

Yes, I think that they understood, I hope, that there was a concern about what was happening. But the level of that concern, of course, would have varied enormously from person to person within the committee. I cannot make a judgment about what everyone else felt ... But as I have said before, I think in relation to making a judgment about whether this was truly new or truly signified any relationship with BSE could not be suggested at that time.2961
7.147 In a statement Professor Collinge told us that at SEAC’s meeting on 1 February 1996 he repeated his concerns that the findings were likely to represent the transmission of BSE to humans.2962

**Communication of concerns expressed at SEAC meeting on 1 February 1996**

7.148 As with the January meeting of SEAC, Mr Eddy and Dr Wight circulated details of the February meeting within their respective Departments.

7.149 On 6 February 1996, Mr Eddy circulated a summary of the meeting to Mr Hogg, Mrs Browning, Mr Packer, Mr Carden and Mr Meldrum.2963 He reported that the meeting had ‘mainly focused on research priorities and the answers to the Minister’s questions’.2964 Mr Eddy added:

I also need to alert the Minister to the fact that Dr Will, the Deputy Chairman of SEAC and Head of the CJD Surveillance Unit, is preparing two scientific papers. Both are potentially tricky and will need careful handling. He is aware of our interest and of the need to alert us in good time before they are published. He does not yet know when they will be published.

7.150 The minute went on to outline the contents of the two papers. It reported that the first paper, which was in an advanced stage, described the identification of two distinct subsets of CJD and that:

In one form the disease appears restricted to specific parts of the brain. In the other form disease is more widespread and is found in the spinal column, and shows similarities to CJD in recipients of growth hormones. The conclusion which some of our critics will draw, although there is no evidence, is that the form of CJD with the widespread spongiform appearance represents the kind of disease which can be ‘caught’ and that those who have this form of disease and have not had any form of medical intervention may have caught it from cattle. Dr Will’s paper will not say that but others will try to interpret it in that way.2965

7.151 He stated that the second paper, which had not yet been drafted, looked at the five confirmed cases of CJD in patients aged under 30 and that:

All five cases look the same under the microscope, with extensive plaques in both the cortex and cerebellar parts of the brain and in the spinal cord, which is an unexpected finding, and may relate to age of onset. Again, the analogy will be drawn by our critics between these cases and those described in the first paper with more extensive spongy appearance in the spinal cord and the suggestion is likely to be made that the five young cases again represent a new form of the disease which, by extension, can be ‘caught’ and was no doubt caught from cattle. These are major leaps of logic but cannot be ruled out on the basis of the available evidence. It is far too premature to draw any

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2962 S63 Collinge para. 33
2963 YB96/2.06/5.1–5.2. The minute was also sent to Mr Haddon (Under Secretary, MAFF), Mr Hollis (Head of Livestock, MAFF), Mr Kevin Taylor (Assistant CVO, MAFF), Dr Cawthorne and Dr Render, among others
2964 YB96/2.06/5.1
2965 YB96/2.06/5.1 para. 3
conclusions and much work needs to be done on previous cases in the UK and on cases from abroad. . . 2966

Discussion

Was Mr Eddy’s minute adequate?

7.152 At the meeting Dr Will repeated Dr Ironside’s view that it was premature to decide that the identified subset of CJD in young people was linked with BSE. This statement, of itself, indicated that it was a real possibility that the link would be subsequently made out.

7.153 We were concerned that Mr Eddy’s minute did not record the concern about the implications of the young cases expressed by Professor Pattison, as recorded in the minutes, the concern on this subject expressed by Professor Collinge, as recorded in the minutes, or Professor Collinge’s equal concern that the findings were likely to represent the transmission of BSE to humans. Although it is not minuted, we accept his evidence that he had expressed this concern, for we have no doubt that it was one that he felt.

7.154 On our reading of Mr Eddy’s minute, he was setting out to warn Ministers and senior officials that the two papers to be published by Dr Will were likely to result in presentational problems. The reference to the need for ‘careful handling’ suggests to us careful handling of the media.

7.155 Mr Eddy told us that he believed that he intended to alert Ministers and officials to the problems of handling the situation generally; his comments were not intended to be restricted to media handling. When we come to consider the reaction to Mr Eddy’s minute we shall see that Mr Hogg probably read it in the same way that we did. Others, and in particular Mrs Browning, told us they regarded the minute as a more general warning.

7.156 Mr Eddy very frankly told us that he had some difficulty in following the implications of the discussion at the SEAC meeting. He did not understand that there was a ‘real possibility’ as opposed to a ‘possibility’ that SEAC would conclude that BSE had transmitted to humans. Because of the difficulty he had with the subject matter of his minute, he sent a draft of it to Dr Wight, raising various queries and asking for her assistance to ensure that he had got everything right. Dr Wight made extensive amendments. Mr Eddy commented in evidence:

I think that reflects the point which came out, I think, in Professor Will’s evidence this morning, that CJD was a complex area; that it was a human health issue; that it was Department of Health, and the CJD Unit which was financed by the Department of Health, where the expertise lay; that we in MAFF had to really just follow what we were told by the Department of Health and what was said at SEAC meetings. We had no in-house expertise. Quite frankly we found some of it rather difficult to follow.
I am sure the Committee sailed through this morning with flying colours, but I can assure you that as someone who is not trained in epidemiology and neuropathology and histopathology, that some of us find it rather difficult to follow. I was very concerned that although I wanted to let the Minister know that there were potential papers being published, I was very concerned to make sure I got it right, because I really did not think I had. I was finding it very difficult to understand, which is why I wanted to make sure that the advice I put to Ministers reflected the Department of Health’s analysis of where we had got to; and that in a particular area where I was not clear, and that if they were in doubt they should go back and check with the unit themselves.

7.157 Mr Eddy may not have been able to follow all the details of the two papers that Professor Will intended to publish. We feel, however, that he must have appreciated the nature of the concerns expressed by Professor Pattison and Professor Collinge and that, although it was premature to draw conclusions, there was real concern that the five young cases, which showed an unusual pathology, might prove to be linked with BSE. Had he reported those concerns, it would have been plain that there was more than presentation to be worried about. We consider that he should have done so.

7.158 In a written statement Mr Eddy told us:

As far as I was concerned, in my minute of 6 February 1996 I had very clearly pressed the fire bell and those who needed to know in the senior management chain were clearly alert to the problem.

I believe the minute of 6 February 1996 gave a reasonable summary of the overall tone of the meeting and left senior management in no doubt of the issues.

7.159 We do not consider that Mr Eddy’s minute ‘pressed a fire bell’, nor do we believe that he intended it to have this effect. Had he referred to the concerns expressed by Professor Pattison and Professor Collinge, this would have drawn the reader’s attention to the implications of the subject matter of Dr Will’s proposed publications. In the event the reader was left to draw his or her own conclusions. What conclusions were drawn from the minute we shall consider in due course. We turn next to consider Dr Wight’s perception of the significance of the SEAC meeting.

Dr Wight’s minute

7.160 On 6 February 1996, Dr Wight minuted Sir Kenneth Calman’s Private Secretary. Dr Wight stated:

There are now 5 confirmed cases in the UK in patients under 30 years of age, all presenting in the last two years. It is likely that these will be sporadic rather than familial cases. This is clearly unusual compared with earlier data on the age distribution of disease. The course of the disease appears to be
somewhat longer in those with a younger age of onset, and the pathology in these cases is distinct, with very extensive plaques in the cortex, cerebellum and also spinal cord. It appears that with newer staining techniques, a major quantitative change in plaque formation is detectable, common to young UK cases.

Comparative information on young cases in other countries is being sought. The detailed findings will be submitted for publication later in the year, and although it is premature for any conclusions to be drawn, clearly the media could make much of this in terms of BSE being responsible for a ‘new’ type of disease pattern.

A paper is currently in preparation by the CJD Surveillance Unit which describes variations in the degree and site of plaque formation in a subset of cases of sporadic CJD. Again, this could be interpreted by some as signalling an aetiological link with BSE.

Further, there are some loose similarities between the appearances in this subset and in the young onset cases, and that found in hGH [human growth hormone] recipients, where there is a peripheral route of exposure as would be the case if there was any link with sporadic disease to BSE. This could add to the possibility of misleading deductions being made when these various findings are published.2974

Was Dr Wight’s minute adequate?

7.161 The facts reported by Dr Wight were, on the face of it, cause for concern. Five confirmed cases of CJD in victims aged under 30 years was more than ‘unusual’. It was unprecedented. A distinct pathology was further cause for concern. But the tenor of Dr Wight’s minute did not acknowledge cause for concern. Statements such as:

‘... clearly the media could make much of this ... this could be interpreted by some ... this could add to the possibility of misleading deductions being made ...’

are all phrases which suggest that there was in reality no likelihood of a link between BSE and these new variant cases of CJD.

7.162 We asked Dr Wight whether at the February SEAC meeting it looked as though ‘the balloon might be going to go up’: that SEAC might conclude that there was a link between BSE and the young cases of CJD.2975 She replied:

I really cannot remember what I thought at this stage. All I can do is infer what I might have been thinking from documents. I think it continued to be worrying, but I am not sure that again we were in a position to say that it was perhaps any more probable really than it had been the month before.2976
We asked Dr Wight whether at this stage she thought that MAFF and DH were facing a very serious situation indeed. She replied:

I do not think it was, you know, possible to conclude one way or the other. I think it was important – it was very important that the data were made public, and that we were properly equipped to deal with the publication of the data, certainly. That was perhaps at that stage where the importance lay. What does all this mean? How is it going to be interpreted? How do we handle the putting of this data into the public domain?

Once again we find Dr Wight’s response to the situation inadequate. The information placed before SEAC by Dr Will was cause for serious concern. While it was too soon to draw conclusions, there was a real possibility that SEAC would conclude that the new cases of CJD were linked to BSE. This was to be inferred from the concerns expressed by Professor Pattison and Professor Collinge at the meeting. We consider that Dr Wight’s minute should have expressed those concerns. In the event she used language that was sedative. While a careful reading of her minute should have alerted the reader to the fact that it was cause for concern, Dr Wight should have put this beyond doubt by referring to the concerns expressed by the two professors.

The response to the reports of the February meeting

Discussion

Reaction to Mr Eddy’s minute of 6 February

In his original witness statement Mr Carden said this:

The first record I have found of my being made aware of the emerging indications of a new variant of CJD (nvCJD) is a minute from Mr T Eddy dated 6 February 1996 to the Minister’s private secretary. This reported that SEAC, at a meeting on 1 February 1996, had received a report from Dr Will, Deputy Chairman of the Committee and Head of the CJD Surveillance Unit, about two papers on CJD that he was preparing for publication. One of these papers was a study of five cases of CJD confirmed in patients aged under 30 (abnormally young compared with other CJD cases). The paper was to describe an unexpected, extensive and unusual pattern of prion protein deposition. Mr Eddy’s minute noted that some might suggest that the new form of CJD could have been ‘caught from cattle’, and commented that this could not ‘be ruled out on the basis of the available evidence’. But it concluded that it would be premature to reach any firm view; SEAC was to do further work, and give agriculture and health Ministers a formal opinion.

Those of us who received Mr Eddy’s 6 February report were aware that we could be on the edge of a very far-reaching change in the picture we had of BSE. My recollection is that from then on until SEAC reached a concluded view on 20 March 1996, we felt in a state of high alert. We – I am referring
to myself and the circle of people within Government to whom the news at that stage was deliberately confined – paid extremely close attention to each new indication from the leading experts. But for more than a month the tentative indications from SEAC’s 1 February meeting were all we had to go on. The hints of bad news remained tentative, and we lived in suspense. 2978

7.166 In a subsequent statement Mr Carden added:

With the report that I and others in MAFF received from Mr Eddy of SEAC’s 1 February meeting the position started to change. Although Mr Eddy reported that it was ‘far too premature to draw any conclusions’, Dr Will’s findings were the first firm indications that the balance of probability might be shifting in favour of BSE actually being transmissible to man (contrary to what had generally been believed in MAFF up till then), and that one suspected means of transmissibility – ingestion of beef – had suddenly gained ground over the others that had been attracting more attention in autumn 1995. 2979

7.167 Later in the same statement he elaborated:

It is a normal feature of the work of senior policy advisers to be on the watch for new developments and to be ready to react to them fast. Our actual approach in this instance of BSE and nvCJD, as described in the statements which I and others have put to the Inquiry at earlier stages, illustrates that I and my colleagues in MAFF devoted much time and energy in the first months of 1996 to watching every new indication of what was going on; that we moved into a state of high alert as events unfolded, and discussed and evaluated each new development intensively; with MAFF and DH in very close touch both at official and ministerial level at all key stages. 2980

7.168 In her original witness statement Mrs Browning made no mention of the nature of the reaction of herself, or anyone else, to the receipt of Mr Eddy’s minute of 6 February. 2981 When she gave oral evidence in Phase 1 she said that she remembered receiving this minute and it was a matter of concern, but clearly there was more scientific work needed to give advice to Ministers. 2982

7.169 Mr Hogg said that he had no recollection of seeing the minute, but the overwhelming probabilities were that he would have done. He added:

I do not actually recall my state of mind, but I know the sort of person I am. I would have been concerned. 2983

7.170 When Mrs Browning returned to give evidence in Phase 2 she said:

I think Mr Carden is quite right to say that that information we received in Mr Eddy’s minute gave us great concern, and that we were anxious, within the Ministry, to know as much as possible through the SEAC Committee as to their conclusions.

2978 S103 Carden paras 54, 55
2979 S103C Carden para. 13
2980 S103C Carden para. 27
2981 S300A Browning para. 60
2982 TR5 p. 110
2983 TR5 p. 109
I think the imagination raced really to see what the advice was likely to be that eventually came forward from the scientists, and what one might do to mitigate that problem in terms of policy announcements and practical action that would then be needed. 2984

7.171 Later in her evidence she said this about Mr Eddy’s minute of 6 February:

I did not interpret Mr Eddy’s minute as being one in which the compelling message was presentation. That was merely a component. I would say my own recollection of my own thinking about it was really far more concerned with what the scientists would find in terms of their additional research and the impact of that, rather than the presentation.

If I may just say that in the Ministry, although presentation was very often a difficult issue to handle, we did not in any way take presentation as our first priority. It was a matter of putting the policy into the public domain in a way that was safe and which was credible. The presentation really was the last thing to be considered. It certainly was not my interpretation of Mr Eddy’s minute that it was about presentation.

Q. LORD PHILLIPS: That is helpful. As far as you were concerned it was quite enough to set the alarm bells ringing, that minute?

A: Yes. Absolutely. 2985

7.172 When Mr Hogg returned to give evidence in Phase 2 he gave a different picture of his reaction to Mr Eddy’s minute. As he had no actual recollection, he viewed it afresh. Of the reference to Dr Will’s papers being ‘potentially tricky’ and needing ‘careful handling’ he commented ‘that sounds, although we go on, that this is essentially a presentational problem rather than one of substance’. After going through the minute he concluded:

. . . reading this again, and I am coming basically afresh to it because I do not remember this, this is not a red alert at all. This is saying that something is happening, you need to know about it, it may have handling problems of a substantial kind, but it is not a warning of transmissibility. It really is not. And had I thought it was, I would have acted and so would all my people around me. 2986

7.173 In characteristic style, Mr Hogg commented, when referred to Mr Meldrum’s evidence that alarm bells were ringing for him:

I am sure he did not ring the alarm bells in my office. Had he done so Lord Phillips, again you may have got this impression of me already, I am an interventionist Minister. I do not hesitate to call for persons and papers, and to make up my own policy. After all, at the end of the day the policy of the 16th March, 20th March, was mine and not by the Permanent Secretary or the officials. So I do not hesitate to intervene. Had I been told that, ‘Look this
is becoming very serious, we think the thing is transmissible’; I would have swooped like an eagle.

. . .

I do not blame officials. I am in the business of recognising that Ministers are responsible. That is why I took the responsibility of the policy without worrying about that, it is my business. I suspect that Meldrum and friends did not think that they had hard enough information to come to me with recommendations or a form of concern, but they did not. Had they done so, there would have been some evidence of that in the paper trail, if only because I would have said, ‘I want to see Meldrum’. I would not have sat on my backside with this kind of commotion around. 2987

7.174 Mr Hogg was referred to Mr Carden’s reference to MAFF being in a state of high alert after the SEAC meeting. He commented:

That does not accord with my recollection. It may be that it was at official level. I am not saying he is wrong. All I can tell you is that he did not bring that to my attention, nor do I think that paper justifies it. 2988

7.175 When told that Mrs Browning had said that Mr Eddy’s paper set alarm bells ringing, he added:

All I can say is it did not set my alarm bells ringing and I am pretty sensitive. I am bound to say, reading the thing again, I am reinforced in that view.

. . . there was nothing to set the alarm bells ringing. It was quite plain that we were dealing with something where there was time, time and where there was not evidence of transmission, we were dealing essentially at that point with a handling difficulty, not a substantive difficulty, at that stage. 2989

7.176 The evidence of Mr Meldrum and Mr Packer also differed as to the effect on them of Mr Eddy’s minute. Mr Packer said in a witness statement:

After 6 February 1996 it became much more likely that we would be faced with the possibility SEAC would conclude that transmissibility of BSE to humans had been proved or was probable. 2990

7.177 In oral evidence he said that the information contained in Mr Eddy’s minute raised, obviously, a number of serious issues and referred, in particular, to the identification of two distinct subsets of CJD. 2991

7.178 In contrast to this, in a supplementary statement Mr Meldrum said:

The comments in the minute dated 6 February 1996 to Ministers are very important. Firstly Mr Eddy, who was simply reporting the views of SEAC, commented that it was too early to draw any conclusions and also indicated
that further advice would be submitted by SEAC when the paper was published, which officials knew would be some time away. This does not indicate that SEAC were unduly worried and nor does it indicate that they considered that any urgent action was required, quite the opposite. Whilst the five cases of CJD confirmed in patients aged under 30 were extremely worrying it was clear that neither the CJD Surveillance Unit, particularly Dr Will, nor SEAC had come to any conclusions, not even tentative conclusions, as to the implications of these cases on the issue of the transmissibility of BSE to humans.\(^{2992}\)

### 7.179 In oral evidence he added:

But if you look at the note of the meeting put to Ministers, from the February meeting of SEAC, it does not give me the feel that alarm bells were being pressed at that particular time. There was no urgency about the next meeting, for instance. There was no comment about ‘We need to have a meeting in two weeks time’, there was nothing about ‘We need to review the literature or look at other sections from elsewhere in Europe as a matter of urgency’. It says: ‘We are going to publish in four to six weeks’, or something like that. It did not indicate to me, that minute alone, that there was the degree of concern that some witnesses have indicated.\(^{2993}\)

### 7.180 The evidence that we have summarised suggests that different witnesses in MAFF had different perceptions of the implications of the matters discussed at the SEAC meeting of 1 February as described in Mr Eddy’s minute. We are conscious of the difficulties of recollecting attitudes of mind several years after the relevant events and we propose to examine the reliability of this evidence. We shall do so later in this chapter, in the context of considering the extent to which officials and Ministers carried out any contingency planning in relation to the action that would need to be taken, should the new cases of CJD be shown to be linked to BSE. Next, however, we wish to consider the reaction of DH witnesses to the account of the SEAC meeting set out in Dr Wight’s minute.

#### Reaction to Dr Wight’s minute of 6 February

### 7.181 In a supplementary witness statement Sir Kenneth Calman dealt with the question of whether DH should have carried out any contingency planning before March 1996 to address the possibility that BSE might be shown to be transmissible to humans. He commented:

Up until the date that I received a briefing of the matters discussed at SEAC’s 1st February 1996 meeting, I and the Department of Health had consistently been receiving advice from the Government’s Expert Advisory Committee that any risk to human health posed by BSE was remote and that there was no scientific evidence to suggest that there was a link between BSE and any human disease.\(^{2994}\)

### 7.182 After setting out the terms of Dr Wight’s minute, he commented:

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\(^{2992}\) S184E Meldrum section L para. 9  
\(^{2993}\) T132 p. 156  
\(^{2994}\) S179A Calman para. 50
There was nothing in this minute which suggested at this stage any change in SEAC’s advice. It was premature for any conclusions to be drawn. In the circumstances it was not appropriate for me to have addressed at this stage the issue of what action might be required should scientific advice be received that it was probable that there was a link between BSE and a disease in humans.\footnote{S179A Calman para. 51}

7.183 He went on to say that he considered all aspects were being properly reviewed and that further deliberations would be required by SEAC.

7.184 When giving oral evidence Sir Kenneth was asked whether his reaction would have been any different had Dr Wight mentioned the concerns of Professor Pattison and Professor Collinge. He replied that he did not think it would, because it was always necessary to get the genetic data.\footnote{T134 p. 61} He went on to remark that it was not until the end of February that things began to change.\footnote{T134 p. 65}

7.185 Dr Metters remarked, in a supplementary witness statement, that there was nothing in Dr Wight’s minute to suggest that there had been any change in SEAC’s advice that there was no evidence of a link between BSE and CJD. SEAC had drawn no conclusions from the developments discussed at its meeting on 1 February.\footnote{S116B Metters para. 44}

7.186 When giving oral evidence, Dr Metters said this of Dr Wight’s minute:

> That is not, in terms, ‘stop press, there is urgent material here’. That is, in a way, Dr Wight saying ‘CMO, there are a number of things arising out of SEAC’s meeting of which you might wish to be aware’. No alarm bells ringing as a result of paragraph 1.

> . . . But until SEAC actually come up and say: ‘Look, it is time you did something because we believe the situation has changed’, I did not think that this was an alarm ringing note.

> . . . At the time it was not a cause for the alarm to go off in my view, especially as she then, after ‘CJD Update’, goes on to research priorities which had been a cause of much more concern, and which she was urgently seeking a resolution of.\footnote{T114 pp. 123–4}

7.187 Dr Rubery’s evidence suggested that she had a different reaction. In a statement she spoke of her concern about the cases of CJD in young people. She went on to speak of a meeting with Dr Roger Skinner recorded in her diary, at which ‘I am sure I would have discussed the SEAC meeting and its implications’. She continued:

> After that date my diary shows I met with Dr Skinner in one to one meetings on 9, 16 and 26 February 1996, I also met on 26 February 1996 with Dr Wight and Mr Skinner and Mr Murray to be briefed for my meeting with the CVO at Tolworth. These more frequent meetings with Dr Skinner reflect my and the Department’s growing concern about the CJD cases in young
people. This would certainly also have been reflected in many informal contacts and discussions with Dr Wight, Mr Skinner, Dr Metters, the CMO and Mr Hart, the Permanent Secretary, during the course of our day-to-day business. I am not able to recall any further details of these informal meetings and because of their informal nature do not have any written record of them.3000

7.188 If this plethora of meetings about CJD cases in young people is said to have taken place as early as February 1996, we do not believe that Dr Rubery’s recollection can be correct. Had they taken place we feel that there would be some documentary record of at least some of them. There were a number of recorded meetings during this period involving Dr Rubery, to which she referred in her original statement. These included meetings about research3001 and a meeting with the CVO on 28 February, at which she was brought ‘up to date on MAFF aspects of BSE’.3002 It was, we believe, at this meeting that a leaflet was agreed for distribution to reassure consumers as to the safety of beef.3003 There is no trace of any meeting to discuss concerns about young cases of CJD.

7.189 Dr Rubery was called to give oral evidence with Dr Roger Skinner in Phase 1 of the Inquiry. In the course of her evidence Dr Rubery said:

... I must have talked about BSE and CJD to Dr Skinner from time to time, and we would have thought about the issues of, ‘Are we doing all we need to in terms of forward planning?’, because that is part of what those regular meetings would be about.3004

7.190 We sought to explore with both witnesses when this was. Their evidence suggested the end of February or later.3005

7.191 In the light of all this evidence, we have concluded that Dr Rubery’s evidence of a series of informal meetings at which the cases of CJD in young persons was discussed cannot relate to the month of February 1996.

The gathering clouds

Further CJD victims reported

7.192 During February further cases of deaths caused by CJD were reported in the press. The reports inevitably focused on the possibility that the cases were caused by or linked to BSE. On 8 February 1996, Peter Hall died of what was later diagnosed as vCJD.3006 His death was reported in the Guardian on 15 February 1996 in an article entitled ‘Mad cow disease kills man’.3007 It reported that a post-mortem was being carried out on a 20-year-old man who, it was claimed, had died of CJD. The article reported that Dr Harash Narang, a clinical microbiologist, who believed that mad cow disease could be transmitted to humans, had tested the victim’s urine and found ‘a unique CJD virus’. On the same day an article in the
Independent entitled ‘BSE “cause of death” ’ reported Dr Narang’s view that the
delivery was caused by the ‘human form of BSE’ but concluded by stating that ‘The
official Government view is that Mad Cow Disease – or bovine spongiform
encephalopathy (BSE) – cannot be transmitted to humans’. 3008

7.193 On 16 February 1996 The Times reported the case in an article entitled
‘Vegetarian’s brain tested’, as did the Daily Express in an article entitled ‘Did mad
cow bug kill a vegetarian?’. The Daily Express reported that the victim’s parents
believed their son had ‘caught’ CJD before he gave up meat two years
previously. 3009 The article went on to report that the victim, who would have been
21 years old the following day, had ‘wasted away in hospital after a two-year battle
with the illness’. Dr Harash Narang was quoted as saying:

One supply of infected meat could be enough to start the disease if a person
is susceptible . . . The most worrying thing is that there could be hundreds of
other cases across the country – even vegetarians like Peter Hall – but
nobody will know unless they are diagnosed properly.

7.194 On the same day the Daily Star reported the case in an article entitled
‘Veggie boy is killed by mad cow disease’. 3010 This reported that Peter Hall’s family
had blamed the ‘beefburgers he loved as a child for infecting him with the fatal
illness’. The family stated that ‘the most frightening thing was the similarity
between his condition and the disease we have seen cows suffering from – shaking,
nervousness and what appeared to be hallucinations’. It was reported that Dr Narang
had diagnosed the victim as suffering from CJD.

7.195 On 18 February 1996 the Mail on Sunday in an article entitled ‘Exclusive:
Fourth teenager is killed by CJD’ reported that Peter Hall had been ‘killed’ by CJD,
which was described as the ‘human equivalent of Mad Cow Disease (BSE)’. 3011

7.196 On 15 February 1996, Dr Wight minuted Mr Clark (Information Division,
DH) about an earlier case of a 30-year-old man who had died of CJD in Belfast. She
stated:

1. A 30 year old man has been confirmed as having died from CJD in Belfast.
Apparently the parents are very upset and, according to MAFF sources, are
driving a publicity campaign. There is to be an inquest imminently, at which
the coroner may be sympathetic to the parents’ concerns and take the
opportunity of raising various issues (re: BSE?) publicly.

2. There are no factors of note in the man’s history (though he spent two days
observing abattoir practices 9 years ago as part of his training as a food
engineer).

3. SEAC will be considering fully the recent cluster of young onset cases at
their next meeting (this man is not one of the five under 29-year-olds referred
to in my minute of 6 February). I hope that we will then be in a position to
draw on SEAC’s advice with respect to the significance of cases in this age
group and any public health implications.
4. In the meantime there is not much we can say, other than that the case is being fully investigated, and offering sympathy to the family.\footnote{YB96/2.15/8.1}

7.197 On 16 February 1996, Mr Mike Skinner informed Mr John Horam\footnote{Parliamentary Under-Secretary, DH, November 1995–97, with responsibility for BSE/CJD from January 1996} of the death of Peter Hall, and about the CJD Surveillance Unit’s involvement in the case. The minute stated that diagnosis ‘may take up to 10 weeks’ because of the time needed to fix the brain tissue.\footnote{YB96/2.16/6.1. The minute was also copied to Mr Dorrell, Sir Kenneth Calman, Dr Metters, Dr Rubery, Dr Skinner, Dr Wight, Mr Wilson (ID) and Mr Eddy (MAFF)}

7.198 On the same day, Mr Eddy minuted Mrs Browning with some background about Peter Hall’s case.\footnote{YB96/2.16/11.1. The minute was also sent to Mr Osborne, Mr Haddon, Mr Taylor, Mr Smith (Press Office), Dr Cawthorne, Dr Matthews and Dr Render} Among others, the minute was also copied to Mr Hogg, Mr Packer, Mr Meldrum, Mr Carden and Dr Wight. Mr Eddy stated:

Department of Health tell me that this is a somewhat untypical case, a possible rather than probable CJD case . . .

7.199 On 17 February 1996, Alison Williams died of what was later diagnosed as vCJD.\footnote{S209 Williams para. 1} It appears that this case was not reported at the time.

7.200 On 20 February 1996 Dr Will made a presentation at a meeting called by the Parliamentary Food and Health Forum to discuss the relationship between BSE and CJD. Dr Dealler was the other invited speaker at the meeting.\footnote{YB96/2.20/2.1–2.4} Dr Will’s presentation is discussed in vol. 8: Variant CJD.

**Judicial Review of the SBO (Amendment) Order 1995**

7.201 We describe in Chapter 6 the ban introduced in December 1995 on the use of the spinal column in the production of meat and bone meal (MBM). Great Harwood Foods Ltd, a producer of MBM, was given leave to seek Judicial Review of this measure on 1 March 1996. The point of law which was raised was that, once definitive measures for a relevant outbreak of disease were adopted by the European Commission at the community level, it followed that Member States were no longer entitled to adopt unilateral measures.

7.202 The point raised by Great Harwood Foods on their application for Judicial Review involved a difficult question of European law. As the European Commission had adopted measures at European Community (EC)\footnote{The European Union (EU) came into existence on 1 November 1993 as a result of the Maastricht Treaty. It incorporated but did not replace the European Community. Throughout the volumes of this Report the term EU is generally used for consistency’s sake (even if sometimes chronologically incorrect), except where specific reference is made to the functions conferred by the European Community Treaty or to its legal effect} level in the case of BSE, it was said that the UK Government could not take measures on its own, but would have to follow the procedure laid down in the relevant directives for animal products (89/662/EEC) and live animals (90/425/EEC) to bring about amendment of the decisions taken by the European Commission. This point sufficiently impressed the judge to lead to grant of leave to seek Judicial Review.
Discussion

7.203 We have since explored with MAFF lawyers whether they had an answer to this point. It seems that a similar point is currently before the European Court of Justice. The amendment of the SBO Order to deal with the possible risk from mechanically recovered meat (MRM) was an urgent measure. The possibility that urgent measures of this kind should be open to challenge on the grounds that they were impermissible under European law is a matter of concern. We expect that this issue will be reviewed by MAFF when the European Court of Justice decision is known. If there remains any danger that emergency measures may be readily susceptible to challenge by way of Judicial Review in this way, we think it desirable to consider steps which might minimize this danger.

The lull before the storm

7.204 On 1 March 1996, Mr Eddy sent a minute to Mr Meldrum stating:

1. You will recall my minute of 6th February warned the Minister that the CJD Unit were preparing two scientific papers about the unusual presentation of the disease in young patients. Dr Wight now tells me that more work has been done on this and the results are beginning to look rather firmer that there is a new sub-population of the disease emerging. We had a very brief discussion on this today and she has suggested that it would be wise for MAFF and DH officials and Press Officers to have a meeting to discuss the way in which this will need to be handled. I am sure that that is a good idea and think that you will all want to be involved. . . . When you have had time to digest this you may well wish to alert Mr Carden.

2. What I have already agreed with Dr Wight is that it will be absolutely essential, in handling this news, to have some form of statement from SEAC as to the implications. I will keep you posted on developments.

3. I should make it clear that this emerged following discussions that DH had with the CJD Surveillance Unit yesterday and DH did not know this at the time of the visit to Tolworth earlier this week. 3019

7.205 Mr Meldrum told us that he had not attended a meeting of the kind proposed in paragraph 1 of the minute, and had no knowledge of whether it had taken place. 3020 He went on to say that the minute from Mr Eddy:

. . . would not have been to me a huge surprise. What was of concern to me was the number of cases that were appearing in young people, the presenting symptoms; yes, and the concerns of a number of people. 3021

7.206 Mr Eddy also told us that he did not think that the proposed meeting took place because it was overtaken by the two SEAC meetings on 8 and 11 March 1996. 3022
7.207 In his minute Mr Eddy refers to the fact that the information he was passing on had been obtained in a conversation earlier that day with Dr Wight. In evidence Mr Eddy was asked whether he recalled any other conversations regarding developments in CJD surveillance between the SEAC meeting in early February and 1 March 1996. He told us:

I do not recall any. I mean, the point I would make about this minute is that it does reinforce what I have been trying to say; and that it is that it was Department of Health who were in contact with the unit and were monitoring the situation. And they quite rightly alerted us when they felt that we had reached the next stage of alert, so to speak.

...  

We had moved to a different stage. They were telling us that the balance of probability had changed, and that their advice to us was we now needed to at least look at this aspect of the problem between the two Departments. That was their advice coming to us, as it properly should have done, as they were the Department which led on that side of things. This was the system working as it should have done.3023

Rumbles of thunder

SEAC meeting: Friday 8 March 1996

7.208 SEAC’s next (twenty-fifth) meeting took place on 8 March 1996.3024 Dr James Ironside, a neuropathologist with the CJDSU, gave a presentation, accompanied by a detailed paper on the Unit’s neuropathological study of CJD in young patients.3025 The paper stated:

A subset of adults with CJD has been identified with the following features:

Young age at onset

Tendency to a long duration of illness

No PrP gene mutations (Most are MM at codon 129)

Characteristic neuropathology with ‘florid plaques’ throughout the brain – not previously identified in the CJD Surveillance neuropathology project

Extensive PrP deposition with multiple plaque morphologies combined with pericellular and diffuse deposition – not previously identified in the CJD Surveillance neuropathology project.3026

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3023 T138 pp. 196–7
3024 YB96/3.08/1.1. Present were Professor Pattison, Dr Will, Professor Almond, Mr Bradley, Professor Collinge, Dr Hueston, Dr Kimberlin, Dr Painter, Mr Pepper and Professor Smith. Dr Matthews (MAFF) and Dr Wight (DH) were observers. Mr Eddy and Mr Skinner were present (MAFF and DH Secretariat). Also attending were Dr P Dukes (MRC), Dr P Grimley (MAFF), Dr Ironside (CJDSU), Mr Jobson (DH), Mr Robb (DH), Dr Rubery (DH) and Mrs Wilson (BBSRC). Apologies were received from three members: Professor Allen, Dr Fred Brown and Dr Watson
3025 SEAC25 tab 3
3026 SEAC25 tab 3 p. 3; also recorded in SEAC minutes at YB96/3.08/1.5–1.6 para. 20
7.209 The paper raised the question whether these cases constituted ‘a new or hitherto unrecognised variant of CJD’. 3027

7.210 Dr Will reported that CJDSU had found that:

. . . there appeared to be two distinct subsets of sporadic CJD cases. The first with extended duration of illness with plaques in the brain and spinal cord, and the second with a short duration of illness which did not show these features. The presence of plaques in the spinal cord might be related to the extended duration of illness which allowed time for centrifugal spread of PrP down the spinal cord. 3028

7.211 Dr Will clarified for us the reasons he had for presenting this description of two subsets of sporadic CJD. Dr Will said that:

The reason I presented this data was in order to ensure that SEAC were fully informed about recent developments that might be of concern. It is important [to] stress that this data on spinal cord neuropathology related to sporadic CJD and not new variant CJD. 3029

Turning to the cases of CJD recently identified in young people in the UK, Dr Will said that these had been compared with the 17 cases in patients under 30 years of age that had been found worldwide since 1965. The clinical features and the duration of illness were variable. There was no evidence on the genetics of the cases from other countries. It was also noted that there were no plaques recorded except in the case of a 27-year-old in Italy which could have been GSS. The minutes recorded:

Dr Will and Dr Ironside were of the opinion that the young cases in the UK with their unique pathology and similar clinical features could be a new form of CJD. 3030

7.212 Dr Ironside left the meeting after lunch and was not party to SEAC’s further discussions. 3031

7.213 During their discussion SEAC members expressed the following views:

i. Professor Collinge said that ‘the findings suggested that there was a new risk factor for CJD which may be BSE, and that the existing public health precautions should be reviewed’. 3032

ii. ‘Several members queried whether these cases could have been identified because of increased ascertainment [ie, increased referrals because of increased awareness] and whether this new form of CJD could have been present, but unidentified, in the population for some time.’ Dr Will did not believe so ‘because there had been growing awareness of CJD among neurologists over a number of years and in some of these cases identification had not been

3027 SEAC25 tab 3 p. 4
3028 YB96/3.08/1.6 para. 22
3029 S61D Will para. 37
3030 YB96/3.8/1.6
3031 S60 Ironside para. 12
3032 YB96/3.08/1.1–1.11 para. 25
straightforward and mainly by neuropathology’. Dr Ironside noted that the pathology here was different to the young cases abroad.\textsuperscript{3033}

iii. Dr Kimberlin suggested the need for a ‘quantitative risk assessment based on information from the meat industry about the extent to which [SBO] had entered the human food chain since the advent of BSE and possible risk exposures of these young CJD cases’. It was said that ‘one new control measure might be to prohibit tissues from older cattle, which were known to have higher titres of BSE in the central nervous system, from entering the food chain’.\textsuperscript{3034}

iv. Several members said that ‘young cases of CJD should be investigated further to identify any other potential risk factors such as pharmaceuticals, for example, and indicated concern about sheep which had been fed the same infective feed as cattle . . . The Secretariat should commission a paper on the use of meat, offal and other tissues from sheep and lambs in the human food chain . . .’\textsuperscript{3035}

v. High priority should be given to strain typing.\textsuperscript{3036}

7.214 At the end of the discussion Professor Pattison confirmed that SEAC would keep the information confidential pending publication. He would inform the CMO and the CVO of the findings. ‘It would be for Ministers to decide whether or not they should be put into the public domain now.’\textsuperscript{3037} He told us that he did not inform Dr Metters and Mr Meldrum personally, but that the secretaries from DH and MAFF informed their respective chief officers of the findings, and that SEAC was seeking a review by other neuropathologists. ‘I think the CVO and CMO were willing to wait until Dr Will and Dr Ironside had finished those consultations and reported back to us before taking it any further.’\textsuperscript{3038}

7.215 Later that day, Mr Mike Skinner minuted Sir Kenneth Calman and Mr Horam advising them about the presentation to SEAC by Dr Will and Dr Ironside.\textsuperscript{3039} He said:

In the opinion of the Unit all this indicates that these cases have been subject to some new factor which has precipitated the disease. If incubation periods similar to other spongiform encephalopathies have occurred the exposure would have taken place some 8 – 10 years ago. It is of course not possible to link this positively to exposure to BSE in the 1980s but, after SEAC had considered the data, it considered that this is a likely explanation, although other possibilities have to be considered.

7.216 Mr Meldrum told us that he was made aware of the new findings ‘a few days’ before the 8 March SEAC meeting and that he had been ‘acutely conscious that, if confirmed, this was a finding of very great significance’.\textsuperscript{3040}

7.217 Mr Hogg told us that he had been notified about the results of the SEAC meeting by Mr Packer. Mr Hogg said:

\textsuperscript{3033} YB96/3.08/1.1–1.11 para. 26
\textsuperscript{3034} YB96/3.08/1.1–1.11 para. 27. This was later mentioned in Mr Eddy’s 12 March minute, YB96/3.12/1.2; and at a MAFF meeting on 13 March, YB96/3.15/2.4 para. 19
\textsuperscript{3035} YB96/3.08/1.1–1.11 para. 28
\textsuperscript{3036} YB96/3.08/1.1–1.11 para. 29
\textsuperscript{3037} YB96/3.08/1.1–1.11 para. 31
\textsuperscript{3038} T10 p. 135
\textsuperscript{3039} YB96/3.08/4.1; S297 Dorrell para. 107. The minute was also copied to the Private Secretaries of Mr Dorrell and Sir Graham Hart, and to Dr Rubery, Dr Wight, Mr Eddy and Mr Wilson
\textsuperscript{3040} S184C Meldrum section B para. 4
there was one meeting between me and Mr Packer, Richard Packer, which is not referred to in this statement, which is about this time. I suspect it was after 8th March, but I am not sure about that. One night – I mean to say between 6.00 and 7.00, but that is broadly speaking right – Richard came into my office, I said that he often came in. This was late in the evening; Frank Strang may have been there, he was my Private Secretary, but he came in and said something like – the language is not right, but this is the substance of it: ‘There is a very dark cloud on the horizon, which is that SEAC think, or are coming to the view, that BSE is transmissible’. I said, ‘This is a very serious state of affairs’. He said something like, ‘They have not come to that view yet, but they may come to that view’. I said something like this, ‘You had better keep very close to Pattison so we can see how this thing is developing’. I remember saying to him, ‘But what you must not do is in any way try and shape their deliberations or conclusions, but what you must do is to keep as close as possible, so we understand what is happening and you must keep me fully posted’.

That is not a meeting which is recorded. It was an entirely informal meeting, he just came into the office, and I suspect – I have tried to date it in my own mind, it was probably about ten days before the announcement, and my bet is it was after the meeting of SEAC on 8th March, but I cannot be more precise.3041

. . .

My suspicion is that I did not at that moment talk to Angela [Browning] or my Ministerial colleagues.3042

7.218 Sir Kenneth Calman told us he became aware of the results of SEAC’s meeting on 11 March 1996.3043 He recalled his reaction to being informed of SEAC’s discussions, as follows:

I noted that the Chairman of SEAC at that meeting asked the various members for their views on the findings and the need for additional control measures. Professor Collinge suggested that there was a new risk factor of CJD which may be BSE and that the existing public health precautions should be reviewed. Several of the members had queried whether these cases could have been identified because of an increased ascertainment and whether this new form of CJD could have been present but unidentified in the population for some time. I noted that Dr Will did not believe that these cases had come to light because of increased ascertainment, because there had been a growing awareness of CJD amongst neurologists over a number of years. I noted that Dr Kimberlin had suggested that there was a need for a quantitative risk assessment based on information from the meat industry about the extent to which SBO had entered the human food chain since the advent of BSE and possible risk exposures of these young CJD cases. He noted the risk assessment would give a logical basis for introducing any necessary further control measures. I also noted that several members commented that the young cases of CJD should be investigated further to identify any other potential risk factors such as pharmaceuticals.

3041 T95 p. 111–12, incorporating an amendment proposed in S327B Hogg
3042 T95 p. 114
3043 S179 Calman para. 112
Following receipt of this information, Sir Kenneth called a meeting that same morning with Dr Rubery, Dr Metters, Dr Wight and Mr Mike Skinner. The note of the meeting records that in light of the confirmatory work to be done, publication of the new findings was ‘unlikely for a month’. It was also noted that Sir Kenneth would call a meeting with MAFF and Professor Pattison for the coming Friday (15 March). However, by the time that Dr Rubery minuted Sir Kenneth’s Private Secretary the following day (12 March) she was able to note that the proposed meeting had been brought forward to Wednesday 13 March, at 10.30, to be held at MAFF. Dr Rubery recorded that Sir Kenneth had suggested the possibility of further meetings of officials on 21 March, about 28 March, and during the week of 8 April.

MAFF’s proposed publicity material about BSE was also discussed at this meeting. A note of the meeting recorded:

> It was agreed that in the light of the new information available to the DH and MAFF on Friday it would be sensible to delay further progress on the leaflet . . .

After the meeting Sir Kenneth Calman wrote to Mr Packer to say that, in view of the new findings, ‘it would seem very unwise to disseminate information which could later be seen as falsely reassuring’.

Sir Kenneth told us that he later met Mr Dorrell to discuss the new findings. We have found no documentary record of this meeting, and Mr Dorrell made no mention of it in his evidence.

On 9 March 1996 Dr Matthews produced a note entitled ‘Consequences of the SEAC Meeting on 8 March 1996’, which he distributed to senior officials within MAFF. He stated:

> The evidence presented by Will and Ironside clearly indicates the presence of a cluster of cases of CJD over a period of less than a year that have clinical and pathological pictures which differ from historical data for patients under 40. Although it is not proof of a link with BSE, it is clear that it affects young people in the UK only, and is contemporaneous with the BSE epidemic.

In his note Dr Matthews set out a number of ‘possible action points’ in response to this development, some of which had been raised at the SEAC meeting. The possible courses of action ranged from the slaughter of the entire UK herd to less drastic measures such as the slaughter of animals from the same cohort as affected animals. Under the heading ‘Possible action points at markets and abattoirs’ he stated:

> Identify and compulsorily purchase animals over 2.5 years of age;
Slaughter and dispose of such animals to prevent their entry into the human food chain (could any parts be salvaged?);

Extend the specified offals ban to include other tissues, or at least to ensure that carcase meat is not contaminated by tissues currently defined as SBO. In particular this means preventing contamination with CNS tissue;

Extend SBO ban to include calves;

Change meat processing practices to avoid the splitting of spinal column;

All cattle over 2.5 years presented for human consumption should be boned out. This could involve removal of major peripheral nerves and dorsal root ganglia, and trimming of tissues most likely to be contaminated by smearing with spinal cord;

Cattle over 2.5 years only to be slaughtered at specified abattoirs;

Prohibit the salvaging of any constituents of SBO – i.e., require total destruction. 3054

**Monday 11 March 1996: SEAC meeting and visit to a slaughterhouse**

7.225 On 11 March 1996, some members of SEAC visited a slaughterhouse. That afternoon SEAC met again (the twenty-sixth meeting) and Mr Meldrum was present to advise the Committee on any issues in relation to meat hygiene that might arise following the visit. 3055 Members of the Committee were generally pleased with what they had seen at the slaughterhouse and felt that the SBO was being properly removed, identified and treated. The minutes record that the Committee did not identify any new measures that it felt should be recommended immediately. 3056

7.226 The meeting went on to re-examine Dr Will’s paper on vCJD and it was agreed that the epidemiology of the human TSE needed further examination by way of:

   (a) peer review to ensure that this was indeed a distinct variant of CJD;

   (b) a review of the literature by experts to ensure that this presentation was new and had not been seen, possibly in an unidentified form, in earlier years;

   (c) review of overseas cases to see whether this variant was unique to the UK or had been observed overseas. 3057

7.227 We have already mentioned Dr Rubery’s minute of 12 March 1996 to Sir Kenneth Calman’s Private Secretary, which described the meeting chaired by Sir Kenneth the previous day (see paragraph 7.219). 3058 The minute also reported on

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3054 YB96/3.9/2.2–2.3
3055 YB96/3.11/1.1–1.3 para. 6. Present were Professor Pattison, Mr Bradley, Dr Kimberlin, Dr Painter, Mr Pepper and Professor Smith. Mr Eddy (MAFF Secretariat) and Mr Skinner (DH Secretariat) were present, as was Dr Mathews (MAFF observer). Dr Rubery, Dr Render and Mrs Townsend were present; Mr Meldrum attended during the latter part of the visit. Apologies were received from Dr Will, Professor Allen, Dr Brown, Professor Collinge, Dr Watson, Professor Almond, Dr Hueston and Dr Wight
3056 YB96/3.11/1.2
3057 YB96/3.11/1.1–1.3 para. 4
SEAC’s 11 March 1996 meeting, which she had attended. She noted that SEAC had concluded:

. . . in the light of the information provided by Bob Will and James Ironside on Friday and their visit to the abattoir today there was no need to change their advice on the SBO bans . . .

7.228 She also noted that the Committee had concluded:

The data are consistent with BSE causing a subset of CJD which is clinically atypical, with an unusual EEG and amyloid plaques on PrP staining but:

(1) This could also be identification of a disease previously unidentified but present.

(2) The description of the new disease is not necessarily evidence for a causal relationship to BSE exposure of the population, although this is a possible explanation.

MAFF updated on SEAC progress

7.229 On 12 March 1996, Mr Eddy minuted Mr Packer (MAFF, Permanent Secretary) summarising SEAC’s deliberations at the meetings held on 8 and 11 March 1996. He summarised the information presented by Dr Will and Dr Ironside on 8 March. The minute noted:

My minute of 6 February warned the Minister that the CJD Surveillance Unit were concerned at the emergence of a subtype of CJD in younger patients. They have now firmed up their views and reported . . . that they have identified a new form of CJD in the UK only. The cases are confined to younger patients ranging from 18 to 42. Depending on medical tests still underway there could be as many as 8 or 9 such cases all dating from the past 2 years. Cases in young patients are unusual but not unknown. But we have had more in the past 2 years than in the previous 10 and more than in other countries. Furthermore the disease looks different both clinically and under the microscope where there are ‘plaques’ which are not found in normal CJD.

7.230 He added that the CJDSU was confident that the disease was new and that SEAC had been ‘extremely concerned and noted that a possible explanation of this new form of the disease occurring apparently only in the UK was that it was related to BSE’. Another concern was that ‘some sheep would have been fed the same contaminated feed as cattle in the 1980s and could have contracted BSE unrecognised because it might look like normal scrapie’.

3058 YB96/3.12/5.8–5.11. The minute was copied to Drs Metters, Skinner and Wight and Mr Skinner. Dr Rubery attached her own notes from the SEAC meeting of 11 March 1996.
3059 YB96/3.12/5.8–5.9
3060 YB96/3.12/5.9
3061 YB96/3.12/1.1–1.4. The minute was also copied to Mr Carden, Miss Kate Timms, Mr Meldrum, Mr Haddon, Mr Hollis, Mr Kevin Taylor, Mr Blakeway, Mr Cowan and Dr Render.
3062 YB96/3.12/1.1–1.4 para. 1
3063 YB96/3.12/1.1–1.4 paras 2–3
3064 YB96/3.12/1.1–1.4 para. 5
7.231 The minute also mentioned the likely period of infection of the victims of the new disease:

... there is ... no reason to believe that they were not potentially exposed before the SBO controls were introduced in November 1989. It is unlikely in logic that these cases reflect exposure post 1989 given the long incubation period of the disease and the expectation that exposure would be lower after the SBO ban than before; but this is not easy to prove. One of the SEAC members, Dr Kimberlin, will be doing a formal risk analysis calculation to assess the likely risk prior to the SBO ban and since. This will take time but will be important in considering the implications in SEAC and in presenting them to outside scientists. In essence he will be able to calculate odds to help answer the question ‘do these cases tell us that BSE was a risk to humans or that BSE still is a risk despite the precautions taken’.

7.232 Mr Eddy detailed the areas identified by SEAC on 11 March as requiring extra work before publication of the findings. He also commented that ‘the mood of the meeting on 11 March was less bleak than that of 8 March and rather more sceptical of the CJD Unit’s findings, but some of the leading medical members of SEAC, including the head of the CJD Unit, were not present’.

DH: a proposal for the ‘next steps’

7.233 Included with the minute sent by Dr Rubery on 12 March was a ‘status paper’. This urged the need to consider a communications strategy for the time when a public announcement on the possible link between vCJD and BSE would be made. Dr Rubery noted a number of ways in which relevant information could be passed on to GPs and other doctors, members of the NHS and Environmental Health Officers (EHOs). The paper also summarised SEAC’s discussion on 8 March 1996 and set out 11 ‘next steps’ required to address the hypothesis of a causal link with BSE and to determine the actions necessary. These were:

i. Obtaining advice from MAFF on the likely timing of exposure, assuming that the route was via beef and beef products;

ii. Obtaining all available data on incubation periods of TSEs that might be relevant;

iii. MAFF needed to consider ways to further protect the human and cattle food chains;

iv. MAFF and DH needed to consider the same question in relation to BSE in sheep;

v. Consideration by the CMO of what advice he needed to give and when on public health, political and credibility grounds;

vi. The setting up of a predictions group to plot out the likely future of the epidemic (with Professors Peter Smith, epidemiologist, and Roy Anderson, Head of Zoology Department, Oxford University involved);
vii. Consideration of other routes of exposure, such as catgut, vaccinations and gelatine capsules;

viii. Consideration of other possible causes of the new disease, for example recreational drugs;

ix. Consideration of how the disease might be present in older people;

x. Urgent assessment of future resource needs for surveillance and research;

xi. Urgent development of a communication strategy and a helpline once the announcement was made. Dr Rubery noted a number of ways in which information could be passed to GPs and other doctors, members of the NHS and EHOs, and recommended that SEAC’s policy on communication with members of the public be ‘sorted out’. She suggested considering the issuing of a press statement after each SEAC meeting, like the Advisory Committee on the Microbiological Safety of Food.

7.234 Dr Rubery told the Inquiry that she could not recall how she had devised this list. However, she thought it would have been based on discussions within SEAC and with the SEAC secretariat as well as with her staff. She would have also have used her previous experience of handling public health issues (such as Chernobyl and salmonella).3069 She stated that she would have sent the paper in draft form for comment to others in her Division before she finalised it.3070

**Wednesday 13 March 1996: meeting with Professor Pattison**

7.235 We noted above Sir Kenneth Calman’s request, that a meeting be arranged with Mr Packer and Professor Pattison for 13 March.3071

7.236 The meeting was held at MAFF on 13 March at 10.30 am. In addition to Sir Kenneth, Mr Packer and Professor Pattison the meeting was attended by Mr Meldrum, Dr Rubery, Dr Wight, Mr Eddy, Dr Skinner, Mr Carden, Mr Haddon, Mr Taylor, Mr Hollis, Dr Matthews and others.3072 Sir Kenneth and Mr Packer agreed on the need to be ‘absolutely sure’ the data were right before they were published, because of the ‘possibly immense implications’ of the new findings:

Taking all things into account, the CMO still envisaged that a sub-type of CJD in younger patients was likely to be identified. He needed to plan on the basis that there was a new risk, that there was a new form of spongiform encephalopathy, and that the likely source was BSE in cows. He also had to assume that the whole population had been exposed over a 10 year period . . .3073

7.237 Professor Pattison told the meeting that SEAC’s slaughterhouse visit on Monday had ‘reassured members that the SBO ban could be made to work effectively’. Mr Meldrum said he was ‘more confident today than before April last year that the rules were being applied’.3074
7.238 In discussion of what new controls might be introduced, Professor Pattison said that SEAC could consider ‘tweaking the SBO ban to remove more potentially infective organs, but this would not be rational’, and ‘removing cows over 2 or 2½ years old from the human food chain. However, this was a very complicated question in view of the economic consequences.’

7.239 Professor Pattison ‘confirmed that SEAC would meet in the next few weeks’. He asked for guidance on the limits of SEAC’s considerations. Mr Packer advised that:

SEAC should consider what it thought appropriate, although comments on how the situation might have arisen would be helpful. If SEAC made a recommendation, the Government was likely to follow it. Although economic consequences were secondary, clearly any recommendations should be balanced. As evidence came forward, it changed the balance of reasonableness of what we were doing; however, any changes to the rules had to be proportionate. It did not follow from the worst case scenario that the current rules needed to be changed.

7.240 Mr Meldrum asked Professor Pattison to ‘bear in mind the logistical effects of any recommendations, and to consider the wider uses of products such as bonemeal eg. for pig rations’.

7.241 Sir Kenneth had drafted a press statement dealing with publication of the research, which he read out to the meeting.

7.242 On MAFF’s publicity information, Mr Packer told the meeting:

. . . it would be inappropriate for MAFF to issue any more copies of the reassuring publications. Where commitments had been made to send out such publications, these should not be honoured. The briefings planned with local authorities and so on should also be cancelled.

7.243 Sir Kenneth pointed out that the Lancet was published on a Friday, ‘the wrong day for taking proactive action’. He suggested that they make the findings public and set out what they proposed to do before they were published in the journal. Professor Pattison thought the article would be published in the Lancet within two weeks. Later publications could give rise to leaks.

7.244 Mr Packer ‘thought it would be difficult to go public other than on the basis of a recommendation from SEAC on further action’.

7.245 After this meeting Mr Packer held a ‘wash-up meeting’ with Mr Eddy, Mr Carden, Mr Meldrum and Mr Haddon. Mr Packer explained that he ‘had some reservations. For example, why were only young people going down with this form of CJD?’ Mr Eddy answered that ‘Professor Will’s explanation was that younger
people were more disposed to buy hamburgers’. Mr Packer ‘did not find this convincing’, and he followed up his reservations afterwards in a letter to Sir Kenneth Calman and Professor Pattison (see below).

7.246 Dr Kimberlin’s work on a formal risk analysis calculation, as agreed at the 8 March SEAC meeting (see paragraph 7.213), was also discussed:

It was agreed it would be helpful if the work by Kimberlin was completed before publication. The Secretary suggested we offer to pay him to work on this full time. We could also offer to provide a statistician if that would help, unless this might be thought to compromise the findings. In the meantime, we should take the line that SEAC should not make recommendations for the sake of it if they were confident that the controls were adequate. We should also make contingency plans in terms of market support and disposal of carcasses . . .

7.247 Mr Packer wrote to Professor Pattison shortly after the meeting with further thoughts. He noted the ‘very considerable political and economic damage’ that might be caused by any public statement of the sort envisaged on the most pessimistic scenario. He wondered whether it was prudent to suggest a link between vCJD and BSE until either there was an increase in the number of CJD cases, and/or until there was a noticeable increase in the number of ‘new type’ cases being identified, where they were following the same pattern as BSE, rising steadily with decreasing intervals between cases. He also said they needed to discuss why the new variant had been found only in young people.

7.248 Mr Packer recalls that ‘both Professor Pattison and the CMO telephoned to say that they regarded the points I had made to them as valid considerations’.

Mr Hogg is informed of developments

7.249 Later that day (13 March), Mr Packer minuted Mr Hogg about ‘developments on BSE and possible links with CJD which are potentially extremely serious’. Mr Packer stated:

SEAC has recognised that given the seriousness of the implications of any statement from an authoritative source to the effect that BSE might well cause CJD, it behoves them to be clear that Dr Will’s claims on singularity are accurate.

7.250 Mr Packer stated that, in the light of SEAC’s deliberations, MAFF needed to plan on a ‘worst case’ basis. He continued:

. . . if BSE/CJD transmissibility does exist then it is highly probable that cases seen so far result from exposure before any measures were taken against BSE in the middle 1980s. Moreover, since the ban and other

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3084 YB96/3.15/2.4 para. 18
3085 YB96/3.15/2.4 para. 19. Dr Kimberlin had raised the need for a ‘quantitative risk assessment’ at SEAC meeting 25, and this was reported in Mr Eddy’s minute of 12 March (see above)
3086 YB95/3.13/5.1–5.2
3087 S287 Packer para. 142
3088 YB96/3.13/3.1–3.3. The minute was copied to Mrs Browning and senior officials
3089 YB96/3.13/3.1
3090 YB96/3.13/3.1–3.3
measures were first introduced in 1988, measures and enforcement have been progressively tightened up. Accordingly, whatever the position on transmissibility, it does not follow that any further measures were needed now. I said as much to Professor Pattison since elements in SEAC are apparently thinking in terms of recommending a ban on the consumption of beef from animals over two years old and it is far from clear that the cost of such a measure would be proportionate to any reduction in risk.

Nevertheless, on the pessimistic scenario worries about the economic consequences of SEAC recommendations would be academic. If SEAC and the CMO issue statements acknowledging the possibility of BSE/CJD transmission I am sure that the public and market reaction would be such that the political and economic effects would be a disaster of unparalleled magnitude so far as UK food scares are concerned. The consumption of beef would be likely to fall immediately to a small proportion of its former level.3091

7.251 Mr Packer added that he would be talking separately to Ms Kate Timms (Head of Directorate responsible for Agricultural Crops and Commodities) about what might be done in the economic sphere should such a market collapse occur.

7.252 On the question of the timing of an announcement, Mr Packer noted that Sir Kenneth Calman was ‘very anxious that all this should be pushed forward as rapidly as possible, not least to avoid leaks’. He also added that ‘it is even more important not to rush into public announcements before we are clear that there is a genuine cause for concern’.3092

7.253 In his oral evidence to the Inquiry, Mr Hogg stated that he agreed with Mr Packer’s recommendations. He stated:

In early December or very late November, there had been a series of television programmes about the unsafety of beef. That did have a very serious though short-lived impact on the consumption of beef. In a sense therefore we were very alert to how febrile public confidence was and therefore I would not have wanted to have run the risks of leaks until such time as I had something positive to say, because I knew what the consequences would be. We had been through it, in a very played down form, in the latter part of 1995.3093

7.254 Mrs Browning told the Inquiry:

Since the emergence of Dr Will’s theory, it had been a very tense time for Government. We were extremely anxious to have advice from SEAC as soon as possible. We did not feel that we could go to the public with an announcement that BSE and nvCJD might be linked, but without any recommendations as to how to deal with it. We therefore needed SEAC to give firm advice as soon as possible.3094

3091 YB96/3.13/3.1–3.3, paras 4–5
3092 YB96/3.13/3.2–3.3 para. 7
3093 T95 p. 119
3094 SB96A Browning para. 65
Mr Packer and Mr Hogg spoke several times on 13 and 14 March to discuss Mr Packer’s minute of 13 March. They agreed that a public statement could not be made until SEAC had advised on the accuracy of Dr Will’s earlier claims and the steps which the Government should take. They also agreed that they should ‘avoid seeking to influence in any way the conclusions to which SEAC itself would come’. Mr Hogg noted the need to get ‘clear advice from the Committee as to the facts and the steps which the Government should take’. Mr Hogg agreed that it would be prudent to plan on the basis of the worst case scenario. In addition, he was glad that Ms Timms had been asked to do some preliminary work and he commented that there might be some potentially very serious consequences in the very short term. MAFF therefore needed to move quickly and have worked up the various possible responses with costings for each option. Finally, Mr Hogg agreed to write to Professor Pattison to ask SEAC to submit their advice about a course of action as soon as they were able.

As a result of these discussions, Mr Hogg wrote to Professor Pattison asking him to submit SEAC’s views to the Secretary of State for Health (Mr Dorrell) and himself:

Since the Government will be able to act on any recommendations which you make only once we have received your considered conclusions, I confirm that I shall be looking to you to submit your advice as soon as you are in a position confidently to do so.

Mr Packer and Mr Hogg also discussed the possibility that after SEAC’s next meeting, which was to take place on Saturday 16 March, Mr Hogg might need to write to the Prime Minister on 18 March 1996 to inform him of developments. Mr Dorrell had informed MAFF that he would be content with this procedure.

DH meeting: 14 March 1996

On 14 March 1996, Dr Rubery attended a meeting with Sir Kenneth Calman and Dr Wight. In a statement to the Inquiry, Dr Rubery stated:

I attended a meeting with CMO and Dr Wight. She had spoken to Professor Pattison who had in turn spoken to other members of SEAC namely, Richard Kimberlin, James Ironside, Bob Will and John Collinge. The pathology of the new variant CJD cases had been confirmed by three other neuropathologists. The new disease seemed to be real. The CMO concluded that a further meeting of SEAC should be convened for Saturday 16th March to advise the Secretary of State on the data.
15 March 1996: costings for two scenarios

7.259 On 15 March 1996, Mr Cowan (MAFF) minuted Mr Hollis, Ms Timms, Mr Carden, Mr Haddon and Mr Eddy. His minute explained that he had been asked to provide costings for two scenarios:

i. the beef market collapses to the extent that recourse is necessary to intervention buying on a significant scale; and

ii. it is necessary to take out of the human food chain animals over two and a half years of age, essentially cull cows.

7.260 Mr Cowan’s costings recognised that the two scenarios were not mutually exclusive. We return to Mr Cowan’s costings at 7.504 below, in the context of advice provided to Ministers. In concluding his minute of 15 March 1996, Mr Cowan stated:

In addition to the direct costs of removing cull cows and adult bulls from the food chain, one has also to consider the likely consumer reaction. It is inconceivable that a ban on cow beef will not adversely affect consumption of all beef. That effect will be catastrophic unless we are in possession of convincing, indeed compelling, scientific arguments for taking such a draconian step only in relation to animals above a certain age. We should also have to face the argument that banning the consumption of muscle (which has never shown evidence of being susceptible to BSE infectivity) casts doubt:

a) on the measures we have in place currently;

b) on the safety of all beef muscle; and

c) perhaps most worrying, the safety of the most important cow product, milk.

The storm breaks

Emergency SEAC meeting: Saturday 16 March 1996

SEAC statement

7.261 An emergency meeting of SEAC was held on Saturday 16 March. At the meeting the new variant CJD cases were discussed in detail. Dr Will reviewed the characteristics of the young cases that had been described at SEAC’s last meeting:

3101 YB96/3.15/5.1  
3102 YB96/3.15/5.3  
3103 YB96/3.16/2.1–2.17. Present were Professor Pattison, Dr Hueston, Dr Will, Professor Smith, Professor Almond, Mr Bradley, Dr Kimberlin, Dr Painter, Mr Pepper and Professor Collinge, and the Secretariat (Messrs Eddy and Skinner). Observing were Dr Matthews, Dr Wight, Mrs Wilson (BBSRC) and Mr Dukes (MRC). Also in attendance were Dr Render and Mrs Townsend (both MAFF)
. . . initial clinical presentation was in younger patients than normal for CJD and with psychiatric or behavioural problems which then developed to neurological problems and eventually dementia. The disease had a comparatively long incubation period, had abnormal EEG and showed distinctive histopathology, with large distinct plaques. 3104

7.262 Dr Will reported that, since the 8 March meeting, a ninth confirmed case of CJD had been discovered in a 31-year-old. 3105 Annex 1 to the minutes listed the cases found so far showing details of nine ‘confirmed’ and three ‘suspect’ cases of CJD in young patients. 3106 Members compared this with other recorded young cases of CJD in the UK and in other countries. 3107

7.263 Having analysed archival and overseas cases, Dr Will concluded that vCJD was a distinct form which was partly age-related, notably including an excess of people under 30. 3108 It was reported that the data had been examined by three independent neuropathologists in Glasgow, who considered that this was a ‘distinct entity unlike any previously seen form of CJD’. The independent experts felt that pathologists in the 1970s and 1980s would have been able to describe the plaques had they occurred in earlier cases, even without the new technique of immunostaining. However, they noted that it was unusual for young patients to be given a biopsy or post-mortem. The Committee agreed this new variant of CJD was a distinct entity and of great concern, and that they must take seriously the possibility that BSE was a new risk factor, although it was noted that the data did not allow this conclusion to be drawn firmly. 3109

7.264 The Committee discussed ‘Action to take in response to the new CJD variant’. Professor Pattison explained:

. . . that he had asked MAFF if SEAC should be constrained by economic or practical considerations when making recommendations for action. The response had been that the Committee should not be so constrained, although if the suggestions made by the Committee were impractical the department might return them to the Committee to seek its views on other options. However, it was clear that the responsibility for taking decisions on the way forward rested with politicians. 3110

7.265 Dr William Hueston, veterinary epidemiologist and member of SEAC from 1995, and Dr Will noted that the key issue was to ensure complete removal of all SBO and there ‘should be no acceptance of any spinal cord being left attached to carcases’. Professor Pattison asked the Committee whether, if it could be sure that 100 per cent SBO removal could be achieved, it would be satisfied that no further steps needed to be taken. The minutes record:

Professor Almond noted that if one set out to eliminate any potential theoretical risk from BSE then it would be necessary to destroy the entire national herd of cattle, however, various control measures could reduce any

3104 YB96/3.16/2.1 para. 1
3105 YB96/3.16/2.1
3106 YB96/3.16/2.2
3107 Ibid
3108 YB96/3.16/2.3
3109 Ibid
3110 YB96/3.16/2.7
risk to a minimal level. Ultimately a decision on whether a zero or minimal
risk was acceptable was a political one.\footnote{Ibid.}

7.266 The Committee agreed to ‘recommend that all steps should be taken to
ensure that the current SBO ban be enforced completely rigorously’.\footnote{YB96/3.16/2.8}

7.267 SEAC considered, but did not reach a conclusion on, the need for further
action in relation to SBO. They discussed a complete ban on cattle over 2½ years
old in the food chain. Mr Bradley commented that this would be tantamount to
saying the SBO ban was not effective. As an alternative, they discussed a
requirement that animals over 2½ years old should be completely de-boned and
their obvious nervous and lymphatic tissue, which was likely to be the next most
infectious tissue after the central nervous system, removed. SEAC decided to give
this issue further thought.\footnote{YB96/3.16/2.9–2.10}

7.268 The Committee also considered the need for a total ban on the use of MBM
on farms and agreed to ‘recommend that the use of mammalian meat and bone meal
in feed for farm animals should be prohibited’.\footnote{YB96/3.16/2.9–2.10}

7.269 In addition, SEAC concluded that it was important for the Health and Safety
Executive (HSE) and ACDP to review the significance of the new findings and ‘if
necessary issue new guidance as quickly as possible’.\footnote{YB96/3.16/2.10}

7.270 The Committee then considered the question ‘Is beef safe?’. The minutes of
the meeting recorded that:

Professor Pattison noted that on the initial analysis carried out by the
Committee it had not been thought necessary to recommend the instant
imposition of further public health measures. There were, however, a
number of points which needed to be revisited in the light of further
information and analysis. However, given this position, there were no
recommendations to remove existing products from the shelves.\footnote{YB96/3.16/2.11}

7.271 Finally, in response to Mr Hogg’s letter of 14 March requesting formal
advice,\footnote{YB96/3.16/2.11} SEAC agreed a brief statement to Ministers. The statement noted the
discovery of the ninth confirmed vCJD case among young people and the fact that
an examination of other potential factors had ‘failed to adequately explain these
cases’. The statement continued:

This is cause for great concern. On current data and in the absence of any
credible alternative the most likely explanation at present is that these cases
are linked to exposure to BSE before the introduction of the SBO ban in
1989.

CJD remains a rare disease and it is too early to predict how many further
cases, if any, there will be of this new form. The Committee are actively

\footnotesize{\singlespacing
\addcontentsline{toc}{section}{References}
\begin{footnotes}
\item[3111] Ibid.
\item[3112] YB96/3.16/2.8
\item[3113] YB96/3.16/2.9
\item[3114] YB96/3.16/2.9–2.10
\item[3115] YB96/3.16/2.10
\item[3116] YB96/3.16/2.10–2.11
\item[3117] YB96/3.14/3.1
\end{footnotes}
seeking further data from both the UK and abroad to help assess the full significance of the Unit’s findings.3118

7.272 Mr Carden told the Inquiry that SEAC’s desire to give further thought to the need for new measures caused acute difficulty over the following three days, in the run-up to the announcement. At meetings over the next few days Mr Hogg, Mr Packer and officials explored with Professor Pattison what SEAC’s likely recommendations might be, but it became clear that SEAC could not reach a final view until it had fully assessed all the options.3119

Sunday 17 March 1996: MAFF and DH meeting with Professor Pattison

7.273 On 17 March, the day following the emergency SEAC meeting, a further meeting was held to discuss the response to SEAC’s statement. The meeting was attended by Mr Packer, Sir Kenneth Calman, Mr Meldrum, Professor Pattison, Dr Rubery, Dr Wight, Dr Skinner, Mr Carden, Mr Haddon, Dr Matthews, Dr Render and Mr Eddy.3120 Professor Pattison briefed those present on the lines along which SEAC was thinking. It was noted that at its meeting the next weekend, SEAC would consider recommendations that covered ‘the whole range of possibilities from doing nothing (except reinforcing the current controls) to the destruction of the national herd’.3121 It would also consider the implications for sheep (including the possibility of an ovine offal ban).3122 Mr Packer considered it necessary to make a public announcement within three to four days to forestall a leak, which was becoming increasingly likely as the information was by then widely known.3123

7.274 Sir Kenneth asked Professor Pattison whether it was safe to eat beef. Professor Pattison said that SEAC did not feel they should ban eating beef:

If the SBO ban was fully implemented, meat which reached the market for human consumption, especially from young animals, was very likely to be risk free. However, the Committee could not give a 100% guarantee; it estimated the risk to the individual as between [one in] $3 \times 10^{10}$ and $3 \times 10^{16}$. The question for today was whether it was safe to eat beef in 1996, whereas the likely exposure was in the mid-1980s. However, unfortunately, this distinction was likely to get blurred.3124

7.275 Sir Kenneth ran through the text of ‘a proposed statement’ which concluded that there was no evidence that ‘eating beef today’ caused CJD.3125

7.276 Mr Packer had drafted a letter for Mr Hogg to send to the Prime Minister3126 alerting him to developments, which was ‘discussed and agreed’ at this meeting.3127 (In the event, two letters were sent to the Prime Minister on the following day. The letter discussed at this meeting was sent jointly from Mr Hogg and Mr Dorrell and is described in detail below.)
7.277 Later that same day, Mr Packer sent a minute to Mr Hogg informing him of the meeting and its outcome. Mr Packer said:

I understand that the SEAC statement, formally made to you and the Secretary of State for Health, followed intense debate over virtually the whole day. I deduce alternative hypotheses have been seriously tested and no plausible one identified. That is Professor Pattison’s view.

... 

There are vast implications for the Department. Not merely is it probable that we will need to propose schemes of support for the beef industry likely to cost hundreds of millions of pounds per annum, but the organisation of it all will also have a cost. We, therefore, face some weeks of turmoil in which difficult decisions will have to be taken. 3128

Monday 18 March 1996: ‘a busy day’

9.30 am

7.278 Mr Hogg held a number of meetings on 18 March 1996. Mr Frank Strang (Mr Hogg’s Principal Private Secretary) commented that ‘18 March was a busy day’. 3129 At 9.30 am the Minister met Mr Antony Baldry (Minister of State, MAFF), Mrs Browning (Parliamentary Under-Secretary, MAFF) and Mr Packer. The meeting was described in a minute prepared by Mr Strang on 21 March. References in the minute to animals over two years old should probably be read as referring to cattle over 2½ years of age. 3130 The minute by Mr Strang recorded:

The Minister agreed to write to the Prime Minister along the lines of the Secretary’s draft (to which was subsequently added DoH’s contribution). He said that it was very difficult to know what we would be able to say in any statement. It would not be enough to say that we did not know whether or not beef was safe. We would need to set out the positive steps we were taking. He suggested that these should be a ban on the sale of beef on animals over 2 years old, the withdrawal of meat products and the setting up of an inquiry. 3131

7.279 Mr Packer questioned the justification for such a ban. He said that the legal basis for taking such a step would be difficult as neither SEAC nor the CMO had recommended such action. Mr Hogg pointed out that:

It was clear from SEAC’s advice that BSE was potentially transmissible from animals over 2½ years. This meant that we had to rely entirely on our SBO controls. However, our audits had shown clearly – and would no doubt continue to do so – that these controls were not implemented perfectly on every occasion. In other words, we could not guarantee that SBO material

3128 YB96/3.17/2.1. The meeting was also attended by Dr Rubery, Dr Wight, Dr Skinner from the DH and Mr Carden, Mr Haddon, Dr Matthews, Dr Render and Mr Eddy from MAFF
3129 S392 Strang para. 33
3130 Mr Hogg informed us that the minute was inaccurate in this respect: S327 Hogg para. 19
3131 YB96/3.21/4.1–4.2 para. 2; discussed at S327 Hogg para. 91; T95 pp. 137–8
was not finding its way into the food chain. We no longer had our belt and braces.\textsuperscript{3132}

\textbf{7.280} Mr Hogg told us:

I always approached this matter on the basis of belt and braces; that is to say that we needed to have a belief, as long as we had it, that it was not transmissible, plus a range of what I described as mechanical controls.

When one element went, e.g. transmissibility, then the position was untenable. That is why, when we learnt that in March 1996, I came to the conclusion that the 30 month rule was an imperative, because I did not believe that you could rest public health on a full adherence within the slaughterhouse or elsewhere like deboning plants with regulations. I did not think that was realistic or safe.\textsuperscript{3133}

... once the belt had gone [ie, the absence of evidence of transmissibility], I did not think it was responsible or proper, as we were dealing with the serious issue of public health, to rely on the abattoir controls, because I did not believe they would be implemented fully and therefore I was determined to find another belt and the belt that I had found, which I had obviously found before this, was the 30 month rule, so I was determined to reinstate both and I was not going to be persuaded to take a different view because I thought it was my duty to put in place as comprehensive a set of public health controls as I could. And Mrs Browning I am glad to say agreed with me.\textsuperscript{3134}

\textbf{7.281} Mr Hogg explained what was meant by ‘belt and braces’: ‘the belt being that there was no risk of transferability from cattle to man, and the braces being that SBO controls were in place should such an unlikely event occur’.\textsuperscript{3135}

\textbf{7.282} It was recorded in the minute that Mr Packer responded: ‘The key point here was proportionality. The proposals which the Minister had in mind would have very severe cost implications. We would need the recommendations of the scientists before taking such steps.’\textsuperscript{3136} Mr Baldry agreed that they should wait for the advice of SEAC.\textsuperscript{3137}

\textbf{7.283} Mr Packer also questioned whether an Inquiry was necessary, as MAFF ‘had given a full account to Parliament in relation to the 1990 Select Committee Report’.\textsuperscript{3138}

\textbf{7.284} It was agreed, however, that Mr Packer would prepare in draft a letter to the Prime Minister with Mr Hogg’s two proposals.\textsuperscript{3139} (This letter was sent to the Prime Minister the next day. It dealt with Mr Hogg’s specific proposals and was sent separately from the letter to the Prime Minister referred to at paragraph 7.276 above.)
7.285 After this meeting Mr Hogg, Mrs Browning, Mr Packer and Mr Carden discussed with Mr Meldrum, Mr Middleton (MAFF Legal Department) and Mr Eddy the practical implications of Mr Hogg’s proposals. Mr Meldrum noted that there was a danger that Mr Hogg’s proposals might be seen as disproportionate to SEAC’s advice. ‘More generally, this would be the first time we had ever pre-empted the conclusions of the scientific experts.’ Mr Hogg said he wanted MAFF to be ready to introduce his measures; that it was important to be able to deal ‘with the situation which arose until such time as SEAC had given its considered advice’. With regard to the age limit Mr Meldrum noted that very few BSE cases had been found in under-2½-year-olds, and that the levels of infectivity of organs in those cases was low. It was also easy to identify cattle at this age from their teeth. Mr Hogg also said he was inclined to the option of withdrawing beef products from the market.3140

7.286 Later that day Mr Packer submitted the draft letter for Mr Hogg to send to the Prime Minister on ‘extra measures’ that would have to be taken to protect human health.3141 This draft included the suggestion that it was ‘essential’ to adopt these extra measures ‘even though SEAC has not yet made definite recommendations’.3142 Mr Packer explained in his covering note that the draft followed the earlier discussions, save in one particular. Mr Packer thought that in relation to the plan ‘of removing all beef products from the food chain . . . the difficulties are almost insuperable and the potential cost enormous’. Mr Packer said these difficulties seemed to render this element of the proposed interim response ‘disproportionate to an extent that is not acceptable’.3143 This draft was revised in certain respects as we set out below (see paragraph 7.305).

7.287 Details of the plan that Mr Packer was referring to, and the difficulties involved, were explained in more detail by Mr Hollis in a minute dated 18 March 1996.3144 Mr Packer had asked him for a ‘rapid assessment’ of the implications of a ban on ‘the sale for human consumption of all beef from UK cattle of more than 2½ years of age, including meat products’. In his minute Mr Hollis described the difficulties involved in recalling such meat:

Small retailers, caterers and wholesalers will not know the age of their meat. The major supermarkets have sophisticated systems which permit them to know this information and most of their fresh meat comes from young animals. In theory they should not therefore be adversely affected in this area, but the strong likelihood is that they would withdraw all meat from their shelves, whatever the age of the animal from which it came. Customers may well return all the beef in their freezers. In practice it would be impossible to refuse the return of any meat or meat product because there would be no way of saying how old was the animal from which it came.

7.288 Mr Hollis’s ‘conservative guess’ of the costs involved in such a recall was ‘at least £1 billion’.

7.289 He also estimated the cost of compensation to producers for cull cows compulsorily slaughtered to be of the order of £350 million per year plus a further
£200 million for slaughter and disposal costs.\footnote{YB96/3.18/2.1} Mr Carden told the BSE Inquiry that the latter proved to be a reliable estimate of the costs involved in the Over Thirty Months Scheme (OTMS) that was implemented after 20 March 1996.\footnote{S103 Carden para. 71}

1.00 pm

7.290 At 1.00 pm a meeting was held between Mr Hogg and Professor Pattison to discuss SEAC’s likely advice for government action in response to the new findings. Professor Pattison told the meeting:

It was clear that a new form of CJD had developed in the 1990s and – assuming it had not arisen spontaneously – that the relevant event had taken place in the mid to late 1980s. Although it was possible that there was some other factor, the Committee had concluded that the most likely explanation was BSE (Professor Pattison put the likelihood at 60%).\footnote{YB96/3.19/5.1. The meeting was also attended by Mrs Browning, Mr Boswell, Mr Packer, Mr Osborne and Mrs Ratcliffe}

7.291 Asked about the likely spread of the new disease, Professor Pattison said that:

... it was possible that the 9 cases were in some way special and that there would be no more. Alternatively, the disease might spread as with BSE in cats, with a small number of cases – say, 4 or 5 – each year. Its spread was unlikely to be like that of BSE itself: the fact that cattle had been fed back to cattle had inevitably amplified that disease. However, it was conceivable that humans might be particularly susceptible.\footnote{YB96/3.19/5.2 para. 5}

7.292 He said that it would be clear ‘within about a year’ how the disease would develop.

7.293 Mr Hogg asked what SEAC was likely to advise by way of response measures. Professor Pattison outlined a range of ideas but said that SEAC would not be in a position to advise until its meeting at the weekend (23–24 March). He said that some members felt that existing SBO controls would suffice ‘provided they were enforced in 99.9% of cases’, but that others were not sufficiently confident in the controls. Professor Pattison stressed the relative degrees of risk in older cows:

... on the worst case scenario, we could expect around 5,000 older cows (i.e. over 2 years) which were incubating the disease to reach the foodchain (although, of course, the SBO material would have been removed). Unfortunately, we could also expect around 24,000 infected young animals to reach the foodchain. However, older animals were likely to be at least 10 times more infectious than younger ones ... Action on older animals was therefore likely to take out at least half the potential problem. Such action might involve either removing the animals from the foodchain altogether or insisting that the meat be boned out, with all lymphatic nodes and nerves being removed.\footnote{YB96/3.19/5.1–5.3 para. 6}
7.294 Mr Hogg said he was minded to take interim measures, including the prohibition of the sale of meat from cattle over 2½ years of age, withdrawal of all beef products from the shelves and a ban on the export of such goods.3150 Professor Pattison ‘was not at all surprised at the Minister’s intentions and understood his wish for a bigger margin of safety’. He described this option as ‘justifiable, logical and not irrational’ and said ‘SEAC was likely to be debating conclusions of this very nature’.3151

7.295 Mr Hogg was also minded to ban the use of MBM in all feed. Professor Pattison agreed, ‘particularly given the continuing risk of cross-contamination’.3152

7.296 Mr Hogg said in oral evidence to the Inquiry:

I had come to a firm view and SEAC had not, but I wanted to be sure that it was in the spectrum of what Pattison thought that SEAC would be recommending and did not lie outside the spectrum. I did not think they would recommend anything more dramatic, but I did not want to be doing anything which was manifestly silly, so I was saying to Sir John [Pattison], ‘This is what I have in mind, I would like to test it with you’. The phrase, as you can see at the top of the next page, ‘justifiable, logical and not irrational’, was I was asking him whether I was subject to judicial review if I did it. I put the test to him as I understood it. That is how that conversation went . . .

. . . we had lost our belt. I knew therefore that there was a risk of transmissibility, or at least SEAC thought there was a risk of transmissibility and I was not going to depart from that view. I knew full well that the SBO controls were not adequate in my judgment. Therefore I had to put something else in place. I was testing out on him whether the 30 month rule was something that he thought was sensible, whether it fell within the spectrum of what he judged sound, and it did, he said so.3153

Prime Minister formally notified of developments

7.297 On 18 March 1996 the Prime Minister received two letters about BSE. The first was sent jointly by Mr Hogg and Mr Dorrell to inform him of the recent developments on the possible emergence of a new variant of CJD. The second letter was from Mr Hogg alone and set out his proposals for measures to be taken in the light of the new findings.

First letter to the Prime Minister

7.298 Mr Hogg and Mr Dorrell jointly wrote to the Prime Minister a letter based on Mr Packer’s draft of the previous day, at around lunchtime on 18 March. The SEAC statement dated 16 March 1996 was attached.3154

7.299 The letter alerted Mr Major to ‘a very serious development on BSE’. It explained that the CJD Surveillance Unit ‘appears to have identified a new variant’ of CJD in young people in the UK, and that SEAC had ‘concluded that exposure to
BSE is the most likely explanation’. Exposure ‘almost certainly’ had been in the middle 1980s.

7.300 The letter included an outline of DH and MAFF responsibilities. In summary, these were:

DH Responsibilities
- Reassure public anxiety about the current safety of beef.
- Ask the Health and Safety Executive (HSE) to look at worker safety as a matter of urgency.

MAFF Responsibilities
- MAFF acknowledged that it faced a major crisis of confidence in British beef. The financial implications of that for individuals, companies and the Government would be severe. The beef industry’s output was valued in 1995 at £2 billion. It also accounted for investments probably running into the billions and the export market for calves (currently at 500,000 p.a.) would disappear.

7.301 It was noted that a ‘detailed analysis’ of what would need to be done would depend in part:

on SEAC’s recommendations and policy conclusions that will flow from them. We may, for example, even have to prevent cattle over the age of 2 from entering the human food chain. Some consequences are predictable: the reduction in consumption is likely to lead to large sales of beef from younger animals into intervention. Older ones . . . most of which are currently exported in the form of various cuts of beef, and which could be thought to present a greater risk of transmitting BSE . . . will become virtually unsaleable and we could face major problems of carcass disposal. The export market for calves (currently running at some 500,000 p.a.) could disappear. There are implications for slaughterhouses and other types of business. The financial implications for individuals, for companies and for [the Government] could be severe.

The milk industry is considerably bigger than the beef industry and because there is no reason to doubt the safety of milk, it is essential and right that nothing is said which undermines confidence in the product.

7.302 The letter suggested that a leak was increasingly possible and that there should be an announcement to the House and the public in the next day or two.

7.303 At 4.00 pm that afternoon Mr Hogg met Mr Michael Heseltine (Deputy Prime Minister). Mr Heseltine ‘asked about the implications’ of slaughtering the entire national herd. Mr Hogg told the BSE Inquiry that he did not take this as

3155 See para. 7.278 regarding references to cattle 2 years old
3156 YB96/3.18/3.1–3.4
3157 YB96/3.18/3.3 para. 10
3158 S392 Shang para. 33(v)
3159 YB96/3.19/10.1–10.3; discussed at T95 pp. 148–9
Mr Heseltine’s considered view or suggestion, merely as a question that he ‘threw . . . out as a possibility’. 3160

7.304 Mr Major had apparently not yet seen the letter. Mr Heseltine told the BSE Inquiry:

I took the unusual step of interrupting a meeting that the Prime Minister was holding and provided him with a summary of the information that had been provided to me by Mr Hogg. I drew Mr Major’s attention to the minute that had been prepared by Mr Hogg and Mr Dorrell. 3161

Second letter to the Prime Minister

7.305 Later on 18 March, Mr Packer submitted to Mr Hogg a revised draft of the second letter for the Prime Minister. 3162 In it Mr Hogg proposed taking interim measures in advance of SEAC advice:

The balance of probability concerning the transmissibility of BSE to man has been fundamentally altered by the SEAC statement. It is right to act now to protect and be seen to protect the public further. The likely Parliamentary and public perceptions point the same way. I would propose to explain to the House that such measures were interim and awaited definitive SEAC advice before being confirmed or amended. Obviously though it would be sensible to work with the trend of the discussions in SEAC. This, following a conversation I have had with Professor Pattison, I have sought to do in the following proposal. 3163

7.306 He proposed ‘the very minimum we can do’:

(i) banning the sale of beef and beef products derived from animals from UK herds and from animals over 2½ years of age;

(ii) banning the manufacture of products from bovine material from animals from UK herds and from animals over 2½ years of age;

(iii) banning the export of such beef and beef products. 3164

7.307 The draft letter proposed the possible withdrawal of all beef products. It said that Mr Hogg favoured this proposal though he acknowledged the ‘enormous financial and other implications’ and that a collective decision would be needed. 3165 Mr Hogg estimated that compensation for owners of cattle over 2½ years old ‘could amount to somewhat in excess of £500m p.a.’. 3166

7.308 The draft letter also identified ‘a much more cataclysmic view. On this basis the announcement we are about to make will finish the UK cattle industry for decades and we might as well accept the fact and order a complete slaughtering and

3160 T95 p. 152
3161 S399 Heseltine para. 21
3162 YB96/3.18/8.1–8.6
3163 YB96/3.18/8.2; S327 Hogg para. 100
3164 YB96/3.18/8.3
3165 YB96/3.18/8.4
3166 YB96/3.18/8.5
restocking. Furthermore, the draft letter also recommended a formal Inquiry into the Government’s reaction to BSE, chaired by a High Court judge.

7.309 In his covering note to Mr Hogg, Mr Packer said that he regarded this measure, and ‘to a lesser extent’ the beef withdrawal proposal, as ‘disproportionate and unjustified’. Mr Packer told the BSE Inquiry that he viewed this as a ‘possible prelude to my seeking an Accounting Officer Direction if such a policy were decided upon’. As the Accounting Officer for MAFF, Mr Packer was responsible for the Ministry’s spending. To seek such a Direction would mean that he was advising against the expenditure and would not implement it without a specific instruction to do so from the Minister.

7.310 The same day (18 March) Mr Packer minuted Mr Hogg about the implications of a ‘possible collapse of the beef market’. He attached a note that had been prepared by Mr Cowan, discussing ‘arrangements for supporting the beef market under current EC rules and analysing what the implications might be for the situation with which we are likely to be faced’. The note discussed various options for supporting the beef market, including intervention buying, a calf slaughter scheme and an OTMS scheme. In contrast with his minute of 15 March, Mr Cowan concluded:

The industry might, however, see some attraction in a voluntary ban on the sale of cow-beef, provided that the market for it could be supported through some form of intervention or compensation. Those slaughterhouses which supply the major supermarkets would undoubtedly be in a better position to do so if they could guarantee that they were not slaughtering cows. It would not be difficult for the MHS to enforce such guarantees, and they might serve to protect the market for steer beef from the long-term effects of this scare.

7.311 During the afternoon Mr Dorrell met Sir Kenneth, Sir Graham Hart (DH Permanent Secretary), Dr Rubery and others. At 7.15 pm they were joined by Mr Hogg, Mrs Browning, Mr Packer, Mr Meldrum and Mr Carden. Mr Hogg said that he intended to make a statement to the House of Commons on Wednesday (20 March). He proposed:

i. to announce a judicial inquiry into the Government’s reaction to BSE;

ii. to ban the sale of beef and beef products derived from UK animals over the age of 2½ years, the manufacture of products from bovine material from the same category of animals, and the export of such beef and beef products. The 2½ year age limit was already used in the context of EU exports and only about 84 out of a total of around 160,000 cases of BSE had been in animals below this age.

7.312 The record of the meeting states that Mr Hogg felt that his proposals on animals over 2½ years would be an interim measure until recommendations were
received from SEAC, which was due to meet again the next Saturday (23 March). He went on:

According to indications received so far from SEAC’s chairman, Professor Pattison, the proposed measures fell ‘within the spectrum’ of what SEAC would think necessary, though probably at the pessimistic end of the scale. However, SEAC was unlikely to recommend anything less than these measures once the Government had already announced them. Mr Hogg felt strongly that his measures represented the minimum that the Government could defensibly do.3177

7.313 Sir Kenneth Calman outlined the consequences for DH of SEAC’s statement. He said they would have to investigate the safety of non-food products such as vaccines, medicine, gelatine and tallow. They would also have to investigate risks to abattoir workers. DH would need to brief doctors and NHS staff to help them deal with the ‘likely flood of enquiries’. DH would need to consider setting up a helpline and running advertisements. It could also respond ‘positively’ to SEAC’s recommendations for urgent research.3178

7.314 Instead of a helpline, Mr Dorrell preferred putting extra staff on existing DH/NHS lines. Mr Dorrell agreed that advertisements and information to GPs should go out by Thursday morning.3179

7.315 Mr Hogg asked about compensation for the victims of vCJD. Mr Dorrell ‘felt strongly that the Government could not accept responsibility for compensation. The Government had at all stages followed the advice of SEAC and its predecessors . . .’.3180

7.316 It was suggested that Mr Hogg’s statement might be followed by a separate one from Mr Dorrell, then by a joint press conference with Sir Kenneth Calman, Mr Meldrum and Professor Pattison. It was also noted that ‘the handling of the announcements would need further consideration in the course of the next day’, and that collective agreement would need to be sought on the contents of the announcement.3181

7.317 After this meeting, the second letter to the Prime Minister was sent as drafted.3182

7.318 In the late evening of Monday 18 March, Mr Hogg and Mr Dorrell met the Prime Minister, other members of Cabinet, and officials to discuss the two letters that had been sent to the Prime Minister that day.3183 Mr Hogg pointed out that ‘once one admitted the possibility of transmissibility to humans, then one had equally to admit that controls were ineffective. Controls had been tightened in 1995 but those controls continued to be breached.’3184 The Prime Minister took the view that ‘the risk of contracting CJD was considerably less than the risk of contracting lung cancer for example, but the Government had not only failed to ban smoking, it had failed to ban even the advertising of smoking’. None the less, those present

3177 Ibid.
3178 YB96/3.19/15.2
3179 YB96/3.19/15.2
3180 YB96/3.17/1.2
3181 YB96/3.17/1.3
3182 YB96/3.18/7.1–7.4; S392 Strang para. 33(viii); discussed at T95 pp. 159–62
3183 YB96/3.19/17.1–17.4; S297 Dorrell para. 111; S117 Rubery para. 31
3184 YB96/3.19/17.2 para. 2; T95 pp. 152–54
recognised that when SEAC’s conclusions were announced there would be massive panic. They concluded that there were three possible options, in terms of the Government’s response:

i. do nothing and await SEAC conclusions;

ii. stand firm on existing controls, recognising the short-term crisis that would cause; or

iii. accept that the beef industry was doomed and plan for replacement of the herd.

7.319 The note of the meeting records the following discussion of the options:

Following the introduction of the SBO controls in 1989 and the further tightening of the controls in 1995, it was recognised that the cases of BSE had declined hugely. Although the full figure for contracted cases of CJD could not be known, there was no reason to assume that the same downward curve would not have taken place. This made the risk of contracting CJD infinitesimal despite the acceptance of transmissibility.

SEAC themselves were split on what action should be taken. Some were of the view that nothing should be done above and beyond the existing controls. Some were of the view that total eradication was the only answer. Others were of the view that the position the Minister of Agriculture was proposing would be acceptable. No doubt SEAC would produce a common position in due course, but given the differing views of some members of the committee, it might not be acceptable to rest on that . . .

. . . Perhaps some 40 per cent of dairy herds remained unaffected. There was no ‘live test’ which could be done. A ‘dead test’ was possible, although not currently in all cases. It might be that it would be a cheaper option to provide a ‘dead testing facility’ so that only safe carcasses were allowed for sale on the market. Whether that would be sufficient to restore confidence in either the domestic or the export beef market was open to question.

Beef sales per year were in the region of £2 billion. The slaughter of the beef herd over two and a half years old was likely to cost some £500 million per year in market support and a one-off cost of £1 billion in the withdrawal of existing food stocks. This represented a cost of some tens of millions per life against a cost per life of £500 million for a road death in a cost benefit analysis. It was not guaranteed that a pragmatic cost benefit approach would prove a containable way forward.

What was clear was that a position of no announcement was unlikely to be sustainable. With this in mind, a Ministerial Meeting would be held on 19 March which would take the opportunity to seek advice from the Chief Medical Officer, the Chief Veterinary Officer and the Chairman of SEAC. In the light of this, the timing of a statement to the House of Commons would be considered.3185
Tuesday 19 March 1996

7.320 On 19 March, Mr Baldry (Minister of State, MAFF) sent Mr Hogg two minutes, copied to Mr Tim Boswell (MAFF Parliamentary Secretary (Commons, 1995–97)), Mrs Browning and Mr Packer. The first expressed his view that MAFF should not act without the advice of SEAC. He said there was no reason to announce more than that the Government was expecting further recommendations from SEAC on which it would seek to act:

I . . . feel very strongly that for Ministers to indicate action now in advance of any SEAC recommendation has every possibility of being ‘over-reaction’ and to lead to much more draconian consequences than in the event are necessary, for which the government and Ministers will attract opprobrium.3186

7.321 In his second minute Mr Baldry gave his opinion on the legal implications of three matters that Mr Hogg had raised with him. On the first, compensation, he advised that at ‘the very minimum, it should be full market value compensation for cattle which cannot otherwise be sold, but there is no way in this situation that we can just compensate farmers and no-one else’.3187

7.322 On the question of a BSE Inquiry, Mr Baldry considered that this would be ‘likely to undermine confidence in SEAC’. It was best to invite members of certain Royal Colleges to examine ‘whether the right terms of reference have been given to SEAC i.e. are they sufficiently broad’.3188 He noted that setting up any other kind of Inquiry ‘would almost certainly imply political acceptance of fault on the part of MAFF. As we have fully complied with all scientific advice so far this seems unnecessary, setting us off on the back foot’.3189

7.323 Thirdly, Mr Baldry ‘strongly’ recommended that MAFF should not make an Order until they knew SEAC’s recommendations. This was because laying an Order under the Food Safety Act requires asserting imminent risk of injury to health. That immediately would signal that we have no confidence in the existing control measures, goes way beyond what SEAC has said and runs the risk of MAFF being involved in litigation for some very considerable time.3190

7.324 Mr Meldrum also sent Mr Hogg’s Private Secretary a minute in which he advised that the proposed ban on beef from cattle more than 2½ years of age should be described as interim, because SEAC might take the view that the meat from such beef could safely be eaten, provided it was first deboned. Mr Meldrum favoured ‘the banning of head meat from all cattle’.3191

7.325 Mr Hollis (Livestock Group) provided an estimate of the cost of slaughtering the entire national herd. Mr Heseltine had asked Mr Hogg about this option the previous evening. The estimate was based principally on the value of milk that would be lost (value of milk production per year multiplied by 5, this being

3186 YB96/3.19/30.1
3187 YB96/3.19/35.1 para. 1
3188 YB96/3.19/35.1 para. 2
3189 YB96/3.19/35.1 para. 3
3190 YB96/3.19/35.1 final para.
3191 YB96/3.19/6.1–6.2 paras 2–3
Mr Hollis’s estimate of the number of years it would take milk production to return to normal). Mr Hollis remarked that the cost of such a slaughter programme would seem likely to ‘comfortably exceed £20 billion in the dairy section alone’. 3192

19 March 1996: meeting with the Prime Minister

7.326 As agreed the previous evening, the Prime Minister held a meeting on the morning of Tuesday 19 March, to discuss with Professor Pattison, the CMO (Sir Kenneth Calman) and the CVO (Mr Meldrum) the Government’s response to recent developments. 3193

7.327 Immediately prior to the meeting Mr Kenneth Clarke, the Chancellor of the Exchequer, who was unable to attend, sent a minute to the Prime Minister outlining his views on possible Government action to be taken on BSE. He advised that ‘the Government should make public as rapidly as possible the full facts it has at its disposal’. He commented that any action which the Government took should be proportionate to the risk to public health:

We want to be in a position in 4 weeks’ time whereby intelligent people can look back and say that the Government’s actions were measured and sensible, and not an absurd over-reaction which made things worse. 3194

7.328 He noted that the ‘behaviour of the Government following the salmonella and listeria crises [when he was Secretary of State for Health] are widely seen to have been foolish and excessive, causing lasting damage to British agriculture’. In presenting the risk assessment of CJD he suggested:

. . . we need to find straightforward examples which people can readily understand. We should compare the risks of catching CJD with the risks of death from salmonella; blindness at birth from german measles; being struck by lightning; winning the jackpot on the National Lottery. No doubt colleagues can think of better examples.

We should also remind people that many die each year from the effects of smoking. But we do not plan to close down tobacco manufacturers. Indeed, we continue to defend the manufacturers’ right to advertise.

I would regard a complete ban on beef products, or the culling of the beef and dairy herds, as completely over the top. Moreover, I suspect the general public would soon take a similar view, faced with endless media coverage of burning cattle piled high on funeral pyres.

7.329 Mr Clarke emphasised that his perspective was ‘not based simply on the potential public expenditure implications’, but on his belief that ‘the duty of Government is to give a responsible and calm lead to public opinion in the face of disturbing events’. 3195

3192 YB96/3.19/3.1
3193 YB96/3.19/7.1. The meeting was also attended by the Deputy Prime Minister, Anthony Newton (Lord President of the Council), the Chief Secretary, Viscount Cranborne (Lord Privy Seal), the Secretary of State for Health, the Minister of Agriculture, the Secretary of State for Scotland, the Financial Secretary, the Attorney General, the Parliamentary Secretary (MAFF) (Mrs Angela Browning), Alistair Goodlad (Chief Whip), the Cabinet Secretary, the CVO, and officials from No.10, the Cabinet Office, HM Treasury, the Department of Health and MAFF
3194 YB96/3.19/28.1
3195 YB96/3.19/28.2
7.330 Mr Major began the meeting by commenting that some ‘very difficult decisions needed to be taken to ensure that the correct balance was struck between treating this matter seriously and over-reacting. Colleagues needed to recall that there were many issues which remained unknown.’\textsuperscript{3196}

7.331 Professor Pattison summarised the latest scientific findings on the ‘new variant CJD’, commenting that the most likely explanation for these cases was exposure to BSE, probably before the introduction of the SBO controls in 1989.\textsuperscript{3197} The note of the meeting records that ‘personally, Professor Pattison did not think that extreme measures would be necessary. In his view the committee was more likely to focus on controls concerning older cattle, together with further controls on mechanically recovered meat.’\textsuperscript{3198} Mr Hogg commented that the Government had:

\begin{quote}
\ldots to date adopted a belt and braces approach. The belt being that there was no risk of transferability from cattle to humans, the braces being that SBO controls were in place should such an unlikely event occur. Now that there was thought to be the likelihood of a link between cattle and humans, the belt had been removed leaving only the braces \ldots The panic which would ensue from any statement would destroy the beef industry \ldots It might be possible to save it if a firebreak could be erected and he had offered the best advice he could. He commented that the difficulty was that we knew that SBO controls were not wholly adequate and in the changed circumstances of the new information this made the Government’s position untenable.\textsuperscript{3199}
\end{quote}

7.332 Mr Major said that taking drastic action in advance of further scientific advice from SEAC would ‘make the Government look silly and would open it to significant litigation if premature action was taken’.\textsuperscript{3200} The Attorney General, Sir Nicholas Lyell, also commented that any action by the Government could lead to litigation on the basis that the Government’s response was disproportionate. The Government needed therefore to be as clear as possible, what the maximum and minimum effect of any epidemic might be ‘and indeed if we proposed to take measures to act against cattle over two and a half years of age then we needed to be sure that cattle under two and a half years were safe’.\textsuperscript{3201} Mr Hogg told us that his proposals were discussed but were eventually rejected as disproportionate:

My recommendations had been comprehensively rejected by the colleagues round the table. It was clear that the Prime Minister, when I saw him the preceding night, did not think they were the right ones. I argued them as robustly as I could, and you may get a sense that I am capable of doing that fairly effectively. It had not been accepted, I thought they were wrong and ultimately we had to get on with the business of Government, a collective decision had been taken. One I disagreed with, but it had been taken.\textsuperscript{3202}

7.333 In a statement to the Inquiry, Mr Hogg said that while he had accepted the decision of the meeting, he nevertheless felt that his proposals would have to be implemented at some point and that there ‘were substantive and presentational
advantages in making an early announcement’. He also stated: ‘I thought that if we did this there was a better chance of retaining public confidence in beef.’

**7.334** Professor Pattison explained SEAC’s conclusions but would not be drawn into giving further advice on the wide range of measures proposed in advance of SEAC’s meeting scheduled for the weekend. The meeting was concluded:

> It was agreed that in an ideal world a statement would not be made until SEAC’s firm views were available, but the risk of a leak and the Government’s duty to protect the public tended towards an early statement. One possible option would be a temporary maximalist control until it was clear how serious the problem was. It would also be important to examine what options there were for improving existing controls to give greater security. It was agreed that if a statement were to be made, it would be important to include something of substance. In order to do that further information from SEAC would be necessary. An early meeting of SEAC would therefore be encouraged. The Lord President would convene a meeting of the relevant parties which would report to Cabinet on 20 March.

**SEAC meeting: 19 March 1996**

**7.335** After that meeting, Dr Rubery went to assemble as many SEAC members as could be found at such short notice. The meeting (the twenty-eighth) started at 4.00 pm. A number of members who could not be present were kept in telephone contact with the discussions. Present in London were Professors Pattison, Almond and Smith. Dr Will and Professor Collinge were there ‘for part of the meeting’. Mr Bradley and Dr Kimberlin participated via a telephone link to Paris. Drs Matthews and Wight attended the meeting as observers. Mr Eddy and Mr Skinner constituted the Secretariat. Also in attendance for all or part of the meeting were Dr Kendell, Mr Gerald Robb, Mr G Ross (MAFF), Dr Rubery, Mr Wilesmith, Sir Kenneth Calman and Mr Meldrum.

**7.336** Professor Pattison explained that the meeting would focus on the adequacy of existing control measures to protect animal and human health. SEAC agreed that matters requiring detailed consideration in the light of new information would need to be dealt with at the meeting on 23 March.

**7.337** Dr Will said that a tenth case had been confirmed, in a 20-year-old. He said that the genetic information on 7 of the 10 cases would be available the next day. There was so far no evidence of genetic mutation. Professor Collinge commented that there was only a small possibility that the genetic sequencing would provide any information to change the view SEAC had reached at its meeting on 16 March.

**7.338** On the question of the safety of milk, SEAC felt there was no evidence that milk could act as a vehicle for BSE or other TSEs. Also, slaughtering the entire UK
beef herd was not considered a justifiable course of action in the light of scientific evidence. 7.329

7.339 SEAC then gave consideration to what further measures might be necessary, in light of the recent findings. Professor Pattison reminded members that SEAC had previously agreed to ban the use of mammalian MBM in feed as a further measure to prevent potentially contaminated material from entering the animal food chain. The other main options for consideration as additional measures were to slaughter the entire herd and restock; slaughter all cattle over 2½ years old; and de-bone beef for human consumption from cattle over 2½ years old. 7.340 In respect of slaughtering the entire UK herd:

The Committee agreed that slaughtering the entire UK herd was not a justifiable course of action in the light of scientific evidence. There was no evidence to suggest that BSE could be transferred to humans via muscle and stringent measures were already in place in relation to the tissues which may contain infectivity. Such a recommendation would have far-reaching socio-economic implications and would have to be supported by stronger evidence than was already available. Professor Smith suggested that SEAC would have a better picture of the likelihood of there being a human epidemic caused by BSE in 6 months to a year’s time. Dr Will agreed that any measures that the Committee recommended should reflect the lack of conclusive evidence that BSE was linked to the new form of CJD. 7.341 In discussion of the option of slaughtering cattle over the age of 2½ years, Mr Wilesmith provided information which showed that from 1989 only 84 animals had a BSE ‘onset’ date of 30 months or less. In the last two years there had only been 3 cases of BSE in cattle aged 30 months out of nearly 5 million cattle. The Committee agreed that 2½ years would be an early enough cut-off point. Professor Smith calculated that there could be a possible 500-fold reduction in risk if cattle over 2½ years old were removed from the food chain. 7.342 The Committee agreed that de-boning of beef for human consumption from cattle over 2½ years of age was an option worth considering. Dr Kimberlin stressed that the nervous and lymphatic tissue trimmings would need to be treated as SBO. This view was supported by the rest of the Committee. Professor Pattison suggested that discussion of the options for additional measures in relation to cattle should be continued at a further meeting to start at 8.00 am the following day (Wednesday 20 March). At that time it would also be possible to decide the Committee’s advice about the risk to human health from eating beef. 7.343 As requested by the Prime Minister at his earlier meeting with Professor Pattison, the Lord President, Mr Newton, chaired a further meeting of Ministers later in the evening. The meeting agreed that SEAC should deliver urgent advice, by 10.30 am the following day, on what response the Government should
make to their latest conclusions. The Cabinet would then consider this and the Minister of Agriculture would make an interim statement at 3.30 pm. The statement would be followed by a press conference. 3215

7.344 Dr Rubery relayed the request for further advice from the meeting chaired by Mr Newton back to the SEAC meeting. 3216 She also went to No. 10 Downing Street at about 10.00 pm to brief Mr Major about the latest developments. He wanted to know what conclusions SEAC appeared likely to reach. 3217

Other meetings on 19 March

7.345 Mr Hogg held a brief meeting with his junior Ministers, Mr Packer, Mr Carden, Mr Haddon, Mr Kevin Taylor and Mr Blakeway, at which the first minute which Mr Baldry had sent earlier in the day was discussed. 3218 Mr Baldry stressed that ‘it would be a mistake to pre-empt SEAC’, and Mr Boswell ‘stressed the need not to lead SEAC in any way’. Mr Carden noted the need not to place SEAC under ‘unreasonable time pressure’. 3219

7.346 Also on 19 March, Dr Rubery and other officials met with representatives of the MLC to discuss the ‘consequences and how one might handle things on 20 March’. 3220

SEAC meeting: Wednesday 20 March 1996

7.347 Fears that the news would leak were realised on the morning of 20 March 1996, when newspapers reported that Mr Dorrell was expected to announce that day that there might be a risk of humans contracting a form of BSE from infected meat. The Daily Mirror carried a headlined article entitled ‘Official: Mad cow can kill you’ and reported:

Humans could catch Mad Cow Disease from eating infected beef, the government will admit today.

Health Secretary Stephen Dorrell will accept for the first time that the brain wasting disease may have been passed to people from infected animals.

The U-turn by Ministers – who for 10 years have insisted it was impossible – will spark calls for tough new curbs on suspect meat. But some experts fear we may already have eaten more than a million infected animals – and that unsuspecting victims are living on borrowed time. 3221

7.348 On the same day several other newspapers also reported the development. The Times, in an article entitled ‘Dorrell set to admit mad cow disease may threaten people’ reported that new research had led ‘Mr Dorrell to accept that the risk is greater than had been supposed . . .’ The Daily Telegraph reported the story in an article entitled ‘Mad Cow disease alert is renewed’, and the Daily Star under the
title ‘Mad cow disease does kill’ reported that Ministers were preparing to launch a ‘massive advertising campaign’ to stop widespread panic. 3222

7.349 That morning Sir Kenneth Calman prepared a first draft of a statement before attending the resumed meeting of SEAC.3223

7.350 SEAC recommenced its meeting at 8.00 am. Present in London were Professors Pattison, Almond, Smith and Collinge, Dr David Pepper (Veterinary Surgeon and member of SEAC since 1990) and Dr Michael Painter (consultant in communicable disease and member of SEAC since December 1995). Dr Kimberlin and Mr Bradley were to return from Paris that morning, but the flight was cancelled.3224 The telephone link to Paris was re-established at 8.45 am. Dr Will had gone back to Edinburgh and he too participated by telephone, from 8.50 am.3225 Dr Matthews continued as an observer. Messrs Eddy and Skinner (Secretariat) were there. In attendance were Dr Rubery, Mr Wilesmith, Lord McColl (Mr Major’s Private Secretary) and Dr Render. Sir Kenneth Calman and Mr Meldrum attended for part of the meeting.3226

7.351 SEAC resumed its discussion of the de-boning option as ‘the best way forward’.3227 It also considered the option of making its recommendations ‘retrospective’ but decided against this ‘in view of the extreme precautionary nature of [SEAC’s] recommendations’.3228 On its 16 March recommendation to ban all MBM in farm animal feed, it decided there was no need to ban MBM in pet foods or fertilisers.3229 It also discussed worker safety.3230

7.352 At 9.30 am Mr Hogg was ‘informed of initial (but still uncertain) indications – received by telephone – of SEAC’s likely advice’.3231

7.353 SEAC finished the meeting and produced its final statement at 9.30 am.3232 The statement said:

The Spongiform Encephalopathy Advisory Committee have considered 10 cases of CJD which have occurred in people aged under 42 as recently identified by the CJD Surveillance Unit, Edinburgh. The Committee have concluded that the Unit has identified a previously unrecognised and consistent disease pattern. A review of patients’ medical histories, genetic analysis to date and consideration of other possible causes, such as increased ascertainment have failed to explain these cases adequately. This is cause for great concern. On current data and in the absence of any credible alternative the most likely explanation at present is that these cases are linked to exposure to BSE before the introduction of the SBO ban in 1989.

CJD remains a rare disease and it is too early to predict how many further cases, if any, there will be of this new form. Continued surveillance is of the utmost importance and the Committee are actively seeking further data from

3222 YB96/3.20/36.1
3223 S179 Calman para. 119
3224 T10 p. 153
3225 YB96/3.20/17.1
3226 YB96/3.20/17.3 para. 10
3227 YB96/3.20/17.3 para. 12
3228 YB96/3.20/17.4 para. 14
3229 YB96/3.16/1.8 para. 31; YB96/3.20/17.4 para. 15
3230 YB96/3.20/17.4 para. 16
3231 S392 Strang para. 36
3232 YB96/3.20/17.4 paras 27, 28
both the UK and abroad to help assess the full significance of the Unit’s findings.

The Committee emphasised it is imperative that current measures to protect the public health are properly enforced and recommend constant supervision to ensure the complete removal of spinal cord.

The Committee also recommend:

a. that carcasses from cattle aged over 30 months must be deboned in licensed plants supervised by the Meat Hygiene Service and the trimmings must be classified as SBOs.

b. a prohibition on the use of mammalian meat and bonemeal in feed for all farm animals.

c. that HSE and ACDP, in consultation with SEAC should urgently review their advice in the light of these findings.

d. that the Committee urgently consider what further research is necessary.

The Committee does not consider that these findings lead it to revise its advice on the safety of milk.

If the recommendations set out above are carried out the Committee concluded that the risk from eating beef is now likely to be extremely small.3233

7.354 After this, Sir Kenneth redrafted his statement.3234

7.355 Mr Hogg discussed the recommendations briefly with Mr Packer and Mr Carden. He said that ‘we should do no more and no less than SEAC was recommending’. It was noted that the orders would not be under the emergency provisions of the Food Safety Act and would therefore need to be consulted on.3235

7.356 Mr Hogg also noted that since there was no product recall, there would be no need to decide immediately on issues around compensation. ‘We would, however, need to consider the mechanisms for providing for MAFF-approved plants for deboning.’3236

20 March 1996: Cabinet meeting

7.357 The Cabinet met at 10.45 that morning to consider SEAC’s advice, as well as a draft statement by Sir Kenneth Calman (CMO) which had been circulated before the meeting. The minutes recorded that ‘in view of the seriousness of the matter, [the Prime Minister] had invited the Chief Medical Officer and Professor John Pattison, the Chairman of the SEAC, to attend the first part of the meeting, to explain the thinking behind both statements’.3237

3233 YB96/3.20/17.7 3234 S179 Calman para. 119 3235 YB96/3.26/14.1–14.4 para. 12 3236 YB96/3.26/14.4 para. 13 3237 YB96/3.20/42.1–42.8
Sir Kenneth Calman said that recent research had identified a new variant of CJD in young people, which had a distinct clinical and pathological appearance and therefore was a cause for concern. He explained that although there was no direct evidence of a link between BSE and this new variant, the theoretical risk that such a link existed now seemed more significant. He noted that special attention would need to be given to what was said about the position of children but there was no scientific evidence that the disease was affected by age.

Professor Pattison said that the new evidence had been provided by the CJD Surveillance Unit, which had identified 10 cases of CJD and was still investigating two others. He reported that after much consideration, and in the absence of any credible alternative account, SEAC had concluded that the most likely explanation for the new variant of CJD lay in exposure to BSE before the introduction of the 1989 SBO ban.

It was agreed important that SEAC’s advice and the CMO’s draft statement were consistent with each other.

The Cabinet agreed that the Government should accept the SEAC recommendations in full. It was also agreed that both Mr Hogg and Mr Dorrell should make statements to the House of Commons, and that a statement should also be made in the House of Lords to explain why the Government was going to implement SEAC’s advice on vCJD.

At lunchtime Mr Packer, Sir Kenneth Calman and Sir Robin Butler briefed Harriett Harman (Opposition spokesperson on Health) and Mr Gavin Strang (Opposition spokesperson on Agriculture) on the announcements to be made that afternoon. In a minute to Mr Hogg later that day Mr Packer recorded:

> The meeting at lunchtime today . . . was constitutionally unusual and it may be worth recording the background and the content which appeared in some respects to influence subsequent exchanges in the House.

Mr Packer noted that the CMO led by detailing the background of the SEAC report and his own statement but then ‘speculated’:

> . . . despite the formal SEAC advice, individual SEAC members might prefer their own children and grandchildren not to eat beef.

Mr Packer inferred that the CMO had implied that this was his own position and noted that Ms Harman’s interest was attracted by this comment.

After the Cabinet meeting Mr Dorrell went to his office to prepare his statement. Dr Rubery and other DH officials helped him. Mr Dorrell told the BSE Inquiry that in the course of preparing his statement:

> I was reminded of speculation in the press that children were at particular risk of infection from BSE. I asked the Chief Medical Officer what his
advice was. He told me that he did not feel qualified to respond. Since it was clear that I would be (and indeed was) asked the question, I asked the CMO to ensure that SEAC considered this specific question at the further meeting which they planned to hold over the weekend.3243

7.366 Sir Kenneth also prepared a further redraft of his statement.3244 The previous day Mr Packer had prepared a statement for Mr Hogg to make to Parliament.3245 Following the decision that Mr Dorrell should make the main statement, Mr Packer drafted an alternative version for Mr Hogg, which was delivered broadly as drafted (see below).3246

7.367 A note was sent from the Prime Minister’s office to MAFF, copied to DH, outlining two points that Mr Major wanted to see brought out in any statements that were made that day. The first was that there was no proven link between BSE and CJD. All that had happened was that ‘the balance of probabilities has now shifted in the light of new evidence. The Prime Minister feels it is important to emphasise this so as to explain earlier statements about there being no scientific evidence of such a link.’3247

7.368 The second point was that the scientists whose advice the Government had received should be named. ‘The Prime Minister feels that simply to say “we are advised” will sound very weak when there will be other scientists prominently saying “we told you so”.’3248

7.369 Mr Hogg told the BSE Inquiry that he did not remember this note. He did not use the particular phrasing in it. He made his statement to the House in his own words.3249

20 March 1996: statements to the House of Commons

7.370 Mr Dorrell began his statement to the House of Commons at 3.31 that afternoon.3250 He stressed the Government’s policy of basing its decisions on SEAC’s advice, and then outlined the CJD Surveillance Unit’s findings based on work relating to ten confirmed cases of CJD in people under the age of 42. He stated that there remained no scientific proof that BSE could be transmitted to man by eating beef, but referred to SEAC’s conclusion that the most likely explanation at that time was that those cases were linked to exposure to BSE before the introduction of the SBO ban in 1989.

7.371 He also confirmed that the Government had accepted SEAC’s findings in full and that they would be put into effect as soon as was possible. As far as DH responsibilities were concerned, there would be an urgent consideration of what further research was needed, and the HSE and the ACDP would be tasked with reviewing their advice on worker safety.3251
7.372 Mr Dorrell also addressed the question about the possibility that children were now at more risk of developing CJD. He stated:

There is at present no evidence for age sensitivity, and the scientific evidence for the risks of developing CJD in those who eat meat in childhood has not changed as a result of the new findings. However, parents will be concerned about the implications for their children, and I have asked the advisory committee to provide specific advice on that issue following its next meeting. 3252

7.373 Mr Dorrell concluded his remarks by stating that any further measures SEAC recommended would be ‘given the most urgent consideration by the Government’.

7.374 Ms Harriet Harman stated that the question of a link between BSE and CJD was an issue of immense importance to consumers and particularly to parents of young children. She asked whether the Secretary of State remained uncertain and suggested that it was now apparent that there had been ‘too much reassurance and too little action’. 3253 Ms Glenda Jackson (Labour MP for Hampstead and Highgate) also raised the issue:

Was not the previous scientific advice categoric that there was no possibility of BSE entering the human food chain? In the light of the possibility that the disease takes 10 years to incubate, should not stronger advice be given – certainly to schools and parents – on the possible effects and dangers of feeding beef to small children? 3254

7.375 In response, Mr Dorrell stated that SEAC had not given any specific recommendation about children but it would consider the issue at its next meeting and the advice would be available at the weekend. 3255

7.376 Mr Hogg began his statement at 4.17 pm. He confirmed that the Government had accepted SEAC’s recommendation that carcasses from cattle over 30 months old must be de-boned in specially licensed plants supervised by the Meat Hygiene Service (MHS), and that any trimmings would be kept out of both the human and animal food chains. In addition, Mr Hogg explained that he had instructed that existing controls in slaughterhouses and other meat plants and in feedmills should be more rigorously enforced. 3256 He emphasised that if the public accepted ‘the best opinion that we have’ that beef and beef products can be eaten with confidence then he believed there would be no damage to the British beef market.

7.377 Ministers were then faced with a catalogue of questions about the development of a live test for BSE, resources for research into BSE and CJD, the reasons for imposing the de-boning requirement only on animals over 30 months of age, and whether the existing controls in slaughterhouses were being adequately enforced. Some questions emphasised that the Government had previously assured the House that the controls were being properly monitored and enforced and therefore questioned the Government’s sincerity and authority in this regard, as well as the Government’s ability to enforce its own rules. 3257

3252 Ibid.
3253 Ibid.
3254 YB96/3.20/34.3
3255 YB96/3.20/34.2 and 34.4
3256 M7 tab 15
3257 M7 tabs 15 and 16
7.378 Action was taken on 20 March 1996 to inform the EC Commission and other member states of the announcement.\(^{3258}\)

7.379 This brings to an end the period with which this Inquiry is concerned. It is, however, necessary to record some of the events which followed soon afterwards.

**The aftermath**

7.380 On 27 March, the European Commission announced a ban on the export of all live cattle and beef products from the UK. On 3 April, Mr Hogg announced to Parliament:

> The BSE crisis has presented the Community as a whole with a challenge of major proportions. The Community’s response must be prompt and effective but also soundly based and fair. The United Kingdom is making a major effort to contribute to that Community response. Arrangements will be introduced to ensure that all bovine animals over the age of 30 months at the time of slaughter will not enter the food or animal feed chains. This scheme will take the place of the compulsory deboning for which SEAC recently called.\(^{3259}\)

7.381 In a press briefing the following day MAFF explained:

> Following the recent findings, SEAC have made recommendations about the treatment of animals over 30 months old. The Government has gone beyond this advice in introducing restrictions on the sale of meat from such animals in order to further reassure the public that any potential risk is being removed.\(^{3260}\)

7.382 Mrs Browning told us why this change of policy came about:

> Clearly there were limitations on the capacity of the industry to bone out all carcasses over 30 months of age, because it is a technique in the abattoir which has to be learned. It is a very specialised skill. Some abattoirs, a few, had this ability to do this. They had staff ready trained. There would have been a difficulty, had that been implemented in terms of timing, in order to train sufficient staff.

> However, the overwhelming reason why the scheme was not put into practice and the 30 month slaughter scheme was implemented was because within 24 hours of the announcement on 20th March the retail trade, mainly the large supermarkets, made it absolutely clear that they were not going to sell meat over the age of 30 months. That was a view endorsed quite vocally for example by the leader of the NFU. It became quite apparent that in order to maintain public confidence post 20th March in British beef, that the decision by the supermarkets to say they would not sell it was instrumental in maintaining confidence in British beef.

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\(^{3258}\) YB96/3.20/14.1 (letter from Mr Carden (Deputy Secretary, MAFF) to Mr Wright (Head of European Department, Foreign and Commonwealth Office)) and YB96/3.20/43.1–43.2 (letter from Mr Hogg to the German Health Minister)

\(^{3259}\) YB96/4.3/6.7

\(^{3260}\) YB96/4.4/4.3
I have to say they were absolutely right to do so. It is to their credit that they pressed for that decision. However difficult the crisis was for the farming industry post 20th March, that action and that position did help to maintain confidence in British beef and allow the market to recover, as it has now recovered.3261

7.383 Mr Hogg told us that after the announcement on 20 March he met with retailers and the National Farmers’ Union (NFU):

I was absolutely delighted when the NFU and Sainsbury’s, Tom Viner in particular and others, came to see me in my office after the Cabinet colleagues had rejected my policy, and pressed me to do exactly what I wanted to do. An enormous smile came across my face, and I told them how sensible and wise they were. But I do not actually remember talking to them in great length about the 30 months scheme beforehand. I think I was a bit surprised actually that they wanted me to do exactly what I wanted to do.3262

7.384 The attitude of the supermarkets was evidenced by an immediate change made by Sainsbury’s in its product specification:

**UK and Ireland Sourced Products**

With immediate effect only steers and heifer beef aged less than 30 months old are acceptable in any J Sainsbury product, fresh, frozen or processed. No cow beef can be used in any product. In addition, if not already sourced from Sainsbury’s ‘Partnership in Livestock’ farms, suppliers must change to such a source as soon as possible.

**Imported beef**

With immediate effect no cow beef can be used. The specification for steers and heifers remains unchanged.3263

7.385 In a supplementary statement Mr Carden told us:

. . . deboning, which SEAC did recommend (though there were no indications before 18 March they would do so), was quickly judged impractical. Forward planning might have pointed a way through *some* of the practical problems (eg the extent to which the capacity of existing deboning plants would have matched the need to debone *all* beef under official supervision – the capacity was *plainly* inadequate). But the essential point which Mr Hogg had discussed with me (in conversation, not on record) was whether official supervision of deboning operations on the scale that would be required against the background of our recent experience (1995) with SBO controls could be treated as reliable. The conclusion he drew that it could not be relied on was essentially a matter of judgement and I do not believe any amount of forward planning would have removed this difficulty. So it is unlikely that this measure, which *was* recommended by SEAC, would have featured in any plan produced by MAFF.3264
7.386 Mr Carden also stated:

. . . the OTMS did become necessary in the immediate aftermath of 20 March 1996, for a number of reasons which emerged only then. None of those reasons was connected with the scientific advice given by SEAC.3265

7.387 The evidence set out above indicates that the OTMS preferred by Mr Hogg was introduced for a combination of reasons:

- Deboning in licensed plants under MHS supervision was not practicable;
- Purchasers were not prepared to buy beef from cattle over 30 months old.

7.388 It may be that an additional element in the decision was the hope that this might incline Europe to be more favourably disposed to British beef. The point that we consider significant is that a major policy decision was so swiftly reversed.

Discussion

Contingency planning at MAFF

7.389 The final stages of the story with which we are concerned present an unhappy picture. SEAC, asked to advise on additional precautionary measures, selected the policy option of deboning all beef from cattle over 30 months of age. The Government adopted this policy option. It immediately proved unviable and had to be abandoned in favour of a total ban on beef from animals of over 30 months of age, the option that Mr Hogg had originally favoured.

7.390 Europe imposed a total ban on all UK cattle, beef and beef products.

7.391 Mr Dorrell, when addressing the House in order to give reassurance about the safety of beef, found himself unable to say whether or not children were particularly at risk and thus gave cause for considerable concern on the part of parents. SEAC subsequently advised that there was no reason to believe that children were more susceptible to vCJD than adults.

7.392 We turn to consider whether, and to what extent, these events were the consequence of rushed decision-making, in the absence of adequate contingency planning.

7.393 It should have been plain to anyone who was at the SEAC meeting of 1 February, or who was adequately informed of what had taken place at that meeting, that there was a real possibility that the cases of CJD in young people had been contracted as a consequence of transmission to humans of BSE. While it was still too early to conclude that this was likely, there was clearly a real possibility that the further investigations of the CJDSU would establish the probability of a link with BSE.

7.394 It seems to us that the real possibility that a link between BSE and CJD might be established in the relatively near future should, if appreciated, have led MAFF
and DH officials and Ministers to give consideration to the response that would be appropriate if this occurred.

7.395 Mr Carden’s description of what he said had happened from 6 February 1996 onwards, namely the moving into a state of high alert with MAFF and DH in very close touch both at official and ministerial level, discussing and evaluating each new development intensively, is precisely what we would have expected to have occurred after 1 February. If and when SEAC advised that it was likely that BSE had been transmitted to humans, urgent questions were bound to arise:

- Were further measures necessary to protect human health?
- Were further measures necessary to retain or restore confidence on the part of the public that it was safe to eat beef?
- What steps should be taken to address the probable collapse of the beef market?
- How should the news be broken to the public?
- How should the news be broken to our European partners?

7.396 We were anxious to explore the extent to which consideration was given within and between Departments on a contingency basis as to how questions such as these might be answered. We asked witnesses for assistance on the extent to which there was contingency planning.

7.397 This led, initially, to a misunderstanding. Witnesses concluded that by ‘contingency planning’ we envisaged the formulation and agreement of what Mrs Browning described as ‘a planned and defined response to deal with a specific event that might occur in the future’. 3267

7.398 We had not envisaged anything as specific as this. Our concern was whether officials and Ministers should have considered and discussed what might be required should scientific advice be received that it was probable that a link existed between BSE and a disease in humans. We made this clear to witnesses before they returned to give evidence in Phase 2.

7.399 We remain of the view that ‘contingency planning’ is the appropriate phrase to describe the process of considering the implications of the various options for responding to a contingency. During Phase 2 Mrs Browning coined the phrase ‘contingency thinking’ to describe this process, and this was subsequently adopted in discussion as a useful shorthand. In this Report we have, however, reverted to the more conventional phrase of ‘contingency planning’.

7.400 All MAFF witnesses were agreed that no specific contingency plan was prepared prior to March 1996. They explained why this would not have been appropriate or even possible. Mr Hogg, in a supplementary statement directed to the point, put the position as follows:

No proper justification could have been advanced before 1st February 1996 and I doubt whether any justification could have been advanced before the
end of February 1996. This is because prior to 1996 the scientific evidence as to whether BSE was transmissible to man was reassuring – there being at that time no evidence at all that BSE was transmissible to man and there had been no firm advice from SEAC to the contrary. Therefore, before the end of February 1996, there would in my view have been no justification for devising a contingency plan, when previously there had been none. There had been no change in scientific advice, and therefore there was no reason to create a contingency plan.

Preparation of a plan would have involved consultation with a range of government and other bodies. First, the plan would have had to have been discussed widely within MAFF. Subsequently and in addition the following government departments and other bodies would have had to have been involved:

a) The Treasury  
b) The Department of Environment  
c) The Department of Health  
d) The Welsh Office  
e) The Northern Ireland Office  
f) The Scottish Office  
g) No 10 (Downing Street)  
h) The Deputy Prime Minister’s Office  
i) The Intervention Board  

It is certain that this necessary consultation would have led to a leak that we were planning to ‘break the news’ that BSE was transmissible to man. This would have caused a crisis that could have destroyed the beef industry, for what would possibly turn out to be no reason.

It is also worth explaining that if we were to devise a contingency plan, it would have been essential to liaise with UKREP and the office of the European Agriculture Commissioner, Franz Fischler. It would also have been difficult to avoid consultation with the representatives of the farming, retail and abattoir industries. In view of this wide consultation (and in the absence of consultation a contingency plan could not have been formulated) a leak was certain, and as I have explained, there was a high degree of risk that such a leak would have precipitated a collapse in consumer confidence.

Further, we would have had to consult with the European Union on the shape of any contingency plan. That fact would have become widely known within the European Commission and the Council of Ministers. The fact that such a plan was being put in place might well have triggered action against British beef within the European Community.
Without Treasury approval, no effective contingency plan could be formulated, as compensation was an essential part of the ultimate plan. Whilst it is true that in the event the Treasury did make available very large sums of public money by way of compensation and other expenditure, I very much doubt that the Treasury could have been induced to do that in advance. Such provision could not have been made on a ‘peace time planning’ basis.

I doubt whether any useful contingency plan could have been prepared in advance. The real problem is that it would never have been possible until the end of February or the beginning of March 1996 to know precisely what it was that we were planning against. Over the years the evidence had pointed to different classes of risk. At one stage it was thought that farmers were particularly at risk; on another occasion it was felt that abattoir workers were at risk; on other occasions veal, cattle cake and indeed venison were all identified as possible sources of infection. Unless one knew the precise risk against which one was being asked to plan, it would have been extraordinarily difficult to make an effective contingency plan. Moreover, we were always going to have to respond to the recommendations of SEAC, and in the absence of knowledge as to what the SEAC recommendations were likely to be, planning on a contingency basis was likely to be all but pointless.

7.401 Mrs Browning, Mr Packer, Mr Meldrum and Mr Carden gave evidence to the same effect.

7.402 We accept that it would not have been feasible to have in place, with Treasury approval, a contingency plan ready to be launched, should the scientists advise that BSE had probably been transmitted to humans. The question remains of the extent to which the factors adumbrated by Mr Hogg and other witnesses precluded all contingency planning in the period prior to 8 March.

7.403 We accept that the extent of any consultation which formed part of contingency planning could reasonably have been circumscribed by a desire not to create the very crisis of confidence that was under consideration as a feature of the contingency. We do not, however, accept that it was impossible or impractical for officials and their Ministers, with a degree of judicious consultation of SEAC and others, to have identified the issues that would have to be urgently addressed if BSE were to have been transmitted to humans and to have explored the available options. This is what we would have expected to be taking place after SEAC’s meeting of 1 February.

7.404 There are two objections raised to contingency planning that we wish to deal with in particular.

**Uncertainty**

7.405 Witnesses made the point that it was not possible to formulate contingency plans in the face of uncertainty as to the route of transmission. As to this, it seems...
to us that the Government needed to consider possible options where the probable transmissibility of BSE to humans was established, but the manner of transmissibility was not. That, indeed, is the position that ultimately confronted the Government. It was also foreseeable that if it was shown that the young CJD victims had probably been infected with BSE, consumption of beef and beef products was likely to be a prime suspect.

7.406 We believe that during February 1996 officials could usefully have explored the different pathways by which BSE might have been transmitted to young persons and discussed with their Ministers the options for increasing the precautions in place to prevent transmission between cattle and humans.

Waiting for SEAC

7.407 A point made vigorously by witnesses was that the Government would not be prepared to take a decision without first having the advice of SEAC as to what measures, if any, should be taken. They argued that contingency planning before SEAC’s advice had been received would have been a waste of time.

7.408 This attitude reflects the reliance that had come to be placed upon SEAC as a source of advice on policy. Mr Packer put the position as follows in oral evidence:

In this period that we are discussing, and probably at other periods as well, but in this period, early 1996, it was certainly the expectation amongst the public, as well as within Government, that any response to a finding by SEAC would be accompanied by a recommendation from SEAC as to the appropriate response to that finding.

Q: Is this something you just assumed, that if SEAC gave advice on transmissibility they would, in the ordinary course, give you some advice about policy measures?

A: No. There is no assumption about it. That is what SEAC had consistently done over the period right back to the Southwood Report. That is what SEAC had always made, such recommendations. They expected to do so, and the Government expected them to do so. Further, SEAC contained the greatest concentration of expertise of people competent to make such recommendations.3273

... while I note it has been debated in front of this Committee whether SEAC should have been relied upon for policy advice to quite the extent that became the practice, the fact is that, translated into the political arena without SEAC advice, Ministers were not willing to go forward. That seems to me to be a salient point, which needs to be registered by those considering the matter.3274

7.409 ‘Waiting for SEAC’ was not a satisfactory alternative to considering the options for action. When it was that Mr Hogg formulated his policy is a matter that we shall shortly discuss, but ultimately he did not wait for SEAC’s advice. We shall consider the merits of Mr Hogg’s policy in due course. At this point we simply
observe that the policy decision which had to be made in March was not one that turned simply on matters falling within SEAC’s areas of expertise. Wider political considerations needed to be taken into account, and these could well have been identified and discussed, on a contingency basis, in February.

7.410 There is a further point in relation to SEAC’s position. Mr Packer correctly made the point in evidence that precautionary measures had already been put in place to cater for the possibility that BSE might be transmissible to humans. It did not follow that any additional measures would be necessary if the likelihood of transmissibility was established.3275

7.411 We can see no reason why SEAC should not have been asked to consider the various options that might be adopted to reduce risk of transmission further, and comment on their efficacy. On the contrary, we consider that this would have been a valuable piece of contingency planning. Mr Carden made the point to us that SEAC was preoccupied with trying to answer Mr Hogg’s questions. We consider that it would have been better occupied considering the options should BSE prove to have been transmitted to the young victims of CJD.

7.412 In this context Dr Metters has drawn our attention to instructions that he gave to Dr Wight in August 1993 after a second dairy farmer had died of CJD:

Unwelcome though it may be to the Tyrrell Committee, I think they must be asked at their next meeting to give further thought to what they might advise the Department and MAFF if another farmer (or two) develops CJD. Or, if a butcher or abattoir worker develops the disease.

Although the Committee were given plenty of advance warning about the second farmer, they may not be so fortunate next time round. Some contingency planning on the Committee’s response to a further case of CJD in a farmer seems essential.3276

7.413 Dr Metters has rightly suggested that he should have credit for seeking to initiate this piece of contingency planning in 1993. He claimed in his supplementary witness statement that the consideration that he gave to this issue proved to be very useful experience when he came to consider what plans might be required in the event that the cases of CJD in young people were causally connected to BSE.3277 We did not find it easy to follow this comment. Certainly neither Dr Metters nor anyone else asked SEAC for contingency advice in the period leading up to March 1996. The attitude of DH officials and Ministers to contingency planning is a matter that we shall consider in due course.

7.414 Although it is common ground that no detailed contingency planning was carried out before March, a number of witnesses suggested that there were informal discussions between Ministers and officials as to dealing with the contingency that the young CJD cases were shown to be linked to BSE. In particular, there was some evidence that Mr Hogg was developing his policy and discussing it with his officials in the weeks before the events in March. We have given careful consideration to this evidence.

3275 T131 p. 10
3276 YB93/8.12/2.1
3277 S116C Metters para. 5
Mr Hogg’s policy

7.415 In written evidence Mr Hogg stated that before the end of February there would have been no justification for devising a contingency plan, when previously there had been none. He went on to say that in the days before the SEAC announcement of 16 March both he and Mr Packer had given considerable thought to what their policy should be in the event that SEAC concluded that BSE was transmissible to man.

7.416 When giving oral evidence in Phase 1, Mr Hogg told us that he had begun to formulate his policy after his informal discussion with Mr Packer on (approximately) 8 March. Mr Hogg also said, ‘I suspect there were discussions between the 10th and 13th in my room on a very private basis as to what happens if SEAC does say this, but I may be wrong about this. I cannot explain it . . . I am clear as to the conclusions but not quite as to the process.’

7.417 We had formed the impression from this that Mr Hogg’s decision to adopt a policy of banning the sale of beef and beef products from animals aged over 30 months was one which he had formulated after 8 March 1996.

7.418 When he returned to give evidence in Phase 2, however, he told us that he believed that he had developed this policy months before, and that he must have discussed it with Mr Packer and other officials:

I do not know when I concluded the main elements of that policy, but my bet is something like this, knowing myself: I had been cogitating on all of this matter for months. I was very well informed about BSE at that time. I had in my mind tested a whole number of propositions. I had doubtless tested it on my officials scores of times and I had come to preliminary views probably a long time before 16 March on a ‘what if’ basis. So when the balloon went up, I had in my locker, my intellectual locker, what I believed to be the solution. I am bound to say that it was the solution and still is.

7.419 This statement was explored with him later in his evidence:

Q: Can we just see where we have reached with regard to them? Mr Packer, you think that at some stage before March you had discussed with him what to do in the worst case?

A: I think I probably did. I cannot remember. But the plain truth is that on 16th March I had a fully worked up policy. There is no formal meeting recorded as to how I came to that fully worked up policy. It is not impossible that I thought it all up in the bath. But it is improbable and I suspect what had happened was that over a longish time I had been ruminating about it, talking to people. It did not actually take a lot of consideration in one sense, because the options were very narrow . . .
Q: Had you actually discussed with your officials, before March 1996, that if the worst came to the worst your view would be that no cattle over two and a half years old should be used for beef or beef products?

A: I have really given my answer, Lord Phillips. I do not remember. I think it is highly probable that I had come to that conclusion a longish time before the 16th March. But I cannot tell you when I came to that conclusion.3284

7.420 Mr Packer had earlier told us of dim recollections of informal discussions with Mr Hogg:

I dimly recollect the discussions, certainly with the Minister and perhaps with one or two others, on a 'what if' basis, not on the basis of meetings directed at this point, but in the margins of the other ongoing work.

I suspect that this was reflected in the rapidity with which we decided how to proceed in March. So, I would suggest we were giving tentative, informal consideration in February, although not in any very precise way, which certainly would not have been possible on the basis of the information we had at the time.3285

... there may well have been conversations – in fact I suggest there probably were – going backwards and forwards to Brussels on the aeroplane with the Minister, relevant discussions, which would never have been recorded before the issue became a major one.3286

I suggest such discussions did occur. When Mr Hogg was before you I think he said something like he could not find an audit trail for how these ideas came into his head, but he was probably in discussion with senior advisers, notably me. He said something to that effect and I think that is right. Because the documents do not exist, it does not mean that there was not any thought being given, although it is evident that there were not the big set piece meetings of the sort to which I was referring.3287

7.421 We did not find either Mr Hogg’s reconstruction of what he thought he would have been thinking in 1996 or Mr Packer’s dim recollections a satisfactory basis for concluding that they had debated, before March, the merits of the 30 month scheme. We are in no doubt that had Mr Hogg proposed such a scheme to Mr Packer it would have provoked vigorous discussion and that both Mr Hogg and Mr Packer would have remembered this.

7.422 A minute from Mr Strang records meetings between Mr Packer and Mr Hogg on 13 and 14 March. It says:

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3284 T137 pp. 34–5
3285 T131 pp. 18–19
3286 T131 p. 22
3287 T131 pp. 22–3
The Minister agreed that, before we could act, we needed clear advice from the Committee as to the facts and the steps which the Government should take. It was therefore agreed that the Minister should write to Professor Pattison, as attached, formally requesting SEAC to submit advice as soon as it was in a position to do so.\textsuperscript{3288}

The Minister agreed that it would be prudent to plan on the basis of the worst case scenario. He was glad to see that Ms Timms had been asked to do some preparatory work. He commented that there might be some potentially very serious consequences in the very short term. We therefore needed to move quickly to have worked up the various possible responses, with costings for each option.\textsuperscript{3289}

\textbf{7.423} This suggests that at this stage Mr Hogg had yet to formulate his policy.

\textbf{7.424} We can readily accept that Mr Hogg and Mr Packer are likely to have had informal discussion about BSE when travelling together or in the margins of meetings. We do not accept, however, that there was a serious discussion on a contingency basis of the various policy options, including the 30 month scheme, that might be adopted should BSE prove to be transmissible to humans.

\textbf{7.425} When Mrs Browning gave evidence in Phase 1 she said that she was sure that she discussed Mr Eddy’s minute of 6 February with Mr Hogg. She said that they were concerned but that clearly there was more scientific work needed to give advice to Ministers.\textsuperscript{3290} When she returned in Phase 2 she said this of Mr Hogg’s thinking:

\begin{quote}
I cannot obviously put myself in the mind of every official or every Minister as to what they were actually thinking in February. What I can tell you, because it is now a matter of record, is that the policies that were put forward by Douglas Hogg . . . clearly were not just drawn up on 19\textsuperscript{th} March but had been subject to particularly his anticipation of what might be needed.

\ldots the thinking that went on prior to March in Ministers’ minds, particularly in the mind of the Minister Douglas Hogg, in which he was having to second guess – you I know will want to ask him this yourself. I really cannot say what was in his mind throughout February.\textsuperscript{3291}
\end{quote}

\textbf{7.426} It is clear from this that Mr Hogg did not discuss the 30 month scheme with Mrs Browning during February 1996.

\textbf{7.427} As to her own approach to contingency planning, she told us:

\begin{quote}
I did not just go home every night and think I will just sit back until April and May and see what comes up. One was thinking of what the various permutations . . . and what the consequences might be.\textsuperscript{3292}
\end{quote}
Clearly we were thinking about it. We were thinking about it a lot. One thought of all the various permutations. 3293

7.428 When asked whether she talked about these matters with her officials, she said:

We talked about it, but I do not think we talked about it in a structured form whereby we sat down and said: we must have a meeting on the 9th and draw up contingency plans looking at all possible eventualities, because we were anxious to get more detailed research from the scientists. There seemed to be so many imponderables once this information was given to us in February, that although we were thinking about it, there certainly were not structured meetings to draw up contingency plans as such, because we wanted to see exactly what the scientists recommended and what their conclusions were. 3294

7.429 We explored with Mrs Browning at great length the extent to which different options for responding to the contingency that BSE might be shown to have transmitted to humans were identified and discussed. It was clear to us from her evidence that they were not. In particular, Mrs Browning emphasised that it would have been impossible to ‘second guess’ that SEAC would advise the option of boning out beef from animals over 30 months of age. 3295 It seems to us that, had thought been given to identifying options, boning out would have been one of them, having particular regard to the fact that this was an approach to the risk of transmission that had already been adopted by Europe.

7.430 Mr Meldrum told us that he and his team had ongoing discussion about BSE virtually all the time while he was in post and as a result he had expressed concerns about removal of spinal cord in 1995 and contamination of head meat on 11 March 1996. 3296 He did not, however, suggest that there were discussions on a contingency basis as to what should be done if SEAC advised that there was a link between BSE and CJD.

7.431 In his supplementary witness statement he contrasted SEAC’s meeting of 1 February with that of 8 March. As to the latter, he said:

It was not until this meeting that there were clear indications of a possible connection between BSE and this new form of CJD and that SEAC was highly likely to be making recommendations for new and additional Government action.

As indicated in paragraph 6 above, as soon as senior officials in MAFF were aware of these findings they, quite correctly, took control of events. This would have taken place immediately prior to the meeting on 13th March, 1996 which was chaired by the Permanent Secretary (Mr Packer). 3297

7.432 This evidence does not suggest that there were discussions between MAFF officials and Ministers about contingency planning in February.
7.433 We revert to Mr Carden’s evidence of the reaction of MAFF officials to Mr Eddy’s minute of 6 February (see paragraphs 7.165–7.167). We consider the extent to which there were discussions within DH and also between MAFF and DH.

The approach of DH to contingency planning

7.434 Sir Kenneth Calman made it plain in his evidence that he personally was not involved in any contingency planning or discussions before March 1996. We have already referred to his evidence of his reaction to Dr Wight’s minute of 6 February (see paragraphs 7.181–7.184). In evidence he added that:

After the meeting in February, clearly both the Department of Health and MAFF, particularly through Dr Rubery’s Division, were and should have been looking at these issues; indeed, as MAFF were; and clearly Ministers would be informed, as they always are when things are changing.3298

7.435 Sir Kenneth had no recollection of having any contact with MAFF officials about BSE in February. He added, however:

. . . but I just point out that, of course, contact between two Departments was done at a variety of different levels, and a lot of this would have been done at the Mr Carden, Dr Rubery type level in terms of the contact across. I would not necessarily have been involved in some of these discussions.3299

7.436 Sir Kenneth was asked whether he applied his mind to whether extra precautions would need to be put in place to protect the human food chain should there turn out to be a link between BSE and CJD. He answered:

This is the kind of issue that Dr Rubery and her Division would have been considering, and indeed with MAFF.

Q: Were you aware of Dr Rubery considering that with MAFF before 1st March?

A: I have tried to make it clear that I, over that period, was not particularly involved in the decisions at that time or some of the work going on, but my assumption was that that was going on both in MAFF and the Department of Health.3300

7.437 So far as his own involvement was concerned, he told us that it was because of the March meeting of SEAC that ‘we activated things within the Department’.3301 He then directed Dr Rubery to produce her ‘first thoughts on handling’.3302

7.438 Dr Metters was in hospital from 12 to 20 March.3303 He did not suggest, at this late stage, that DH carried out any contingency planning prior to March 1996. In a statement he told us:

3298 T134 p. 69
3299 T134 pp. 70–1
3300 T134 p. 76
3301 T134 p. 49
3302 YB96/3.12/5.1–5.11; S179A Calman para. 54
3303 S116B Metters para. 47
In early February, I did not know that the surveillance of CJD, which had been underway for some years, would produce significant new findings, let alone what response might be required in the light of such findings. The nature of such a response would depend very heavily on the nature of the new findings.3304

7.439 In a supplementary statement, however, made after he had given oral evidence in Phase 2, he stated:

I recall discussing prevention, care and treatment options with the Permanent Secretary in mid-February 1996 and also separately with Sir Kenneth Calman. Far from neglecting contingency planning it formed an integral part of DH’s evolving response to SEAC’s advice which was only finalised in the period 8–20 March 1996.3305

7.440 We have not found it possible to reconcile this statement with Dr Metters’s previous evidence, or with any of the other oral or written evidence. We have concluded that Dr Metters’s memory must be at fault. The discussions of which he spoke must, we believe, have taken place after 8 March.

7.441 Our conclusion is that neither Sir Kenneth Calman nor Dr Metters was involved in contingency planning or discussions in the period prior to March 1996. Nor was Mr Dorrell, their Secretary of State, given any notice of the storm clouds that were gathering. Sir Kenneth told us in oral evidence that the matters raised by Dr Wight in her minute of 6 February were discussed with Ministers at a top of the office (TOTO) meeting on 7 February.3306 When we investigated this, we found that only the recommendations made by SEAC about research were discussed at this meeting. Dr Metters wrote to Dr Wight after this meeting in relation to a comment made by Mr Horam, who had recently been appointed Parliamentary Under-Secretary:

After TOTO PS(H) told me that he was content for officials to take this forward without his direct involvement, but he wished to be kept informed of progress by copy minutes etc. He also commented that he was surprised about the extent to which DH had hitherto avoided the political limelight on BSE/CJD. He would like us to do what is necessary to keep things that way.13307

7.442 This does not suggest to us that anyone had conveyed to Mr Horam the possibility that SEAC might be about to advise that there was a probable link between BSE and CJD. We deal with Mr Horam’s own thoughts later in this chapter.

7.443 Mr Carden referred in his witness statement to MAFF and DH being ‘in very close touch both at official and ministerial level at all key stages’.3308 ‘This is not a description which is apt to describe interdepartmental liaison in February 1996.'
7.444 We have already referred to the fact that Sir Kenneth Calman had no contact with MAFF during this period. Dr Metters’s evidence was that there was no requirement for action before March. \(^{3309}\) Mr Hogg told us that he could not remember whether he had discussions with Mr Dorrell ‘in the margins’, but added that:

... of course the implications so far as animal safety was concerned were mine. He was concerned with the requirements for human health which required DH intervention.

7.445 So far as Mr Hogg was concerned, DH was not involved until shortly before 18 March. Asked whether he should not have discussed the 30 month scheme with Mr Dorrell, Mr Hogg replied:

No, forgive me, the 30 month rule was down to me; that was my policy, it was not the Department of Health’s policy; it was something for which MAFF was answerable.\(^{3310}\)

7.446 In some additional comments supplied to the Inquiry, Mrs Browning said that she did not discuss her ‘contingency thoughts’ with her opposite number at DH after she had read Mr Eddy’s minute. She did not think there would have been any benefit in doing so. Until they had firm contingency plans to put to other Departments, there was little, if anything, that they could have contributed.

7.447 In oral evidence Mrs Browning expressed the view that action which she had contemplated that she might have to take under the Food Safety Act would not have required discussion with her opposite number in DH:

I would not have needed to consult with Mr Malone. For example, if, having invoked the Food Safety Act in order to withdraw say milk or dairy products, it would not really have been a matter for Mr Malone. The consequences of invoking the Food Safety Act to withdraw say milk and dairy products, the next step would have been to say: how do we ensure the public is now supplied with safe, fresh supplies of such product? That would not have been a matter I would have discussed with the Health Minister. It would not have been appropriate for him to have been involved. That would have been a practical problem for us at MAFF, had we had to invoke that Act for that purpose.\(^{3311}\)

7.448 Mr Packer’s evidence was to the effect that the division of responsibilities between the Departments meant that there was no necessity for joint discussions before the end of March.

Q: ... there is a more general point. Here in February there is something which potentially had really pretty horrific consequences for your Department and for the Department of Health. And it seems to us that a month went by without any discussion between the two Departments about this cloud looming over the horizon. Again you may say to me it will not be recorded, but I can assure you there were such discussions. If so, we would like to know.

\(^{3309}\) T114 p. 132
\(^{3311}\) T130 p. 11
A: I may have spoken to the Permanent Secretary in the margins of the Permanent Secretaries’ meetings. It would be exactly the sort of thing that one would have done. But I cannot assert that I did, because I cannot recall, so I am not going to. But it is exactly the sort of thing that I might have done. I think, perhaps – I feel this impasse must be based on some sort of misunderstanding of Departmental responsibilities. It is correct that if BSE were found to be transmissible there would be horrendous consequences for MAFF and conceivably for the Department of Health, but they are of a different nature. The horrendous consequences for MAFF are, once we have discovered it, immediate. The market collapses, measures may or may not, depending on the view taken, need to be taken immediately on the ground.

For Health they would obviously have a long-term concern and they would need to circulate information. But there is not the same element of crisis as we would see and did see all too clearly in respect of our own concerns, and with those concerns the Department of Health would not be able to help us, because we would have to deal with them.

And clearly when we come later to proposals for action, both Departments and indeed the whole Cabinet have to be confident, but the uncertainty between 1 February and 8 March is such that I do find it very difficult to see that any such formal contacts could have led to anything very useful that was not very rapidly established after 8 March in any event, so that the practical consequences of what you are referring to as a lack of contact are zero, thereby justifying the approach we took at the time, notwithstanding it looks off when viewed from outside Government.3312

7.449 Mr Meldrum told us that:

Soon after Dr Calman was appointed we had a meeting at his request where we established the guidelines for our working relationship and Dr Calman stated that he would be happy to meet with me whenever there was a need to do so. I took him up on this invitation on a number of occasions. I tried to give Dr Calman as much warning as possible of any new findings even though they may have been extremely preliminary and were not subsequently confirmed.3313

7.450 Mr Meldrum also helpfully provided us with a copy of his official appointments diary for the period from the beginning of 1995 through to March 1996. It is notable that no meeting is recorded with the CMO or any official of DH between 28 November 1995 and 13 March 1996. This does not, of course, preclude the possibility of informal and unrecorded meetings between the CMO and the CVO, but on the evidence that we have received we think it unlikely that any such meeting took place.

7.451 We have summarised this evidence at some length because it demonstrates that the ‘very close touch’ between the Departments spoken of by Mr Carden did not occur in the run-up to 8 March 1996. When Mr Carden came to give oral evidence we explored with him the extent to which the situation had been discussed between MAFF and DH after SEAC’s meeting of 1 February:

3312 T131 pp. 31–2, incorporating an amendment suggested in S287G Packer
3313 S184A Meldrum para. D4
Q: You have told us that you were on a state of high alert . . . Was the Department of Health on a state of high alert?

A: I think the Department of Health would have to tell you, Chairman. You have talked to them.

Q: I find it a bit surprising that you do not know the answer to that question, ie that there does not seem to have been any discussion at that point with Health.

A: I cannot recall discussion on this specific point in the immediate aftermath of 6th February.

Q: Is that not a little surprising?

A: I think both Departments will have been looking to SEAC to bring forward a firmer scientific view. When I said that this was a point that put us into high alert, I do recall that my view was, if this turns out to be firm evidence that BSE has been transmitted this will be a major change in the picture we have; but the signs that I had and was getting for the first time here at the beginning of February were tentative.

We had had signs that pointed to transmissibility of a different kind, for example in the group of farmers, that were, if anything, firmer, firmer in the weight that SEAC seemed to be attaching to them, that set of signs in the autumn of 1995. I think what I am saying is that I had here some tentative signs and a report that more work would be needed before conclusions could be drawn, and looking down the track I was forming the view that at the end of that track could be something momentous, but that we would have to wait while the scientific view matured.

Q: Was that the view of your colleagues in MAFF?

A: Yes, I believe it was.3314

7.452 There is one significant conflict of evidence to which we should refer. When giving oral evidence in Phase 1 of the Inquiry, Dr Rubery spoke of a conversation which she had had with Mr Carden:

I did say to him, ‘It looks to me as if it is conceivable that if another case turns up of CJD in a teenager, then it is going to be difficult for SEAC to continue to say there is no link; should we meet to develop a plan and see how we should take things forward in the longer term?’, but he was adamant we could not do that. He felt if anybody discovered that we were meeting, if the press got wind of this, that this would cause problems and also it would be difficult to get information from the relevant people they needed on the MAFF side to plan the consequences. So I did not do anything more on that side.3315
This conversation had not been mentioned in Dr Rubery’s witness statement. In a supplementary statement she explained:

I did not refer to this conversation in my [original] statement because I have no record of it or the date at which it occurred. I am afraid I have no recollection of anything further relating to that conversation.3316

Mr Carden told us that he had no recollection of this conversation and that he believed that Dr Rubery’s recollection was inaccurate. He set out a number of cogent reasons for his doubts about the accuracy of her account. He accepted that he had had reservations about the value of contingency planning and suggested that Dr Rubery may have been influenced by possessing more information about the emerging data of CJD in young people than was available to Mr Carden:

If Dr Rubery did indeed have a fuller picture than I had about the gathering strength of evidence and concern in medical circles, relating to the cases of CJD in young people, it might account for an impression on her part that I was less receptive to her side of the discussion than perhaps she might have expected.3317

We are perplexed by this conflict of evidence, which, we have concluded, is likely to reflect a misunderstanding arising out of a conversation between Dr Rubery and Mr Carden. If contingency planning was raised, we think it quite probable that Mr Carden would have questioned its value. It does not, however, seem credible that he would have refused to meet Dr Rubery because of concerns as to the implications that the media might draw from such a meeting.

Conclusion

We have reached the firm conclusion that there was no contingency planning to address the possibility that BSE would be shown to have transmitted to humans at any time before 8 March, either at MAFF or at DH. The contemporary documents paint a very clear picture.

The respective minutes of Mr Eddy and Dr Wight, which were intended to brief their superiors about what had transpired at SEAC’s meeting on 1 February, provoked no reaction at all.

On 1 March Mr Eddy was alerted by Dr Wight to the fact that the CJDSU had obtained results which indicated that a new sub-population of CJD was emerging. He sent a minute to Mr Meldrum suggesting a meeting of MAFF and DH officials and press officers to decide how the news should be handled. He added that it was absolutely essential, in handling the news, to have some form of statement from SEAC (see paragraph 7.204). SEAC was due to meet on 8 March. No action of any sort appears to have been taken at MAFF or DH prior to that meeting.

SEAC met on 8 March. The same day Mr Skinner informed Sir Kenneth Calman and Mr Horam of the likely existence of a new form of CJD linked to exposure to BSE in the 1980s (see paragraph 7.215). Similar information was relayed by Mr Packer to Mr Hogg (see paragraph 7.217). At this point officials and

3316 S233A Rubery para. (b)
3317 S103C Carden para. 36
Ministers in the two Departments began to move. The first decision was that a stop should be placed on the distribution of publicity extolling the safety of beef (see paragraphs 7.219–7.221). On Sir Kenneth Calman’s instructions, Dr Rubery drew up her ‘status paper’.

7.460 Thereafter, on 13 March, on Sir Kenneth Calman’s initiative an interdepartmental meeting of officials with Professor Pattison took place (see paragraphs 7.235–7.248). Here, for the first time, there was discussion of possible measures to tighten up controls against transmission of BSE and the possibility of removing cows over 2 or 2½ years of age from the human food chain was mooted. Mr Packer reported this to Mr Hogg the same day (see paragraph 7.249). We think it likely that this was instrumental in the formulation by Mr Hogg of the 30 month scheme as his policy option.

7.461 By 18 March Mr Hogg had formulated his policy. Fundamental to it was his belief that it was not acceptable to have a policy which permitted animals with potentially infective tissues to be slaughtered for human consumption in reliance upon slaughterhouse operatives to remove all such tissues. While he may well have discussed his mistrust of slaughterhouses with his officials over the previous months, we do not accept that he had described his 30 month scheme. Nor had there been any discussion of the alternative option of deboning.

7.462 The attitude of Sir Kenneth Calman and Dr Metters appears to have been that there was no need to think about action unless and until SEAC advised that a likely link between BSE and CJD had been established (see paragraphs 7.181 and 7.185). We have observed that the language of Dr Wight’s minute was a sedative, and this provides a degree of mitigation for those who were sedated.

7.463 In his witness statements Dr Metters suggested that there was nothing really that DH needed to do by way of contingency planning. It was for MAFF to weigh up the options, such as a cattle cull, that would increase the protection against the risk of transmission. So far as DH was concerned, there was no known treatment that would prevent infection or cure its consequences. So far as care of victims was concerned, there was no reason to think that the NHS would be unable to cope.

7.464 These comments exemplified the attitude of DH up to the last few days with which we are concerned. BSE was seen as being essentially MAFF’s problem. To a degree this was realistic. The CJDSU was, however, very much DH’s part of ship. By February the Unit’s surveillance had produced evidence of a possible link between BSE and CJD. Despite the shortcomings in Dr Wight’s minute of 6 February, it was on reading that minute – rather than six weeks later – that Sir Kenneth and Dr Metters should have considered the action that might be required should the scientists advise that BSE had probably been transmitted to humans. They should then have recognised the need for MAFF and DH to address the implications in conjunction. Sir Kenneth should also have alerted Mr Dorrell to the possibility that a link would be established between BSE and the young victims of CJD.

7.465 After the oral hearings, Mr Horam in a supplementary witness statement raised the possibility that Sir Kenneth had a discussion with him about the potential
significance of SEAC’s findings before 8 March and possibly even before 7 February. We noted earlier that Dr Metters’s minute of 8 February 1996 does not suggest that Mr Horam had learnt of the possibility that SEAC might be about to advise that there was a probable link between BSE and CJD. In his original witness statement Mr Horam had placed this conversation on or shortly after 8 March. We believe that his original statement is likely to be correct. It certainly accords better with evidence given by Mr Dorrell and Sir Kenneth to the Agriculture and Health Select Committees on 27 March 1996.

7.466 Mr Dorrell stated to us that he could not recollect being told in February 1996 that there was a real possibility that SEAC was about to confirm a link between BSE and recent cases of CJD. He added that he would not have expected to be informed of this as he

. . . was interested in SEAC’s actual conclusions, rather than speculation about what those conclusions might be.

7.467 We are in no doubt that the information that was discussed by SEAC on 1 February should have been communicated to Mr Dorrell and should, if he were not to be open to criticism, have led him to start to consider the implications of the possibility that BSE had transmitted to the young victims. As, however, he was not told about this, he escapes that criticism.

7.468 So far as MAFF is concerned, we have drawn attention to the contrast between those who told us that Mr Eddy’s minute of 6 February put them on a state of alert as to the possibility that SEAC would conclude that BSE had been transmitted to humans – Mrs Browning, Mr Packer and Mr Carden – and those who said they saw no cause for alarm in Mr Eddy’s minute – Mr Hogg and Mr Meldrum (see paragraphs 7.165–7.180).

7.469 We consider that Mr Eddy’s minute should have put those who read it on alert in the manner described by Mr Carden. We agree with Mr Hogg that the terms of the minute suggested that Mr Eddy’s concern was about the problems of presentation that the information to be published by Dr Will was likely to cause. Mr Packer told us, however, that he looked behind this at the substance of Mr Eddy’s minute. The minute indicated that the problems of presentation would arise because it was impossible on the available evidence to rule out the possibility that the five young cases with distinctive pathology had ‘caught’ the disease from cattle. Further investigation was required which might, or might not, confirm that possibility.

7.470 Mr Hogg did not recollect reading the minute, but told us that he would almost certainly have done so. He said that it would have caused him concern (see paragraph 7.169) albeit that it was about problems of presentation. Mr Meldrum told us that he was personally concerned about the five young cases, but that Mr Eddy’s minute indicated that SEAC did not consider that the situation was one of any urgency (see paragraph 7.179).

7.471 We are left in doubt as to whether Mr Eddy’s minute put Mr Carden and Mrs Browning onto the state of ‘high alert’ that Mr Carden described. What is clear

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3320 S346A Horam para. 5
3321 S346 Horam para. 11
3322 IBD3 tab 14 pp. 33–4
3323 S297A Dorrell para. 3
is that, as Mr Hogg observed, ‘Meldrum and friends did not think that they had had enough information to come to me with recommendations or a form of concern’ (see paragraph 7.173).

7.472 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 discussions between Mr Hogg and Mr Dorrell. They did not do so. Again, we have felt able to reach this conclusion for each individual on the basis of matters discussed at their respective oral hearings alone. In what follows, however, we look at the picture in the round. Mr Eddy’s minute seems to have been treated by all simply as information of matters that called neither for action nor for discussion. We believe that the reason for this lies in the attitude to SEAC described by Mr Packer (see paragraph 7.408). SEAC was being relied upon to advise if and when the stage was reached that called for action and to advise what action should be taken. A few quotations from the evidence, in addition to those already cited from Mr Packer, will serve to illustrate this attitude.

7.473 When giving evidence in Phase 2, Mrs Browning said:

In the last week or two, particularly before the announcement was made, we were quite desperate to get some definitive advice from SEAC.\(^{3324}\)

... over a period of some seven weeks Ministers were placed in a position where they were required to await scientific advice which was anticipated would not be forthcoming until the spring.\(^{3325}\)

... we had been given very clear advice at the beginning of February that we could not expect to get the definitive advice on exactly what we were going to have to deal with until the spring. We had to accept, however frustrating that was, that that is the way that science works;\(^{3326}\)

... policy action in the main, in my experience, meant that the SEAC Committee would give Ministers advice in the light of new scientific evidence, and without exception we then put that into legislation and into the public domain.

There were issues around the handling of that process, vis-à-vis the general public and the media; but I am not aware that there was any advice that I was given by SEAC in my three years as a Minister at MAFF that we did not accept or we did not implement in terms of policy making.\(^{3327}\)

7.474 In a witness statement Mr Carden referred to the fact that there were already in place precautionary measures to address the contingency that BSE might be

\(^{3324}\) T130 p. 35  
\(^{3325}\) T130 p. 42  
\(^{3326}\) T130 p. 44  
\(^{3327}\) T130 p. 47
transmissible to humans. It was not self-evident that SEAC would see a need for any new measures. He added:

We were therefore keenly attentive to indications emerging from SEAC, following their 1 February meeting, as to whether they thought new measures might be needed. It was certainly not apparent to me from Mr Eddy’s 6 February 1996 report that they would recommend anything of that kind. As I said in my oral evidence to the Inquiry on 2 July 1998 ‘there was not much basis for thinking usefully about things that would have to be done if the worst case conclusion was reached.3328

7.475 Mr Meldrum, in oral evidence in Phase 2, gave his perception of the situation:

I thought that is what SEAC was saying. This is immensely worrying, the number of cases in a short timescale in young people with different presenting symptoms. We were all much aware of it. And I of course, like everybody else, was waiting until SEAC came to a view. Because of the expansion of the committee, they were in a very good position to do so.3329

7.476 In a witness statement, Mr Packer told us:

We were waiting for SEAC’s advice on transmissibility which only they were competent to give. Fortunately it was always likely that this process would be a matter of only a few weeks as proved to be the case. We were also awaiting SEAC’s recommendations on the appropriate response to such advice. (I always thought it undesirable to proceed on any other basis (see for example the minute from Mr Strang to Ms O’Donoghue of 15 March 1996 (paragraph 2)). It was not clear that they would recommend any action; certainly there was no need for emergency measures.

7.477 He continued:

From 8 March 1996 circumstances changed again since a finding that transmissibility had occurred became significantly more probable. From that point policy was taken forward at the top level within MAFF, in close consultation with DoH and with SEAC notably the CMO and Professor Pattison. In effect these discussions constituted part of the planning process. Given the importance of the issues this was wholly appropriate.3330

7.478 This last paragraph is significant. The deliberations that took place after 8 March were, to a degree, contingency planning. SEAC did not advise that there was a probable link between BSE and the young cases of CJD until 16 March. SEAC did not advise on the action that it was appropriate to take until 20 March. At the interdepartmental meeting of officials which he called on 13 March, Sir Kenneth Calman commented that ‘although the implications were stark, the options were very limited’.3331

3328 S103C Carden para. 19
3329 T132 p. 160
3330 S287C Packer paras. 18–20
3331 YB96/3.15/2.4
7.479 We have concluded that the options could and should have been discussed within and between the two Departments on a contingency basis during the month of February and the early part of March. Dr Rubery’s status paper of 12 March correctly noted:

MAFF needed to consider additional possible safeguards for the public with respect to exposure to Beef and Beef products.3332

7.480 Between 13 and 20 March whether and how the human food chain should receive further protection was the most important issue being considered by SEAC and government. It was being considered in a rush under extreme pressure. It should have received detailed consideration on a contingency basis before the storm broke in March.

7.481 Mr John Major in a written statement to us put the matter succinctly:

It appears from Mr Hogg’s evidence that there were indications prior to March 1996 that SEAC might reach the conclusions they eventually did reach. Given this, I would have expected that some thought was given to what would need to be done if those conclusions were reached.3333

Defects in the policy-making process

7.482 The policy-making process took place in a rush in the week leading up to 20 March. Largely because of this, it had the following unsatisfactory features:

i. No submission was made to Mr Hogg from his officials setting out the policy options and the pros and cons of each. The advice that he received from his Permanent Secretary was essentially that he should wait to see what SEAC had to say.

ii. There was a failure to identify the relevant questions that needed to be considered when deciding what policy should be adopted and to identify which of those questions required advice from SEAC.

iii. Mr Hogg’s decision was based very much on his own appraisal of the situation. We asked him how Mr Meldrum viewed his policy. He answered:

I do not know what Meldrum’s view was. I may have known at the time. I cannot remember now. The truth to tell, at the end of the day it was for me to make my mind up. That was what I was paid to do; and I did not hesitate to do it. They could have all told me I was wrong. But the plain truth is, Lord Phillips, I was right, and nobody has tried to argue otherwise. I knew I was right at the time; and a whole choir of people could have told me I was wrong. Perhaps they did, I do not know; but it did not matter. I knew I was right.3334

iv. Mr Hogg claimed credit for getting the answer right in the way that he did:

3332 YB96/3.12/5.5–5.6
3333 S400 Major para. 87
3334 T137 pp. 59–60
by 16 March I had come to a fully worked up policy. With the exception of two elements, that policy was ultimately accepted by the Cabinet colleagues, but they did not accept it on the 20 March, or the 18 I think is probably the more correct. They did accept it a few days thereafter. It is still the policy in place, subject to natural evolution. I do not think anybody in this Inquiry or at any other stage has said of my policy — because it is my policy — that it was wrong. Therefore one must proceed on the basis that it was right. And if it was right, I am not at all sure what the criticism is about. Why worry about the modalities when the policy is right?

You really, if I may venture to say this Lord Phillips, should be applauding Ministers who are prepared to take the necessary action quickly and in a non-bureaucratic manner. That is what I did.

For reasons that we have developed, we agree that Mr Hogg got the right answers. It would have been better, however, had he been able to demonstrate that his officials had placed before him the relevant facts and arguments and that he had made a reasoned decision in the light of them.

v. Mr Hogg did not involve Mr Dorrell, his opposite number in DH, in the formulation of policy. It seems to us obvious that Mr Dorrell and his Department had a vital concern with the issue of what, if any, additional steps should be taken to protect public health. Mr Hogg was asked whether it would not have improved the chances of having his policy accepted if it had been discussed in more detail with the DH in February. His answer was that it would not, because neither Mr Dorrell nor the CMO agreed with him. Mr Hogg simply presented his policy to Mr Dorrell on 16 March, apparently confident that its merits would speak for themselves. It seems to us that Mr Hogg would have had a better chance of persuading Mr Dorrell of the merits of his policy had Mr Dorrell or his officials been involved in discussions when that policy was being formulated.

vi. The Prime Minister and Mr Hogg’s ministerial colleagues were not informed of what by then had become a crisis situation until 18 March. Mr Major was asked to comment on this and did so in his statement:

I have been asked to consider the evidence Mr Hogg gave orally to the Inquiry concerning the events leading to the announcement on 20 March 1996 and, in particular, what he said about the extent to which he thought it appropriate to inform other Ministers and myself about the information he had received prior to sending his first minute on 18 March. Mr Hogg gave as his reasons his concerns about leaks and the fact that he did not like troubling people — and myself in particular — until he knew exactly what the situation was and what he proposed to do. I agree with Mr Hogg’s comments about leaks. Clearly, the more people who have knowledge of a particular set of facts, the chances of a leak must be increased. It was important that the information came into the public domain through a clear announcement about the advice that had been received and the Government’s position on the action to be taken, and not through a leak. Mr Hogg could, as he said, have telephoned me to discuss the matter informally, but did not. I do also understand the reasons he gave to the Inquiry as to why he did not wish to
trouble me. In Government there will be at any one time a number of important issues with which Departments are dealing and which may eventually need to be referred to Cabinet for collective decision. It would not usually be sensible to refer such matters to Cabinet and/or the Prime Minister for discussion before they have been properly considered by the relevant Department: the discussion ought to take place against the background of a well thought through position by those who are closest to the matter. Whether and when to refer a matter in this way must be a question of judgment for the relevant Department in each particular case.  

We believe that contingency planning could have resulted in a well thought-through position being presented to the Prime Minister before 18 March. In the event the position was not ‘well thought through by those closest to the matter’. Mr Hogg had reached his own conclusions largely by a process of independent thought.

vii. SEAC was required to advise on policy overnight. It seems to us that this put members of the Committee under almost intolerable pressure.

viii. The Cabinet was faced with taking a decision on the basis of SEAC’s advice without the time or the information necessary to consider other matters of high relevance to the policy decision.

Would contingency planning have made any difference?

7.483 This question was raised more than once by Mr Packer when giving evidence in Phase 2. The propositions that he put to us can be summarised as follows. The Government would not move without advice from SEAC. It was undesirable to proceed without SEAC’s advice. Mr Hogg attempted to do so and the policy that he proposed was rejected. In the event SEAC advised and the Government followed that advice. Contingency planning would not have affected the end result.

7.484 When it was put to Mr Packer that MAFF should have been thinking about the possible options, he answered:

But we do come back to the question of outcomes, Chairman, and would the outcome have been different if pursued differently; and my contention is the outcome would not have been different or better. I think there is a lot of evidence for that in the papers before you. However it may be suggested work might have been done, the end result was correct, and that goes a long way towards validating the approach of those at the time.

7.485 We do not agree with Mr Packer that ‘the end result was correct’. The end result was a policy decision which almost immediately proved to be unviable and had to be abandoned, to be replaced with the 30 month scheme that Mr Hogg had initially proposed. Mr Hogg put the matter to us as follows:

. . . SEAC did in fact recommend a deboning regime; and indeed my colleagues in the Cabinet were foolish enough to accept it. But I knew it was wrong, I said it was wrong. I was not going to have it, and it changed.
7.486 We do not endorse the adjective used by Mr Hogg to describe his colleagues’ reaction. The Cabinet was confronted with an acute emergency. Mr Major and his colleagues learned on 18 March of SEAC’s advice that BSE had probably been transmitted to humans. They appreciated that if the Government did not make this advice public others were likely to, and that the public would demand to know the Government’s response to the advice. SEAC was pressed to give its advice as to the measures that should be taken to protect public health and did so. The Government accepted that advice.

7.487 Mr Packer had questioned the need to devote resources to contingency planning. He made the point that precautions were already in place against the risk that BSE might be transmissible. He commented: ‘If you think matters are secure, then you can move in a more measured way’, and questioned: ‘What would lie behind this rush to do things before we were clear what water we were in?’ In the event, the Cabinet found itself in very hot water. At that point the machinery of government moved impressively fast in reacting to the emergency. In the circumstances we do not consider that the Cabinet can be criticised for the decision that it reached, albeit that the decision proved to be wrong. The question that interests us is whether contingency planning might have resulted in the Cabinet reaching the conclusion that the de-boning option was not the correct policy decision and that a 30 month scheme should be introduced.

7.488 We now turn to consider major issues which should have been considered if a properly informed policy decision were to be taken on 20 March. We shall consider whether, if contingency planning had started in February, the Cabinet might have reached a different policy decision. In the course of our discussion we shall examine the extent to which it was appropriate to look to SEAC to provide the answer to the issue and the extent to which the answer should have been sought elsewhere.

**Should additional tissues be banned?**

7.489 The policy in place in February 1996 was designed to address a remote risk that BSE might be transmissible to humans. The method of addressing that risk was to seek to remove from the carcasses of cattle those tissues which, should the disease be transmissible, would carry a high titre of infectivity. These were designated as SBO. It was recognised that there were, in addition, tissues that might carry a low titre of infectivity, in particular peripheral nervous and lymphatic tissue, that were not proscribed as SBO. At the stage that beef was deboned, often in the butcher’s shop, these would normally be removed in the course of dressing the meat. It had been considered disproportionate to proscribe these as SBO.

7.490 Once it was recognised that transmissibility was not a remote possibility, but a likelihood, the question arose of whether additional tissues should be proscribed as SBO. While this involved an exercise in proportionality, the question was one in respect of which SEAC’s advice would naturally carry much weight.

7.491 SEAC considered the matter and concluded that, in the case of cattle over the age of 2½ years, the beef should be boned out in order to remove the nervous and
lymphatic tissue trimmings, which would be treated as SBO. That conclusion was incorporated by SEAC in the advice that it gave to the Government on 20 March.

Additional measures to ensure proper removal of SBO?

7.492 There was a more fundamental issue. The policy in place in February 1996 envisaged the possibility that animals would go to be slaughtered for human consumption that had certain tissues, which, if eaten, might be potentially lethal. This was considered only a remote possibility, and in those circumstances it was considered satisfactory to rely upon the removal of those tissues by the slaughterhouse in order to protect human health. Once one postulated that it was probable that tissues of some animals entering the slaughterhouse would be potentially lethal, the question arose as to whether it was still satisfactory to rely upon the slaughterhouse to remove those tissues. This issue, also, was considered by SEAC. In its advice to Government, SEAC gave a conditional reply. The risk from eating beef would be likely to be extremely small provided that:

i. The SBO ban was properly enforced; constant supervision to ensure the complete removal of spinal cord was recommended;

ii. The carcasses from cattle aged over 30 months were deboned in licensed plants supervised by the MHS.

7.493 This conditional advice from SEAC required further input from MAFF into the policy decision. How confident could one be that all spinal cord would be removed from every carcass? Shortcomings in this area had been disclosed in 1995 and steps had been taken to address them. MAFF officials do not appear to have advised on the degree of confidence that could be placed on those steps to achieve the desired result. Mr Hogg had, however, no doubt as to the answer:

. . . by the end of 1995 I had come to one very important conclusion as to the ability of abattoir owners and the slaughterhouses to deliver 100 per cent compliance. I was absolutely certain that they could not. And the reason for that was that I had seen them on a number of occasions personally, face to face; I had been to abattoirs; I had seen the audits; I had talked to the CMO, as you know. Above all, I had seen them and I had formed a very, very, very clear view that there were no circumstances in which I would base public safety on 100 per cent compliance in the abattoirs.

It was all right to accept a degree of default when you believed that the thing was not transmissible, but it was not all right to accept default when you came to believe that it was transmissible. And there was no prospect of my ever accepting a deboning regime voluntarily. It was forced on me for a few days by the Cabinet colleagues, but I would never have accepted it voluntarily because it would have meant putting my trust in people in whom I did not have that confidence. That is another point I think of importance.3342

7.494 Had Mr Hogg sought advice from MAFF and from the MLC on this point, he would have received confirmation that 100 per cent success in the removal of spinal cord had not yet been achieved. We note that between 1 November 1995 and 20 March 1996 there were 19 instances where State Veterinary Service (SVS) staff
found spinal cord had not been removed of which, in 11 cases, the health stamp had been applied. 3343

7.495 So far as the deboning option is concerned, SEAC stipulated in its advice that deboning would have to take place in licensed plants supervised by the MHS. As to this requirement, Mrs Browning commented to us:

Clearly there were limitations on the capacity of the industry to bone out all carcasses over 30 months of age, because it is a technique in the abattoir which has to be learned. It is a very specialised skill. Some abattoirs, a few, had this ability to do this. They had staff ready trained. There would have been a difficulty in terms of timing, in order to train sufficient staff. 3344

7.496 In his statement to us Mr Major remarked that the Cabinet agreed that the recommendations of SEAC should be accepted in full, although the detailed implementation would inevitably take some time. 3345

7.497 It does not seem to us that the Cabinet had the time or the information fully to appreciate the practical implications of the deboning recommendation.

7.498 Mr Major commented in his statement, with hindsight, that had the matter been raised with him earlier, SEAC might have been asked to consider the matter with greater urgency. Had SEAC been invited in February to advise on a contingency basis, it is at least possible that the practicalities of 100 per cent enforcement of the SBO ban and of deboning in licensed premises under MHS supervision might have been explored before 20 March. Mr Hogg’s personal reaction that de-boning was not a viable option might then have been supported by data. It might even have been shared by SEAC.

The issue of public confidence

7.499 We have no doubt that the primary consideration of the Government, when facing the crisis, was to ensure that any measures necessary to protect public health were put in place. They had, however, a powerful, and legitimate, secondary consideration. They wanted to mitigate, insofar as possible, the effect that the SEAC announcement would have on the beef market. To this end, considerable thought was given as to what should be said to the public. The Cabinet did not, however, consider whether it might be desirable to take more drastic action than that recommended by SEAC in the interests of the beef market. The reason that the policy that they selected proved unviable was because it was not acceptable to the market.

7.500 Mrs Browning explained the position to us as follows:

The overwhelming reason why the scheme was not put into practice and the 30 month slaughter scheme was implemented was because within 24 hours of the announcement on 20th March the retail trade, mainly the large supermarkets, made it absolutely clear that they were not going to sell meat over the age of 30 months. That was a view endorsed quite vocally for
example by the leader of the NFU. It became quite apparent that in order to maintain public confidence post 20th March in British beef, that the decision by the supermarkets to say they would not sell it was instrumental in maintaining confidence in British beef. I have to say they were absolutely right to do so. It is to their credit that they pressed for that decision. However difficult the crisis was for the farming industry post 20th March, that action and that position did help to maintain confidence in British beef and allow the market to recover, as it has now recovered.3346

7.501 In his statement Mr Major said this of the decision to abandon deboning and introduce the 30 month scheme:

Subsequently the Government did take further steps, but these were justified by the need to restore public confidence in the beef industry which had been affected severely by the media response to the announcement. We did, of course, anticipate the possibility of a highly adverse public reaction, but in Government decision making cannot be driven by concerns which appear to have no solid foundation: by contrast, the steps that we have agreed upon were firmly founded on the scientific advice we received.3347

7.502 We have some difficulty with the logic of this part of Mr Major’s evidence. It seems to us that the speed with which the Cabinet had to act precluded any informed consideration as to the effect that the alternative options were likely to have on the market. For this reason we make no criticism of the failure to take this into account. Had time permitted, however, it seems to us that the requirements of market confidence should have received careful consideration and been taken into account when policy was formulated.

7.503 We observe that this is a matter that received some embryonic consideration. On 15 March, Mr John Cowan, the Head of Beef Division, at the request of his superior, Mr Geoffrey Hollis, Head of Livestock Products Group, provided costings for two scenarios. One was that it proved necessary to take out of the human food chain animals over 2½ years of age, essentially cull cows. After advising on the very considerable costs that this would involve, he concluded with the following observations:

In addition to the direct costs of removing cull cows and adult bulls from the food chain, one has also to consider the likely consumer reaction. It is inconceivable that a ban on cow beef will not adversely affect consumption of all beef. That effect will be catastrophic unless we are in possession of convincing, indeed compelling, scientific arguments for taking such a draconian step only in relation to animals above a certain age. We should also have to face the argument that banning the consumption of muscle (which has never shown evidence of being susceptible to BSE infectivity) casts doubt:

a) on the measures we have in place currently;

b) on the safety of all beef muscle; and

3346 T130 pp. 23–4
3347 S400 Major para. 101
c) perhaps most worrying, the safety of the most important cow product, milk.\textsuperscript{3348}

7.504 A few days later he produced a note on the implications of a severe collapse of the beef market. This incorporated part of his paper on the effects of a ban on the sale of beef derived from animals aged over 30 months. He appears by this time to have had further thoughts on the effect that such a ban would have on the market, for he concluded his note:

The industry might, however, see some attraction in a voluntary ban on the sale of cow-beef, provided that the market for it could be supported through some form of intervention or compensation. Those slaughterhouses which supply the major supermarkets would undoubtedly be in a better position to do so if they could guarantee that they were not slaughtering cows. It would not be difficult for the MHS to enforce such guarantees, and they might serve to protect the market for steer beef from the long-term effects of this scare.\textsuperscript{3349}

On 18 March this note was forwarded by Mr Packer to Mr Hogg.\textsuperscript{3350}

7.505 At the Ministers’ meeting on the following day Mr Hogg is recorded as saying

. . . that he believed that the panic which would ensue from any statement would destroy the beef industry. He believed it might be possible to save it if a firebreak could be erected and he had offered the best advice he could. He commented that the difficulty was that we knew that SBO controls were not wholly adequate and in the changed circumstances of the new information this made the Government’s position untenable.\textsuperscript{3351}

7.506 This indicates that one consideration that Mr Hogg had in mind when urging the 30 month scheme was that this might have a beneficial effect on the market.

7.507 Having regard to the enormous cost of the 30 month scheme, it is not realistic to suggest that the Government would have adopted it simply on the basis of speculation that it might be beneficial to the market. We question whether, had time allowed, confidential soundings could not have been made which would have brought home to the Government that the de-boning option would not be acceptable to the market. In this context we have in mind evidence from Mr Hogg (see paragraph 7.383) that suggests that he had excellent contacts with some in the industry:

. . . I used to see Tom Viner and people like that – he was the Chief Executive of Sainsbury’s, as you may remember – and others, we used to dine together sometimes and lunch together sometimes, not very frequently, and they used to come up to the office. I was absolutely delighted when the NFU and Sainsbury’s, Tom Viner in particular and others, came to see me in my office after the Cabinet colleagues had rejected my policy, and pressed me to do exactly what I wanted to do. An enormous smile came across my face, and I

\textsuperscript{3348} YB96/3.15/6.3
\textsuperscript{3349} YB96/3.18/19.7
\textsuperscript{3350} YB96/3.18/19.1
\textsuperscript{3351} YB96/3.18/7.3
told them how sensible and wise they were. But I do not actually remember talking to them in great length about the 30 months scheme beforehand. I think I was a bit surprised actually that they were pressing me to do exactly what I wanted to do.3352

7.508 With hindsight it is clear that deboning was not a viable option and that Mr Hogg was right to opt for the 30 month scheme. His reaction to de-boning reflected that of the supermarkets and their customers. Had contingency planning begun in February and proper consideration been given to the various options, we think it possible that the Government would have opted for the 30 month scheme in the first place, rather than for a de-boning scheme which could not be implemented in the short term and which was perceived as an inadequate response by the NFU, the meat industry and the consumer.

7.509 Mr Hogg made the point that his policy had included a prohibition on the export of beef and beef products that did not comply with the 30 month rule. He went so far as to suggest to us that if this had been adopted in the first place the European beef ban would not have been imposed.3353 We do not find that suggestion realistic. It does, however, lead us to a more fundamental observation in relation to contingency planning.

7.510 We have observed elsewhere that throughout the period with which we are concerned public pronouncements tended to convey the impression that BSE was not transmissible to humans. While most of those making the statements were aware of the possibility that humans might have been infected before precautionary measures were introduced, this matter was not put before the public. Public pronouncements did not lay the ground for the possible contingency that, in due course, BSE might be shown to have been transmitted to humans. Had this message been conveyed it might have proved easier to persuade the public that the early cases of vCJD did not cast doubt on the safety of the beef that was being sold in 1996.

The position of children

7.511 We have identified one other area where contingency planning might have proved beneficial. The young cases of vCJD raise the obvious question of whether children might have a particular susceptibility to infection with BSE. That question had been raised but not answered when Mr Dorrell made his statement to the House on 20 March. Following Sir Kenneth Calman’s statement, Mr Dorrell was constrained to say that parents would be concerned about implications for their children and that he had asked SEAC to provide specific advice on that issue following its next meeting.3354 This statement must have alarmed many parents. SEAC subsequently advised that there was no reason to believe that children were particularly susceptible. Had that advice been obtained before 20 March parents could have been reassured rather than alarmed.

3352 T137 p. 32
3353 T137 pp. 38–9, 55
3354 YB96/3.20/46.4