

1 Thursday, 1st June 2017

2 (10.00 am)

3 LADY SMITH: Good morning. This is the stage in the Inquiry
4 when we move to the taking of evidence.

5 Mr MacAulay, how do we proceed?

6 MR MacAULAY: My Lady the first witness I would like to call
7 is Professor Kenneth McKenzie Norrie.

8 LADY SMITH: Thank you.

9 PROFESSOR KENNETH MCKENZIE NORRIE (affirmed)

10 LADY SMITH: Good morning, Professor Norrie. Do sit down
11 and make yourself comfortable.

12 When you are ready Mr MacAulay, thank you.

13 Questions from MR MacAULAY

14 MR MacAULAY: Are you Kenneth McKenzie Norrie?

15 A. I am.

16 Q. What position to you hold at present, Professor Norrie?

17 A. I am professor of law at Strathclyde University.

18 Q. Perhaps I could take you to your CV and we will put this
19 on the screen in front of you and it is to be found at
20 INQ.001.001.0874.

21 Perhaps turning to the next page, 0875 -- and can
22 I say, this is the first test of this equipment,
23 Professor Norrie, so you are sort of a guinea pig for
24 this.

25 I think on that page you begin by setting out your

1 academic qualifications and we see that, for example,
2 you got a PhD from Aberdeen University in 1988.

3 A. Yes.

4 Q. Moving on, you set out your professional history, the
5 various positions you held. Perhaps we can move down
6 the page. You also set out your visiting appointments
7 and, below that, some governmental positions I think
8 that you held; is that correct?

9 A. They are all correct, yes.

10 Q. Again, I don't know if it is possible to get the full
11 page on the screen or not? No, it is not.

12 But we see at the bottom, for example, in March to
13 July 2010, at the very bottom of the screen, that you
14 were an adviser to the Education, Culture and Life-long
15 Learning Committee of the Scottish Government on
16 Children's Hearings?

17 A. Yes, that is correct.

18 Q. Moving on to the next page, 0876, you set out your
19 external positions and honours. Moving on then to the
20 next page 0877, do you set out there the books that you
21 have been responsible for publishing?

22 A. Yes, I do.

23 Q. These are the original editions, although some of them
24 have one into a second edition?

25 A. Yes.

1 Q. For example, we looked at -- we see that your interests
2 have ranged from trusts to family law.

3 A. Yes.

4 Q. In particular, we see that you were the author, along
5 with Sheriff Wilkinson, of "Parent and child" and that
6 is in the second edition, is it?

7 A. Yes, third edition.

8 Q. Moving down the list, can we see that one of the
9 publications that you are responsible for is one with
10 the title "100 Cases That Every Scots Law Student Needs
11 to Know"?

12 A. Yes.

13 Q. Can I take it that you would excuse from that
14 instruction legal practitioners or would you not?

15 A. That's one of the books I'm most proud of, even though
16 it doesn't count for any university purpose. It sets
17 out important legal cases in a friendly manner. It is
18 designed to get students interested in the judicial
19 proceedings.

20 LADY SMITH: Yes, Professor Norrie, when I saw that on your
21 CV I wished it had been around when I was a student!
22 Too late for us, I think.

23 MR MacAULAY: But again we see that your interests are -- in
24 particular in family law -- covered by the other
25 textbooks that we set out on that page. On the next

1 page, I think, of your CV you set out the subsequent
2 editions of these works.

3 Then we have quite a number of pages dealing with
4 articles that you have written, again ranging from
5 different subjects such as medical negligence,
6 jurisdiction, family law and so on.

7 A. I probably started out as a medical lawyer, but since
8 moving to Strathclyde it has been primarily family law
9 that I work in.

10 Q. I think your PhD was in medical law.

11 A. Yes, it was.

12 Q. Your most recent then publication, it is at page 0885 --
13 so far we have a blank. (Pause)

14 I will just read this out. It is 2016 and it is
15 an article "Appellant Deference in Scottish Child
16 Protection Cases (2016)".

17 A. Yes.

18 Q. Anything more recent than that or is that the most
19 recent?

20 A. Something appeared, I think, last week in the Child and
21 Family Law Quarterly on adoption orders and surrogacy
22 orders.

23 Q. Finally, if you turn to page 0886, for present purposes
24 you set out chapters in books that you have some
25 responsibility for.

1 A. Yes.

2 Q. So far as the Inquiry is concerned, professor, was your
3 brief to provide a report describing the legislative and
4 regulatory framework governing children in care in
5 Scotland from about 1900 to date?

6 A. That is correct, yes.

7 Q. Could I just put your report on the screen. That is at
8 INQ.001.001.0001. I think you have a hard copy in front
9 of you.

10 A. I do.

11 Q. As I said, Professor Norrie, you are the -- is it on the
12 screen? (Pause)

13 Do we all have it on the screen? (Pause)

14 Does your Ladyship have it?

15 LADY SMITH: No. I have a hard copy but nothing on screen.

16 Just a moment. If we wait a couple of minutes, we are
17 hopeful that it is going to be feeding through and
18 coming up, are we?

19 It may be in the meantime you can carry on with some
20 preliminary questions Mr MacAulay.

21 MR MacAULAY: Yes. If we look at the hard copy, professor,
22 you are covering, I think, four different points in time
23 when you are looking at this topic.

24 A. Yes.

25 Q. Can you just explain your thinking behind that?

1 A. Well, over the past hundred years or so there have been
2 a number of very significant pieces of primary
3 legislation which seem to be natural sort of changes in
4 policy tack. So the way I divided up the process was
5 to, first of all, look at the period before 1948 --
6 that's focusing on the 1948 Act, the Children Act of
7 1948. So the first period was before then.

8 Then, the second period I was examining was the
9 period between 1948 to 1968, referencing of course the
10 Social Work (Scotland) Act of 1968.

11 The third period, 1968 to 1995, obviously, the
12 Children (Scotland) Act (1995) and the fourth period was
13 after 1995.

14 Q. So far as today is concerned, we, I think, have parts 1
15 and 2 of that piece of work --

16 A. Yes.

17 Q. -- from what you call the beginnings up to 1968?

18 A. That is right.

19 Q. 1968 was an important point was it not because of the
20 Social Work (Scotland) Act?

21 A. The Social Work (Scotland) Act was really a start of
22 a new chapter in child protection in law and child care
23 law in Scotland, yes.

24 Q. So far as parts 1 and 2, taking us up to 1968, are
25 concerned, I think you want to make the point these are

1 still in draft because there may be changes as a result
2 of the work you will be doing as you are going on?

3 A. In a sense these time periods are artificial because the
4 breaks weren't complete breaks. There were overlaps,
5 a lot of the subsidiary legislation, for example, was
6 changed at different periods of time. So to do the
7 work, I had been doing it effectively chronologically
8 but of course as you examine the newer material you
9 sometimes realise the implications of some of the
10 earlier material.

11 So to help the Inquiry I have produced -- as I have
12 more or less finished the work of each part, I have sent
13 a draft with the proviso that I might change bits and
14 pieces of it later. Not the factual details, I don't
15 suppose -- unless I find new factual details -- and then
16 once I have done all four I will revise the whole thing,
17 knit it all together and present a final report.

18 Q. I think we are looking to that to the second part of
19 this phase 1 of the Inquiry later on in the year?

20 A. Yes, the timescale I'm currently working on is to get
21 part 3, that's 1968 to 1995 by the end of June. Then,
22 the final part October-ish and then the sort of melded
23 together whole very shortly thereafter.

24 Q. If we look then to the part 1, the beginnings to 1948,
25 we now have that on the screen, but I think you have the

1 hard copy of your index to that part in front of you,
2 and you have divided that also into three or four
3 particular sections.

4 A. Yes.

5 Q. Can you explain your thinking there?

6 A. Well, the period before 1948 was -- there was a number
7 of substantial changes and it was actually quite
8 difficult to know when to start because in a sense the
9 Children Act (1908) would be the appropriate start
10 because that was still -- most of that was still in
11 force until 1937. But you can really only understand
12 the 1908 Act by understanding its background and how we
13 got to the 1908 Act. So I actually went a wee bit
14 before that. So the first section of this first part of
15 the report deals with the Prevention of Cruelty to
16 Children acts in the late Victorian period.

17 Then, the second section from the Children Act
18 (1908) to the Children and Young Persons (Scotland) Act
19 (1932), and then from 1932 to 1948.

20 Q. 1932, was that in itself something of a landmark?

21 A. The 1932 Act tends to be a wee bit forgotten nowadays
22 because it was in a sense overtaken by the Children and
23 Young Persons (Scotland) Act (1937) but in fact the 1932
24 Act was the one that allowed a number of changes in
25 direction. It amended the 1908 Act. The 1937 Act

1 didn't actually change the law, even though that's the
2 one we remember today and bits of it are still in force
3 today, but actually 1937 was a consolidating piece of
4 legislation, consolidating the rules in 1932 and 1908
5 Act. But 1932 was a change in direction to some extent.

6 Q. Then we come to 1948, which was your other landmark
7 point. Was the 1948 Children and Young Persons
8 (Scotland) Act an important piece of legislation?

9 A. The Children Act (1948) was primarily an Act that placed
10 the local authority at the centre of child care and
11 protection in Scotland. It was a UK piece of
12 legislation, but one of the major purposes of the 1948
13 Act was to place the local authority at the centre of
14 child protection.

15 It imposed, for example, a duty for the very first
16 time on local authorities to receive children into care.
17 It gave them the power to assume parental rights and
18 responsibilities, which they had never had before. So
19 the 1948 Act was very significant in what it did in
20 terms of local authority duties.

21 Q. Can we then look at the period before 1908, the 1908
22 Act, because I think you say it's important to look at
23 the context. In particular, can I ask you about the
24 Poor Law and the development of the Poor Law in the 19th
25 century. Can you explain how that's relevant?

1 A. The Poor Law of course had been in operation effectively
2 since the reformation in 1560 and it was primarily
3 operated by the Church of Scotland. The Poor Law
4 Amendment Act (1948) transferred responsibility from the
5 church itself to parochial boards which more or less
6 reflected the parish structure of the Church of
7 Scotland. The Poor Law authorities were -- each
8 parochial board was subject to a general board with
9 supervision based in Edinburgh which had responsibility
10 for the whole of the country.

11 In terms of how they dealt with children, the
12 Poor Law in Scotland was of course different from the
13 Poor Law in England. It was rather more restricted. It
14 really only dealt with or provided relief for people who
15 were unable -- physically and mentally unable to earn
16 their own living.

17 That of course brought in their children. The
18 practice of the parochial boards, at least from the 1845
19 period, the practice developed very early on of the
20 Poor Law authorities boarding out children rather than
21 providing what was called "indoor relief", in other
22 words debt relief in poor houses, and they would board
23 out the children with respectable families. They had no
24 statutory authority to do so throughout the 19th century
25 but they didn't actually get statutory authority until

1 1934. But the practice had developed that this was the
2 way that children tended to be accommodated under the
3 Poor Law. Of course their parents might well be
4 accommodated in poor houses so families were separated.

5 LADY SMITH: Professor Norrie, this may be a completely
6 different subject and I don't want to particularly
7 enlarge on it, but briefly, how were the parochial
8 boards formed? Who went onto them? How did they
9 operate? Do you know?

10 A. Nearly always it was the local minister because even
11 though responsibility transferred from the Church of
12 Scotland in 1845, there wasn't -- you know, in practice
13 it was ... the institutions had existed for centuries
14 beforehand and the institutions might well have changed
15 their name and eventually their composition but it was
16 much the same as before.

17 So it was nearly always the minister and local
18 worthy -- I don't know how the actual appointments
19 process operated.

20 LADY SMITH: A general idea of people who were trusted by
21 the local community?

22 A. Local worthies I would have thought.

23 MR MacAULAY: The point you make, even from this point of
24 time in Scotland, is that boarding out was the approach
25 that was being taken by these authorities?

- 1 A. Yes, very much. For children.
- 2 Q. For children?
- 3 A. Yes.
- 4 Q. I think we know that over the last hundred years or so
5 there have been different changes in local government
6 structures which I think causes a little bit of
7 confusion when we are looking at the legislation as to
8 exactly who was being identified. For example,
9 education authorities were given responsibilities when
10 they seemed to have a status that was different from
11 what they have today.
- 12 A. Yes.
- 13 Q. But in relation to the Poor Law authorities and what one
14 might loosely call local government, were they quite
15 separate at least up until a point in time?
- 16 A. The Poor Law authorities were completely separate from
17 the local authorities in town and county councils,
18 borough councils, things like that.
- 19 Q. When you mentioned the 1934 Poor Law Act, you are
20 looking there at Poor Law authorities?
- 21 A. Yes. The Poor Law itself was abolished with the
22 National Assistance Act, which I think was 1949.
- 23 Q. I think your report says 1948.
- 24 A. Yes.
- 25 Q. The 1934 Act that you mentioned then did provide

1 statutory authority --

2 A. Yes.

3 Q. -- for boarding out by Poor Law authorities?

4 A. That is correct, yes.

5 Q. Can I now ask you, again by way of background, to tell
6 us a little bit about reformatory and industrial
7 schools. You look at that at page 0004 of your report.
8 Because these are -- these were schools that at least
9 existed for quite a number of years. Can you just
10 explain how they operated?

11 A. Yes. Both reformatory and industrial schools started
12 out life as voluntary organisations that had been set up
13 usually by philanthropic individuals, church groups that
14 sort of thing. They were technically different in that
15 a reformatory home was for children who had committed
16 offences. The hope and expectation was that, if it is
17 a child, the child can be reformed and diverted from
18 falling into a life of criminality.

19 By the mid-19th century the Scottish courts, in a UK
20 wide movements, the courts in England as well, had
21 developed the practice of giving convicted children the
22 alternative: you can either be punished, once you are
23 convicted, you can either be punished normally or you
24 can be sent to reformatory school instead of a prison
25 with the hope of being reformed.

1 Industrial schools were different. They were really
2 for the indigent, for children who would not be educated
3 otherwise because the parent couldn't afford this.
4 This, of course, was before compulsory and, importantly,
5 free education, though there was obviously lots of
6 parish schools, but you still had to pay for them. So
7 indigent and in particular travelling children who the
8 State thought there is just no possible -- or charitable
9 organisations thought there was no possibility of these
10 children being educated otherwise.

11 So industrial schools were set up to provide
12 a useful training for children. The thought behind both
13 industrial and reformatory schools was actually the
14 same. The thought behind it is that children are
15 affected by their background, by their upbringing. If
16 you are a children of criminals, you are going to become
17 criminals; if you are a child of the poor, you are going
18 to remain poor. The idea was actually to break the
19 cycle, to develop children into law abiding and
20 productive members of society.

21 1866 is an important year because in that year there
22 were two pieces of legislation passed requiring
23 certification of both reformatory and industrial
24 schools. It also -- the Acts also gave the courts the
25 power to send children compulsorily to -- rather than

1 just charitable organisations taking them in, the court
2 suddenly had the power to send children to these
3 schools.

4 While technically they were different, there were
5 overlaps. As I said the philosophy was much the same.
6 Children sometimes who one would have thought would be
7 appropriate for one school found themselves in the other
8 school. Throughout the literature and the parliamentary
9 debates of the time, you see people questioning whether
10 it is sensible to have these two groups of children
11 placed in the same institution. So there's overlap both
12 for the constituency and actually the underlying
13 philosophy, this breaking of the cycle.

14 Q. As we will see, the 1932 Act, as you mentioned earlier,
15 swept this away.

16 A. Yes. The 1908 Act was important too because that
17 brought the regulatory structures together. Previously
18 you had industrial school legislation and reformatory
19 schools legislation. In 1908 the legislation was
20 brought but they were still technically different but
21 the regulatory structures were harmonised in the 1908
22 Act and then in 1932 the formal distinction was
23 abolished completely.

24 Q. We will look at 1908 Act shortly.

25 Just to look at what you say on pages 0005 and 0006

1 of your report, that although they were different,
2 nevertheless both types of school were subject to
3 government inspection?

4 A. Yes.

5 Q. So there was a regulatory regime even at that time in
6 1866?

7 A. Yes, the 1866 Acts required certification of these
8 schools and also required, I think, annual inspection of
9 the schools.

10 Q. Just by way of getting some feel for how many there were
11 and how many children were resident in these schools, if
12 you turn to the bottom of page 0005 of your report, you
13 tell us that by 1896 it was reported there were 5,500
14 children kept as "inmates" in 43 such institutions in
15 Scotland.

16 A. Yes, that is a report from a departmental committee, the
17 government committee.

18 Q. Can I then move on to another topic, because this is the
19 way it comes out in your report. On page 0007 of the
20 report you address the Prevention of Cruelty To and
21 Prevention of Children Act 1889 and subsequent similar
22 legislation. Can you give us an understanding of how
23 that's important in this context?

24 A. The first importance, I think, of the 1889 Act is that
25 a created a new crime, which was basically ill-treatment

1 of children, parental ill-treatment of children.
2 Ill-treatment, neglect, exposing children. It made it
3 a crime. That crime was then translated into the 1908
4 Act, section 12 of the 1908 Act, and then again repeated
5 in the Children and the Young Persons (Scotland) Act
6 1937, section 12. That, of course, is actually still in
7 force today as the main crime of ill-treatment and
8 neglect of children. It is traced back directly and the
9 words are not much altered from the crime that was
10 created in 1889.

11 The second importance of the 1889 Act however, and
12 probably more important for the purposes of this
13 Inquiry, is that the 1889 Act gave to the court the
14 power to remove child victims from their parents. If
15 a parent had been convicted of the offence of exposure
16 or neglect or ill-treatment of their children, that
17 child could be removed.

18 Q. And put where?

19 A. And put to -- put into the charge of a relative of the
20 child or other fit person. That was, I think, the
21 language used in the 1889 Act: to a relative or other
22 fit person.

23 Q. Just looking at the "fit person" part of that; could
24 that be an institution, for example?

25 A. Not in 1889. But I think it was the Prevention of

1 Cruelty to Children Act (1904) that said voluntary
2 organisations of corporate bodies -- and I think they
3 had in mind local authorities -- were deemed to be fit
4 persons for the purposes of what then became known as
5 "fit person orders".

6 Q. But what you tell us I think on page 0008 of your
7 report, in the second main paragraph, that this approach
8 was essentially State-mandated fostering of children?

9 A. Yes. At the time, and for much of the 20th century, it
10 was called technically boarding out. In modern parlance
11 we would describe it as fostering.

12 Q. This is different to the boarding out that was being
13 carried out by the Poor Law authorities?

14 A. Yes, it was controlled. It was statutorily controlled
15 much more than the boarding out of the Poor Law
16 authorities, but I suppose it had the same effect.

17 Q. The same effect.

18 I think in the next number of pages in your report
19 you deal with the prevention of cruelty up, I think,
20 until the 1904 Act where you look at that on page 0012.
21 It is there you tell us that:

22 "Any society or body corporate established for the
23 reception of poor children would be a fit person under
24 the Act."

25 A. Yes, although of course sending a child to a corporate

1 body would never be the end of the story because
2 a corporate body is not a person, it is not a voluntary
3 organisation. They would then have to take a further
4 step of deciding where the child was physically to be
5 and they would board the child out with a responsible
6 person.

7 Q. Can we then come to the Children Act (1908) and you
8 begin looking at that Act at page 0013 of the report and
9 you tell us that it was a significant turning point in
10 the legislative history of child protection and juvenile
11 justice.

12 I think you also tell us in this report that this
13 Act lay the foundations for the modern welfare state; is
14 that correct? It is on page 0014, about halfway down.
15 I suppose you say what you say there:

16 "The 1980 Act may be seen as part of a series of
17 Acts ..."

18 You include in there then some other legislation
19 that:

20 "... both laid the foundations of the modern welfare
21 state and, at the same time, normalised the notion that
22 the State's obligations to protect citizens might also
23 involve significant interference in their lives."

24 A. Yes, this was the famous liberal government which
25 introduced old-age pensions and the like, free school

1 meals and juvenile justice within the Children Act
2 (1908). It was really the start of what we would call
3 today juvenile justice, that different rules should
4 apply when a child is criminally charged than when
5 an adult is charged.

6 Q. The first part of the Act you deal with is part 1 and
7 that is at 0015 of the report. You are looking there at
8 a process known as baby farming.

9 A. Yes.

10 Q. Can you tell us a little bit about that?

11 A. Yes, baby farming was a practice, heaven knows how old,
12 but by the 19th century people were beginning to realise
13 the dangers. Baby farming was effectively -- it was
14 a middle-class practice, people who could afford to pay
15 somebody else to bring up their children. You find it
16 in quite a lot of the great literature of the 19th
17 century in Dickens and in Jane Austin there is a baby
18 was farmed somewhere in Emma, I think her friend
19 Harriet.

20 Basically it was an illegitimate child, to put it
21 bluntly. The typical scenario would be an illegitimate
22 child born to somebody who could afford to bring up the
23 child but didn't want the social responsibilities. So
24 they would send the child away forever, pay somebody
25 else to look after that -- to bring up that child. Of

1 course there's huge, huge risks in that sort of practice
2 and so the legislation started to deal with it.

3 Q. Perhaps I can put the Act up on the screen and we can
4 take it from there. LEG.001.001.0312.

5 A. The first Act that dealt with baby farming -- there is
6 an Act called the Infant Life Protection Act (1872).
7 This is slightly before this one. If I could just give
8 the background.

9 An Act in 1872 required baby farmers, people who
10 received children for reward -- and reward was crucial
11 there -- who received children for reward, they had to
12 notify the local authority, that was all, as long as the
13 child was under one. That was the 1872 Act.

14 There was an Infant Life Protection Act of 1897 that
15 raised the age to the age of seven. The Children Act
16 (1908) in part 1 it is dealing with what was then called
17 "infant life protection". This is a UK statute which is
18 why we have the term infant rather than child.

19 LADY SMITH: Yes.

20 A. Infant life protection. What this Act did was to allow
21 local authorities to place limits on the number that any
22 house -- the number of children any household could
23 receive for a reward. It also required local
24 authorities to appoint child protection visitors.

25 MR MacAULAY: I will just come to that section in a moment,

1 but what we have on the screen is section 1(1) which
2 tells us that:

3 "Where a person undertakes for reward the nursing
4 and maintenance of one or more infants under the age of
5 seven ..."

6 So it is still seven. I think it moves to nine at
7 some point?

8 A. 1932 I think it moves to nine.

9 Q. But seven at this point:

10 " ... apart from their parents or having no parents,
11 he shall, within 48 hours from the reception of any such
12 infant, give notice in writing thereof to the local
13 authority."

14 So there is a notification process and I think you
15 mentioned that is a carry-on from the previous position?

16 A. Yes.

17 Q. If you look then at section 2(2), which is at page 0314.
18 This, I think, is what you are going to move on to. We
19 are looking at section 2(2) and can we see that, to put
20 it broadly, there was an inspection regime associated
21 with this process --

22 A. Yes.

23 Q. -- at least by 1908.

24 A. Yes, this was the point of the 1908 Act. There had been
25 a number of journalistic concerns that the existing law

1 wasn't providing sufficient -- just having notification
2 was not sufficient. What the 1908 Act did was to
3 require every local authority in the country to appoint
4 a child protection visitor who had to go and visit the
5 child periodically in order to satisfy themselves as to
6 the proper nursing and maintenance of the infants or to
7 give any necessary advice or directions as to the
8 nursing and maintenance.

9 Q. Perhaps while we have this piece of legislation to hand,
10 can I just take you to page 0317. Look at section 11
11 which deals with "exemptions". We are told that:

12 "The provisions of this part of this Act shall not
13 extend to ..."

14 If we read down, do we see towards the last three
15 lines:

16 "... for institutions established for the protection
17 and care of infants, and conducted in good faith for
18 religious or charitable purposes, or boarding schools at
19 which efficient elementary education is provided"?

20 A. Yes.

21 Q. Why the reference there to boarding schools as
22 an exemption?

23 A. Well once you raise the age to seven -- remember before
24 that the age was one -- once the age becomes seven you
25 potentially capture children at fee-paying boarding

1 schools. I suppose it was felt that that's not what
2 baby farming is about. A boarding school is not
3 a baby-farming institution; it is quite different. So
4 we have this provision that very explicitly excluded
5 boarding schools.

6 LADY SMITH: Professor Norrie, the circumstances of baby
7 farming seemed to have been such that the law didn't
8 address the issue of whether parental responsibility or
9 rights shifted away from the natural parents; is that
10 right?

11 A. That's absolutely correct. That was one of the
12 vulnerabilities of children who were being brought up
13 for reward effectively by strangers. The law did not --
14 there was no mechanism to shift parental
15 responsibilities. What today we would call parental
16 responsibilities, parental rights to -- so these were
17 children being brought up by people who had no power to
18 consent to medical treatment or anything like that. It
19 simply wasn't the consent --

20 LADY SMITH: Nor any statutory duty of providing
21 financially, for instance, alimentering the children as we
22 say in Scots law, as the parents would have. The best
23 they might say to the logical authority officer is, I am
24 doing my best with what I have but the parents don't
25 give enough money, and there would be nothing the local

1 authority could do about that.

2 A. That is right.

3 LADY SMITH: The legal thinking, the political thinking was
4 probably quite unsophisticated at that stage but was
5 starting to try and do something to have an outsider
6 look at how the child was getting on. Is that really
7 what it amounted to?

8 A. I think that's fair. Clearly these children were in
9 a very vulnerable position in all sorts of ways. There
10 were attempts in the earlier Acts to involve the local
11 authority. The real teeth came with the 1908 Act to
12 allow a child protection visitor to give advice.

13 LADY SMITH: Whatever that might mean. And with no teeth --

14 A. There was another set of teeth because the local
15 authority could apply to the court under the 1908 Act to
16 remove the child.

17 MR MacAULAY: Can I then move back and just look again at
18 the reformatory and industrial schools because that is
19 also dealt with by the 1908 Act and take you perhaps --
20 perhaps we could put on the screen page 0332 of the Act.
21 While we are waiting for this to come up, I think you
22 said earlier that this Act did at least keep the broad
23 distinction alive between reformatory and industrial
24 schools.

25 A. Yes.

1 Q. Section 44, that's now on the screen, does that provide
2 us with the definitions provided by the Act as to what
3 these different institutions were? For example, the
4 expression "reformatory school" means:

5 "A school for the industrial training of youthful
6 offenders in which youthful offenders are lodged,
7 clothed and fed as well as taught."

8 The expression "industrial school" means:

9 "A school for the industrial training of children in
10 which children are lodged, clothed and fed, as well as
11 taught."

12 I think you said before there was a blurring of the
13 two institutions --

14 A. Yes.

15 Q. -- but they are nonetheless labelled differently?

16 A. They are labelled differently but you will see the
17 purposes are identical. The people resident in this
18 school are described in one case as "youthful offenders"
19 and in the other case as "children", but by 1908 that is
20 the only difference. Their purpose and their aim -- and
21 their statutory obligation -- to lodge, clothe, feed and
22 teach the children became exactly the same.

23 Q. A child at this time, I think, under this Act -- we
24 needn't look at the section, section 131 -- was defined
25 as someone under the age of 14.

1 A. Yes.

2 Q. And a young person someone under the age of 16?

3 A. Yes. 14 being, I think, the school-leaving age by then.

4 Q. Yes. Coming to the regulation of these two schools,
5 I think you said earlier in this Act the regulatory
6 regime was the same for both types of school?

7 A. Yes.

8 Q. If we look at section 45, which is on the same page, do
9 we see that this section is dealing with
10 certification -- well, this part is dealing with
11 "certification and inspection" and we are told at 45(1):

12 "the Secretary of State may, upon the application of
13 managers of any reformatory or industrial school, direct
14 the chief Inspector of Reformatory and Industrial
15 Schools hereinafter mentioned to examine into the
16 condition and regulations of the school and its fitness
17 for the reception of youthful offenders ..."

18 So there was a regulatory regime that included
19 certification and inspection?

20 A. Yes.

21 Q. If we look at section 46 on the next page, we are told
22 at (1) that:

23 "The Secretary of State may appoint a chief
24 inspector ..."

25 For these schools and so on?

1 A. Yes.

2 Q. At (3) do we see that:

3 "Every certified school shall, at least once in
4 every year, be inspected ..."?

5 A. Yes.

6 Q. Even at this stage, in 1908, there was a clear regime in
7 place for a certification and inspection?

8 A. That is correct. These are schools and inspection of
9 schools, public schools at any rate, comes in at a very
10 early stage. I think the Education Acts will -- for
11 normal public schools will reflect similar things.

12 Q. So far as the general duty on the schools themselves is
13 concerned, if we look at page 0334 and at section 52, do
14 we see there that:

15 "... the managers ... shall be deemed to have
16 undertaken to teach, train, lodge, clothe and feed the
17 individual] during the whole period for which he is
18 liable to be detained in the school."

19 A. Yes.

20 Q. That was the general duty at that time?

21 A. Yes.

22 Q. The reasons why, as I think I said earlier, a child
23 would be sent to either an industrial school or
24 reformatory school are likely to be different, although
25 there was a blurring of that difference.

1 A. Yes.

2 Q. But the broad difference being someone who has committed
3 a criminal offence --

4 A. Yes.

5 Q. -- and perhaps a child who was found begging or
6 something of that sort?

7 A. Yes.

8 Q. Is that broadly speaking --

9 A. Yes, that's fair.

10 Q. I think it is also this Act that sets out some
11 provisions about juvenile offenders. Can you just give
12 us some background to that? What was this trying to do?

13 A. What it was trying to do was to give recognition,
14 I think, first and foremost that youthful offenders are
15 more likely to be amenable to reformation and to be
16 diverted away from a life of criminality.

17 That's a strong part of it. But if you read the
18 debates in the 1908 Act, I was actually quite surprised
19 to read in the 1908 parliamentary debates the extent of
20 which it was understood that children are different and
21 children need to be dealt with rather more carefully in
22 courts of law than -- you know, we have all read
23 literature from the 19th century in which children are
24 before magistrates and it is a horrible experience for
25 them.

1 That was recognised and they tried to give effect to
2 it in the 1908 Act. What they tried to do first and
3 foremost was to set up what were described -- was
4 described in the legislation as juvenile courts.

5 I think it is important to recognise that these were
6 not separate courts. Juvenile courts as such were
7 simply the normal criminal courts in Scotland, the
8 sheriff court, the borough court and the police court,
9 but they were dealing with children, children and young
10 persons, people under the age of 16, to which slightly
11 different processes of court procedure applied.

12 The physical location, for example, had to be
13 different because you didn't want children to be in
14 adult courts and waiting in waiting rooms and corridors
15 and associating with the criminals that are populating
16 the normal criminal courts. So they were separate.
17 Parents had to be involved. Parents had to attend. For
18 the first time under the 1908 Act parents were required
19 to attend while their children were being subject to the
20 criminal process. They were to be held in private.
21 I think that is a really, really important aspect of the
22 1908 Act. The press were permitted to attend but other
23 than that proceedings had to be in private.

24 So there were all these elements which together,
25 I think, allow us to say that the 1908 Act is really the

1 start of a concept of juvenile justice different from
2 the normal criminal process.

3 Q. If we look at the types of disposal that was available
4 then to the juvenile court. If you look at 0361 on the
5 same Act, in section 107, this is a section dealing with
6 a method of dealing with children and young persons
7 charged with offences.

8 A. Capital punishment was abolished for children under the
9 1908 Act; I can't remember where.

10 Q. Yes, it is section 103, but we needn't look at that.

11 So this is dealing with the different options that
12 were open to a court when a young person was charged
13 with any offence and the court is satisfied of his guilt
14 and we see a number of options, including probation as
15 an option. We see that at letter (c). At letter (d):

16 "By committing the offender to the care of
17 a relative or other fit person."

18 Then:

19 "By sending the offender to an industrial school; or
20 by sending the offender to a reformatory school; or by
21 ordering the offender to be whipped."

22 Then there is a mention of damages. There are
23 a number of options there?

24 A. Yes.

25 Q. Including, of course, essentially putting the child into

1 some form of care.

2 A. I think from my perspective the other really interesting
3 feature of the 1908 Act is that these options are
4 virtually the same as the options for what today we
5 would call care and protection cases. These two
6 categories of children, which previously represented
7 industrial schools and reformatory schools, are being
8 very much brought together. We tend to think that's
9 a much more modern thing in Scotland from the Kilbrandon
10 report, but actually you find it as early as in the 1908
11 Act.

12 LADY SMITH: Was there any separate regulation as to the
13 nature of whipping that could be imposed on a child?

14 A. Whipping was only for offenders.

15 LADY SMITH: Then was it controlled legislatively or was it
16 up to the discretion of the person who inflicted the
17 punishment?

18 A. I do not know of any legislative description of what had
19 to be used and how many whips and all that.

20 LADY SMITH: Perhaps the idea was that there was
21 a controlled mechanism in the Common Law where the
22 crossover would be between reasonable punishment, or
23 chastisement as we used to call it, and assault. Maybe
24 it was left to that, I suppose.

25 A. It survived into our legislation until just after the

1 Second War.

2 LADY SMITH: Thank you.

3 MR MacAULAY: Can I now then turn to the other piece of
4 legislation you mentioned earlier on and that is the
5 Children and Young Persons (Scotland) Act (1932).

6 A. Yes.

7 Q. If I can again put that Act on the screen; it is at
8 0450.

9 In your report, before we look at the Act itself, at
10 page 0023 and moving on from there, you tell us about
11 the lead up to this piece of legislation. Can you
12 summarise how it came about?

13 A. Yes. The government, in 1925, established a committee
14 under the chairmanship of a King's Counsel, Sir John
15 Morton. He produced his report in 1928, "Protection and
16 Training", which recommended that the provisions
17 relating to juvenile justice under the 1908 Act be
18 bolstered significantly.

19 His primary recommendation was that there would be
20 proper separate courts called juvenile courts. Rather
21 than the normal court that had to adopt different
22 processes, we should set up proper juvenile courts
23 staffed by magistrates who were trained and
24 knowledgeable in the needs of children. So it was quite
25 a forward-looking report.

1 Q. When you say "proper juvenile courts", also in separate
2 buildings from the --

3 A. Separate buildings with a separate magistrature.

4 Q. In relation to reformatory and industrial schools then,
5 was the plan now to do away with that distinction?

6 A. Yes. By the 1920s there was really no effective
7 distinction between industrial and reformatory schools;
8 they were simply called that. But the other thing
9 that -- it is either him or somebody else mentions --
10 schools had stopped calling themselves industrial
11 schools, such-and-such industrial school or
12 such-and-such reformatory school; they would be given
13 a geographical name, for example. I think the Scottish
14 Education Department also round about this time
15 recommended that the titles of reformatory and
16 industrial be dropped because it was serving really no
17 useful purpose and that was reflected in the 1932 Act
18 when it was passed.

19 Q. We will come to that in a moment.

20 If you turn to page 0028 of your report then,
21 professor, there, after the quote, I think you say that:

22 "With a surprising modernity, Stanley also described
23 the overall aim of the reforms as 'increased simplicity
24 to make the court process much more intelligible to the
25 young person' and, by being more intelligible, less

1 frightening."

2 So it was quite forward thinking?

3 A. I thought so. That was in the House of Commons, yes.

4 Q. The 1908 Act was not replaced by this Act?

5 A. No. The 1908 Act remained the principal Act after the
6 1932 Act, which amended the 1908 Act and also had its
7 own provision, but the principal Act remained the 1908
8 Act.

9 Q. And although we have a 1937 Act, which I think you
10 mentioned earlier and seems to be the one that is
11 identified in textbooks and so on, it was really simply
12 consolidating what had been before?

13 A. Yes.

14 Q. I think in this legislation a young person is now
15 defined differently; I think it is section 64. That's
16 on page 0499 of what's on the screen. I will just read
17 it out:

18 "For the purposes of this and the principal Act, the
19 expression 'young person' means a person who has
20 attained the age of 14 years and is under the age of
21 16 years."

22 So there is a change in the definition of a young
23 person from someone under 16 to under 14?

24 A. Yes.

25 Q. Part 1 of the Act that was on the screen a moment ago,

1 I think, deals with the juvenile court system and I will
2 come back to that because I want to see how the new
3 system of approved schools was dealt with. You deal
4 with that on page 0047 of your report and if I could
5 look at 47(8) of the Act. That is LEG.001.001.0478.

6 I just want to get the definitions from the
7 legislation. It is actually section 36 and I want to
8 look at and also at section 37. (Pause)

9 So in section 36 we are told:

10 "(1) In this Act the expression 'approved school'
11 means a school approved by the Scottish Education
12 Department in accordance with the provisions contained
13 in the first schedule ..."

14 We will look at the first schedule in a moment.
15 This is where the description "approved school" comes
16 from.

17 A. Yes.

18 Q. At 37(1) do we see that:

19 "This Act shall apply in relation to a school which,
20 at the commencement of this Act, is a certified
21 reformatory school or a certified industrial school as
22 if the certificate for the school were a certificate of
23 approval issued under this Act."

24 So there we see the end of the former distinction?

25 A. Yes, section 37(1) allows the schools that exist, that

1 are currently certified -- we accept that as approval.
2 In the future, schools that wanted to perform these
3 functions needed the approval of the Scottish Education
4 Department to do so and that's where the name "approved
5 schools" comes from.

6 Q. Looking then briefly to the schedule itself, that's at
7 page 0509 of what's on the screen. This is the first
8 schedule. I think I can take you to it while we are
9 waiting for it. It is dealing with the approval of
10 schools and that a process whereby, for example, the
11 manager of a school can seek certification of approval
12 of a particular school.

13 A. Yes.

14 Q. So this is, looking ahead, not for the schools that
15 existed before as reformatory or industrial schools, but
16 other schools?

17 A. Yes.

18 Q. Can we see while we have this schedule in front of us,
19 at page 0513 -- and I'm looking at paragraph 15(2) -- do
20 we see there that:

21 "The Scottish Education Department shall, through
22 their inspectors, review the progress made by persons
23 detained in approved schools with a view to ensuring
24 that they shall be placed out on licence as soon as they
25 are fit to be placed out"?

1 A. Yes.

2 Q. Again, the regulatory regime involves certification and
3 inspection?

4 A. Inspection and -- this is quite important, that
5 particular provision you identified, because it is not
6 just inspection of the school, but it is reviewing the
7 progress of each individual pupil therein, with
8 a view -- because the managers of the school had
9 an obligation to place out the child. In other words,
10 to release it, but to release the child to a fit person,
11 not necessarily, and probably not usually, back to the
12 parent but to some person, some fit person who would
13 provide a good role model for the child.

14 Q. I think you also deal with in your report -- in
15 page 0048 of your report, you make mention of what
16 I think you refer to as aftercare provisions, which are
17 set out and dealt with in this Act. These weren't new;
18 in fact, I think they appeared in the 1908 Act.

19 A. Yes.

20 Q. Can you just explain what the philosophy there was?

21 A. Well, I think the philosophy was to -- much of the
22 philosophy of child care was to -- particularly through
23 the boarding-out provisions -- and we see this very much
24 in the middle years of the 20th century -- was to create
25 a replacement family, to compensate the child, which

1 I think is a very telling phrase in the Clyde report,
2 which admittedly is a bit later -- to compensate the
3 child for a poor start in life.

4 So the legislation recognising that once a child has
5 been in institutional care or has been boarded out with
6 a fit person or whatever, they continue to need help
7 even once they reach the age of 16 and 17. Children who
8 are brought up by their parents continue to get help
9 after they are 16 and 17, so children who are being
10 effectively looked after by the State require that help
11 as well. This was recognised at a surprisingly early
12 period.

13 So the aftercare for children who had been in
14 approved schools and industrial and reformatory schools
15 beforehand, they would be supervised for some years
16 after their release by the managers and the managers of
17 the school had responsibility to provide advice and
18 sometimes even financial maintenance.

19 But the other very noticeable feature -- and it
20 appears throughout the legislation -- is help in finding
21 employment, which, if you think about it, is quite
22 a sensible type of aftercare for children. This is
23 going back to the whole early philosophy of the
24 industrial schools, which was to turn children who might
25 fall into a life of indolence into productive members of

1 society. So quite an important part of the aftercare
2 was assistance in finding employment.

3 Q. Looking to the care itself within the approved school,
4 I think we have provisions on that as well in this
5 schedule of the Act. So if we look at page 0514 where
6 we have paragraph 17, for example we see that:

7 "Subject as hereinafter provided, all rights and
8 powers exercisable by law by a parent shall as respects
9 any person under the care of the managers of an approved
10 school be vested in those managers ..."

11 That's quite an important provision.

12 A. Yes. This does what you said didn't happen, and rightly
13 said didn't happen, with the baby farming environment.
14 This is a statutory provision that vests parental
15 rights -- what they would call parental rights and
16 responsibilities in the managers of the home. So they
17 had all the responsibilities of care that a parent would
18 have, all the liabilities and duties.

19 Q. At (2) we are given some idea as to what the duties were
20 in relation to providing, for example, clothing,
21 maintenance and education to persons under their care.

22 A. "... and cause them to be visited, advised and
23 befriended and to give him assistance, including
24 financial assistance, in maintaining himself and finding
25 suitable employment."

1 So there's practical help as well as just advice.

2 Q. Can I then go back to the changes made to the juvenile
3 court system in part 1 of this legislation. You deal
4 with that in your report beginning at page 0029. That's
5 going back to where we were. You already told us that
6 the 1932 Act sought to ensure that the personnel of the
7 juvenile's court were suitably trained to deal with
8 children. You have also said that, I think, there
9 should be different court buildings from other courts.
10 In reality did that happen?

11 A. In reality it did not happen, no. This was pointed out
12 in the Kilbrandon report in 1964 that the aspirations
13 didn't really happen. As far as the different court
14 buildings, that never occurred because there just wasn't
15 the premises. So the best that happened was that
16 juvenile courts would sit at different times from adult
17 courts.

18 As far as the specially trained magistrates, it was
19 said in the Parliamentary debates under the 1932 Act
20 that there is simply -- in Scotland, unlike in England,
21 in Scotland there just wasn't a bank of magistrates to
22 set up these courts.

23 The hope was that gradually, in the fullness of
24 time, different areas of Scotland would be able to train
25 up sufficient magistrates in the specialities of child

1 law. The Kilbrandon report in 1964 points out by then
2 this had happened only in four areas, in four local
3 authority areas in Scotland.

4 You do say on page 0033 of your report that what was
5 being set out in this piece of legislation can be seen
6 as the blueprint for what Lord Kilbrandon recommended?

7 A. Yes, very much. What was aimed and hoped for was
8 a bench of magistrates, that had to include a woman and
9 there had to be three of them. They would be specially
10 trained in the needs of children and an awful lot that
11 was repeated in Kilbrandon and then given effect to
12 finally in the 1963 Act.

13 Q. Through the children's hearings?

14 A. Yes. Even the procedures that were set out in the
15 Juvenile Court Procedure Rules from, I think, 1933 would
16 be very familiar to anybody familiar with the children's
17 hearing system. The chairman of the panel of justices
18 had to explain to the child and the family what today we
19 would call the grounds -- the reasons why they had been
20 brought to court were. They were then asked whether
21 they agreed with these grounds or not. If they said no
22 then there was a trial of the facts.

23 Today of course it is a separate -- the trial of the
24 facts is separate, but the process is astoundingly
25 similar. It is the model that -- Kilbrandon didn't

1 invent something new; he gave effect, I think, to
2 aspirations that were already there.

3 Q. Looking then to the jurisdiction of the juvenile courts
4 and the potential outcomes, you cover these beginning at
5 page 35 of your report through to page 36. Can you just
6 explain what you are setting out there in relation to
7 jurisdiction and potential outcomes for children?

8 A. Yes. I actually found it quite difficult to -- being so
9 familiar with the children's hearing system, I found it
10 quite difficult to present this in language that was any
11 different from the current thing. But it seemed to me
12 that the jurisdiction of the juvenile court from the
13 1932 Act was that effectively you had an offence ground
14 in one section and then you had a number of what today
15 we would call care and protection grounds, such as child
16 or young person has no parent or guardian, is falling
17 into bad associations, exposed to moral danger, or is
18 beyond control. All of these appear in the children's
19 hearing system.

20 Children and young people who have been victims of
21 certain specified offences, usually sexual offences
22 against the child, and children of vagrants who are not
23 receiving efficient elementary education. Again today
24 a child not attending school regularly.

25 These were all the separate grounds. There was

1 an offence ground and a number of care and protection
2 grounds. They were all there in the 1932 Act which, if
3 they were shown to be established, gave the court
4 jurisdiction to impose one or more of the outcomes.

5 Q. If we are looking at the outcomes -- and we will go back
6 to the Act itself at page 0055 -- I'm looking at
7 page 0455. While we are waiting for that, I'm looking
8 towards the bottom of the page:

9 "Disposals included ordering him to be sent to an
10 approved school or commit him to the care of a fit
11 person."

12 A. Yes.

13 Q. We are beginning to see these are disposals that we have
14 seen before.

15 A. They are brought together.

16 Q. The fit person is, whether a relative or not, provided
17 the person is willing to undertake the care of him?

18 A. Yes.

19 Q. And they could also be placed under probation for
20 a period not exceeding 3 years was another disposal. So
21 a number of disposals open to the juvenile court.

22 We have looked, for example, at approved schools and
23 how they came into being under this Act and the
24 regulatory regime for them. But so far as the norm was
25 concerned, I think you tell us on page 0042 of the

1 report, that boarding out became the norm. Can you say
2 why that was?

3 A. Almost certainly it was for practical reasons. If
4 a child was committed to the care of a fit person, that
5 fit person being an education authority, the education
6 authority itself had to place the child somewhere. If
7 an approved school was either not suitable or not
8 available, then boarding out with a fit person, or what
9 today we would call a foster carer I suppose, would be
10 the option.

11 It is likely as well of course that boarding out was
12 a substantially cheaper option than any form of
13 institutional care.

14 Q. Here we are talking about boarding out being through the
15 State essentially?

16 A. Yes.

17 Q. But of course we will bear in mind also the boarding out
18 was also available through the Poor Law authorities. So
19 we had the two running in tangent (sic)?

20 A. Yes, and in a sense three because -- well, you have got
21 the Poor Law certainly separate. You have got the court
22 being able to commit the child to the care of a fit
23 person, which might be a named individual. Then you
24 have, of course, the managers of voluntary organisations
25 or the approved schools themselves who had the power to

1 board the children out, away from the school, with fit
2 persons.

3 Q. But we must remember that the Poor Law authorities, they
4 are not the State, they are not the local authorities.

5 A. They are not the local authorities, no.

6 Q. Can we look quickly at the Poor Law (Scotland) Act
7 (1934). You mentioned this in passing. This is at
8 2176. If you could turn to what is section 10 at
9 page 2182. Can we see -- there is a section there that
10 reads:

11 "A local authority may make arrangements for the
12 lodging, boarding or maintenance otherwise than in
13 a poor house of children under the age of sixteen years
14 who are orphans ..."

15 What do we take from this?

16 A. What that did was to give the Poor Law authorities the
17 statutory authority for the practice that they had
18 developed effectively a hundred years before that.

19 They had been in the practice of boarding children
20 out with suitable foster carers, but in fact they had no
21 statutory authority to do so. Section 10 puts it onto
22 a statutory basis. I don't know of any claim that --
23 any legal claim before that that they had done anything
24 contrary to the law, but it was clarified in section 10.

25 Q. There were, I think, regulations made under the 1932

1 Act -- and perhaps we could look at the Children and
2 Young Persons Care and Training Regulations (1933) to
3 see how they deal with matters such as regulation and
4 inspection. Perhaps if we could put on the board, it is
5 at 0634.

6 These regulations -- if we can get to page 0634. It
7 is LEG.001.001.0634. So can we see that these
8 regulations are described as the "care and training"
9 regulations and they are with regard to approved
10 schools. But do they also have provisions dealing with
11 boarding out?

12 A. Yes. These regulations are passed under the 1932 Act.
13 Part A deals with approved schools; part C deals with
14 rules and regulations for children who have been boarded
15 out. I can't remember what part B does.

16 Q. If we look at regulation 2, for example, can we see
17 that:

18 "The managers, or a committee of them, shall meet as
19 often as is required for the efficient management of the
20 school. They shall arrange for some of their number to
21 visit the school periodically and they shall maintain
22 an effective control over all expenditure."

23 A. Yes.

24 Q. And so on. Is there a degree of monitoring by the
25 managers themselves?

- 1 A. Yes, that is right.
- 2 Q. Who would the managers be if you are looking at approved
3 schools?
- 4 A. The managers would tend to be the often voluntary
5 organisation or religious body that ran the school --
6 that -- yes, that ran the school. The managers are not
7 the sort of headmaster and staff of the school; they are
8 the people of the organisation that runs the school and
9 maybe runs more than one.
- 10 Q. If we turn to page 0638, at regulation 24 do we see that
11 there are provisions there for inspection of the
12 schools?
- 13 A. Yes. As I said earlier, these are schools, so subject
14 to inspection by His or Her Majesty's Inspector of
15 Schools.
- 16 Q. Do we see in the previous regulation that they are quite
17 detailed provisions about records?
- 18 A. Yes, records of each child.
- 19 Q. Including, if you look at letter (d), a punishment book?
- 20 A. And there had to be a punishment book; the punishment
21 was set out in some detail.
- 22 Q. In relation to that, if you look at page 636, we have
23 rules there dealing with discipline and punishment.
- 24 A. Yes.
- 25 Q. Is that right?

1 A. Yes.

2 Q. 11 through to 14?

3 A. Yes, paragraph 11 sets out the types of punishment that
4 could be obtained. There was the possibility, of
5 course, of corporal punishment. But there was
6 aspirational limitations. For example, at paragraph 12:

7 "The type of punishment shall be determined not only
8 by the gravity of the offence but also the temperament
9 and physical condition of the offender."

10 That, I think, is quite interesting that it suggests
11 sometimes a medical officer of the school has to be
12 involved. If there's a feeling that you are going to be
13 corporally punishing a child who is physically weak, you
14 need the consent of the medical officer first.

15 Q. At paragraph 14 can we see that:

16 "If corporal punishment is considered necessary,
17 a light tawse only may be used; a cane and any form of
18 cuffing or striking are forbidden."

19 So there is clear instruction as to how punishment
20 was to be --

21 A. There is instruction, yes. I am not convinced anybody
22 would know what a light tawse was rather than anything
23 else.

24 Q. But at least one would know that it was not a cane or
25 cuffing or striking.

1 A. Yes. I think the other curious thing about this is that
2 it specifies clearly how many strokes and how many
3 strokes where and it also makes a distinction between
4 boys and girls: the boys can be struck on the hands or
5 posterior; girls can only be struck on the hand. Make
6 of that as you will.

7 Q. I think in other regulations we might see that girls
8 were exempted altogether from corporal punishment.

9 A. Yes, I think in remand homes girls couldn't be punished
10 at all.

11 Q. Just to see what should happen if corporal punishment is
12 inflicted, if you look at paragraph 18 on page 0637, at
13 18 can we see that:

14 "The headmaster or headmistress shall, without
15 delay, enter in the punishment book ... particulars of
16 all punishments ..."

17 A. Yes.

18 Q. It is quite detailed, the date, name, age and nature of
19 the offence, and so on and so forth?

20 A. Yes.

21 Q. There does appear to be a willingness to control
22 corporal punishment, even then in the 1930s.

23 A. Yes, to make not exactly public but to make it
24 examinable by inspectors because of course later on the
25 inspectors and a medical officer periodically has to

1 examine the punishment book, presumably to ensure that
2 punishment has not been excessive or has been
3 excessively given to a particular child.

4 Q. I think you said that although the regulations appear to
5 focus on approved schools, they also applied to boarding
6 out?

7 A. Later other parts of these regulations apply to boarding
8 out as well.

9 Q. If we turn to page 0059 of your report, I think you set
10 out there -- at 0059 and moving onwards -- a number of
11 the regulations that are specifically relevant to
12 boarding out.

13 A. Yes.

14 Q. In relation to controlling the persons to whom boarding
15 out -- the child was being sent, what was the position
16 in that regard?

17 A. The 1933 regulations were quite limited in ensuring that
18 appropriate people -- that fit people were fit. All it
19 did was to set out exclusions. If you fell into
20 a particular category you could not -- you were not
21 a fit person.

22 Q. Regulation 43 for example:

23 "Boarding out [was] not permitted with a person who
24 had been convicted of an offence that rendered them
25 unfit to be a foster parent ..."

1 That is the sort of exemption you are talking about?

2 A. That is right. People who lived in public houses were
3 not fit persons. Interestingly persons in receipt of
4 poor relief were not fit persons. I think this goes
5 back to the whole idea of breaking cycles. You don't
6 send a child who has been saved from a life of indigence
7 and put them into an indigent households. If the
8 household is in receipt of poor relief, they are not
9 a fit person to look after the child.

10 Another exclusion is any household where there is
11 "a lunatic or mentally defective person"; these are
12 technical terms at the time of course. That was not
13 a suitable place for a child.

14 Q. So far as monitoring the child is concerned, I think you
15 tell us at the bottom of page 0060, under reference to
16 rule 49 that:

17 "The medical officer shall visit boarded-out boys
18 and girls in their foster homes every six months ..."

19 A. Yes, that is right.

20 Q. There was that degree of supervision, if you like.

21 Then at 50 on page 0061 you say:

22 "The education authority to whose care boys and
23 girls are committed shall cause them to be visited
24 within one month of their being boarded out and
25 thereafter at least once in every three months."

1 A. Yes.

2 Q. So there were quite clear provisions as to inspection
3 and monitoring?

4 A. That's right. It is perhaps worth pointing out that
5 this applies only to children boarded out by the
6 education authority, so it does not, for example, at
7 this point, include children boarded out by the Poor Law
8 Authority. So we are just left --

9 Q. So we have this distinction still in place at this time?

10 A. Yes.

11 LADY SMITH: Mr MacAulay, would that be a convenient point
12 to break just now?

13 MR MacAULAY: Yes my Lady.

14 LADY SMITH: Professor Norrie, we will take a 15-minute or
15 so break at this point and resume -- that clock I think
16 is a little slow -- just after 11.40 am.

17 Thank you very much.

18 (11.30 am)

19 (A short break)

20 (11.45 am)

21 LADY SMITH: Before we return to Professor Norrie's
22 evidence, could I apologise to those of you who are
23 following the documents on screen. We know that the
24 system is not running in an ideal way. By next week we
25 hope it will be able to go straight to the particular

1 page that we want. It is all a bit frustrating but I am
2 sure you understand that however many trials you run in
3 advance, there's no test like the real thing and this is
4 the real thing.

5 However, we can all bear with it, I am sure, with
6 a degree of patience and understanding. We are doing
7 our best. Thank you.

8 Mr MacAulay, when you are ready.

9 MR MacAULAY: Can I now look at voluntary homes,
10 Professor Norrie. You start to look at these at
11 page 0062 of your report. Before I look at the 1932
12 Act, can I go back to the 1908 Act and that's at
13 LEG.001.001.0325 at page 0326 -- in fact, 0325 will do.
14 I want to get to section 25, which is on the bottom of
15 the page. Do we see here against the headnote
16 "Visitation of homes" that a provision tells us that:
17 "The Secretary of State may cause any institution
18 for the reception of poor children or young persons,
19 supported wholly or partly by voluntary contributions
20 and not liable to be inspected by or under the authority
21 of any government department, to be visited and
22 inspected from time to time by persons appointed by him
23 for the purpose ..."

24 So here we are looking at, are we, at private
25 church-run establishments dependent on voluntary

1 contributions?

2 A. Yes.

3 Q. I think these are described, subsequently at least, as
4 voluntary homes?

5 A. That is right.

6 Q. So there is, even in 1908, a degree of monitoring of
7 these establishments?

8 A. Yes.

9 Q. Then if we look at the 1932 Act, I think that Act
10 re-visits -- perhaps before I do that, you make a point
11 in your report of contrasting the inspection regime
12 envisaged for voluntary homes to that in place for
13 reformatory and industrial schools.

14 A. Yes.

15 Q. What's the point you make?

16 A. Well, I think the point I make is that, as we have
17 already seen this morning, the visitation regimes, even
18 in the 19th century, for industrial and reformatory
19 schools and then approved schools after 1932 were really
20 very detailed. The voluntary homes regimes really
21 didn't contain anything like that level of detail. The
22 inspection provisions, even under the 1932 Act and the
23 1908 Act, were not compulsory but within the discretion
24 of the Secretary of State.

25 Even when there was an inspection, which had to be

1 from time to time rather than at any set down periods,
2 the detail that we have earlier seen with other
3 institutions simply wasn't there.

4 Q. Let's look at the 1932 Act in this connection then. The
5 Act itself we find at LEG.001.001.0450 and the page
6 I want to go to is 0481.

7 I'm looking for 0481. While we are waiting for that
8 to come onto the screen, professor, this is part 3 of
9 the Act and that part of the Act is dealing with
10 voluntary homes.

11 A. Yes.

12 Q. Do we see, as we have it now on the screen, in
13 section 40(1) that there is a notification process, the
14 duty being on the person in charge of the institution to
15 submit particulars?

16 A. Yes, that is right.

17 Q. To the Secretary of State?

18 A. That is correct.

19 Q. The term "voluntary homes", is this the first time you
20 have come across it in legislation as a term?

21 A. I think so, yes. Of course it is not the home that's
22 voluntary in a sense, it is the organisation -- you know
23 the terminology is slightly awkward and potentially
24 misleading. These are homes run by voluntary
25 organisations, which includes of course churches.

1 Q. And we see at 41(1) that there is a provision to the
2 effect that:

3 "The Secretary of State may cause any institution to
4 which this part of the Act applies to be inspected from
5 time to time."

6 A. That is right.

7 Q. So again that is a provision for inspection?

8 A. Yes.

9 Q. At (2):

10 "The Secretary of State may, with the consent of the
11 council or any county or large borough, appoint officers
12 of that council to conduct the inspections."

13 A. Yes.

14 Q. I think, as you tell us in your report, there were
15 regulations also governing voluntary homes and if we
16 look at LEG.001.001.0646. We have these on the screen
17 now, professor. Are these regulations essentially
18 setting out what particulars were to be submitted under
19 the notification procedure that we looked at?

20 A. That is right. These are more notification than
21 inspection provisions.

22 Q. For example, if we run down the screen, there is
23 a schedule that provides -- sets out a number of
24 questions asked like, for example, the name and full
25 postal address of the institution.

1 If we move over to the next page, 0647, looking at
2 number 9 on the list of what had to be submitted --
3 I will read that out, it will come up in a minute -- the
4 question is:

5 "Is the institution inspected by a government
6 department or local authority and, if so, which
7 department or local authority? Date of last
8 inspection?"

9 A. Yes.

10 Q. That was something that was being requested under the
11 provisions.

12 I think also under the Act itself there was
13 a provision, section 42, that -- I needn't go to it, but
14 the Secretary of State had the power to remove children
15 from a voluntary home.

16 A. That is right. If, as a result of any of these
17 inspections, there was some serious risk or perceived
18 risk then the Secretary of State had the power to
19 effectively close the home by removing all the children.

20 Q. We have seen provisions in relation to discipline, for
21 example, in respect of approved schools. What about
22 voluntary homes? Were there any provisions setting out
23 how discipline should be managed?

24 A. No, not at this stage. No.

25 Q. In your report at page 0065 -- that's

1 INQ.001.001.0065 -- you go on to talk about remand
2 homes.

3 A. Yes.

4 Q. Can you tell us a little bit about them and their
5 origins?

6 A. Yes, the remand homes were established in the first
7 decade of the 20th century. The term "remand" was
8 a technical English term: if a child was committed for
9 trial, then he could be remanded. The legislation,
10 Youthful Offenders Act and Children's Act 1908 were, of
11 course, UK statutes. So remand homes grew as places
12 where, if children were to be subject to criminal
13 process, but the trial was to be some time in the
14 future, they would be remanded or, in Scottish terms,
15 just kept in such a place.

16 They very quickly also became places in which, after
17 sentencing, if a child was to be sentenced for a very
18 short period of time, less than a month, then such
19 a child would tend to go to a remand home rather than at
20 that time a reformatory school or a prison.

21 So they would be put to a remand home. So that's
22 how these homes developed. They were really part of the
23 prisoner state, if you like.

24 Q. But really geared towards short sentences?

25 A. Short sentences and, of course, children awaiting trial.

1 Q. I think you tell us on page 0065 of your report that
2 there was an inspection regime particularly under the
3 1908 Act?

4 A. There was always an inspection regime and the 1908 Act
5 required the establishment of visiting committees,
6 really on exactly the same lines as prison visiting
7 committees at the time.

8 Q. Moving on from the 1908 Act, as you tell us on
9 page 0066, the Remand Homes (Scotland) Rules (1933) at
10 paragraph 5 also set out provisions about inspection.

11 A. Yes.

12 Q. Discipline, if you look at page 67 of your report at
13 page 16, you tell us there that:

14 "Punishment, where 'necessary for the maintenance of
15 discipline', had to be either temporary loss of
16 recreation ..."

17 And so on and so forth. Was there provision for
18 corporal punishment?

19 A. There was provision for what was described in the rules
20 as "moderate corporal punishment"; I'm not convinced the
21 word adds anything, but only for boys. Girls were not
22 to be punished by corporal punishment in remand homes.

23 Q. But no specification as to -- no reference to a light
24 tawse, for example?

25 A. Unlike the Approved Schools Regulations, there was

1 nothing about the numbers of strokes and what had to be
2 used. It simply referred to "corporal punishment".

3 Q. The next type of institution you look at is borstals and
4 that is at page 0068 of your report. Can you just give
5 us the background of the creation of the borstal system?

6 A. Yes, borstals were established for the first time,
7 I think, in another Act in 1908 called the Prevention of
8 Crime Act in 1908. Again it was based on the
9 understanding that young offenders were more open to
10 rehabilitation and retraining than older offenders. In
11 Scotland -- the age in England changed throughout the
12 years but in Scotland it was always 16 and, for
13 borstals, it was young persons between the ages of 16
14 and 21.

15 The emphasis was very much on rehabilitation and
16 technical training and the idea was that the young
17 person would be trained to become a useful member of
18 society, rather than leading a life of crime. So that
19 is how they were set up in 1908. There was an Act
20 called the Criminal Justice Administration Act which
21 gave sheriffs the power to commit to borstal any young
22 offender convicted summarily of an offence punishable by
23 imprisonment.

24 Q. There were, I think, regulations and the Borstals
25 (Scotland) Regulations (1911) and I don't think I need

1 to take you to them, but again was there put in place
2 a visiting committee regime to monitor --

3 A. Yes. Again the borstals were part of the prisoner
4 state. So the visiting committees of prisons were again
5 the model for visiting committees for borstals. Again,
6 the interesting thing -- I think the interesting thing
7 about the visiting committees -- the 1911 regulations
8 talk about the visiting committees helping the inmates
9 find employment after release. That's a recurring
10 feature in this period.

11 Q. I think during this period we are looking at, up until
12 1948, the next area you consider is detention under the
13 mental health legislation. You will see that on
14 page 0070 of your report.

15 A. Yes.

16 Q. Just to pick up a number of points -- we are focusing on
17 children and young persons, of course. The first piece
18 of -- I think the first major legislation you point to
19 is the Mental Deficiency and Lunacy (Scotland) Act
20 (1913); is that right?

21 A. Yes.

22 Q. I think essentially you are telling us that the
23 institutions that housed children -- that's what we are
24 looking at here -- had to be certified?

25 A. Yes. The Act itself didn't actually make a distinction

1 between children and adults but institutions for the
2 mentally disabled they certainly had been certified
3 after the 1913 Act.

4 Q. You tell us that in relation to the risk of abuse that,
5 in particular, the risk of sexual abuse was recognised.
6 You look at that at page 73 of your report. Even at
7 that point that was something that was at least in the
8 minds of the legislators?

9 A. It was certainly at that stage, and probably earlier,
10 recognised that patients in mental institutions or under
11 mental health guardianship were vulnerable to
12 exploitation. So we had in the 1913 Act a special crime
13 created to ensure that -- to provide some sort of
14 protection to vulnerable young women. It was limited to
15 young women.

16 Q. Yes. You make that point in the report. That the focus
17 was --

18 A. Limited to women, not necessarily young women. All
19 women and girls.

20 Q. You tell us, I think, that there were inspection
21 provisions under rules enacted under the Act for these
22 institutions?

23 A. Yes, that is right.

24 Q. Indeed, I think you tell us a patient could make
25 complaints to those who were inspecting the premises?

1 A. Yes.

2 Q. And corporal punishment was not allowed?

3 A. Corporal punishment was not allowed. For guardians
4 there was an explicit provision that guardians could not
5 visit corporal punishment on their charges. There is
6 nothing specific about hospital staff, but I think that
7 was not needed. Because of the defence of reasonable
8 chastisement, there was never any question of that
9 extending to carers, hospital staff and the like. That
10 was parents and schools and foster parents and the like.

11 Q. So far then, professor, we have taken you up to the eve
12 of 1948 or thereabouts. Can I ask you to give us
13 an overview of the period that we have been looking at
14 today and the different institutions that we have been
15 considering, such as approved schools, voluntary schools
16 and boarding out which I think are the three main areas
17 you have discussed?

18 A. Yes. I think as an overview of the first, like I say,
19 three or four decades of the 20th century, there was
20 an increasing recognition that these institutions,
21 whichever they were, in which the State had taken over
22 responsibility for the accommodation of children, there
23 was an increasing recognition that there had to be
24 control, particularly by visitation and inspection. So
25 we find, as the regulations come, they become more

1 detailed as the years go by.

2 I think there is a clear and -- actually in the
3 early 20th century -- developing idea that what the law
4 needs to do for these children is insulate them from bad
5 influences. It is perceived from the parliamentary
6 debates in 1908 that children are products of their
7 environment, so the way to protect children is to
8 protect them from their environment. That means
9 removing them from their families.

10 Actually, as the early years of the 20th century go
11 by, this hardens and one of the really noticeable
12 features of the regulations we have been looking at is
13 what isn't there and what isn't there is any contact
14 with parents. That's virtually absent. Indeed as the
15 years go by, before the Second World War, it becomes
16 almost official policy to discourage parental visits.

17 The fit person order, for example, started out life
18 as almost a bit like what today we would call kinship
19 care. It was, "Sent to a relative or other fit person".

20 The notion of relative disappeared in the 1932 Act.
21 You are insulating the child not only from the influence
22 of the parents, but of the wider family too and you are
23 sending children, particularly boarding out. We see
24 with the boarding out provisions what the State was
25 trying to do was create a new family for the children --

1 a better family, putting it bluntly, one that will train
2 the child up.

3 I think the 1933 regulations talk about the child
4 being trained to "cheerful obedience to duty" and other
5 things like that. Other bits of the provision talk
6 about foster carers providing love and care to the
7 children. That is not really the sort of thing you
8 should have in legislation in my view. But the whole
9 idea was a child would be insulated from the bad
10 influence, they would have better and new role models to
11 become productive members of society away from their
12 original families.

13 The end of this period could be marked by the Clyde
14 report, which was produced in 1946, and we see in there
15 a real distrust of parents. The idea is to bolster who
16 the foster carers are. To make sure you have got the
17 right sort of person as foster carers, not subject them
18 to too much inspection, just create a normal family life
19 with the foster parents away from the birth family.

20 Q. But we have seen, as you have indicated, if you look at
21 approved schools, for example, that emerged in the
22 1930s, subject to inspection and regulation and indeed
23 rules about corporal punishment as well and record
24 keeping.

25 A. Yes.

1 Q. Voluntary homes were in existence with a much lighter
2 touch in relation to inspection?

3 A. Yes.

4 LADY SMITH: But I get the impression from your overview,
5 Professor Norrie, that it was still being seen as
6 necessarily better for the child to be away from the
7 home that had been assessed as being harmful or too high
8 a risk for a child?

9 A. Yes.

10 LADY SMITH: So, if you like, the scales were tipped
11 automatically in favour of benefit to the child accruing
12 from just removal from the home.

13 A. I think there was a strong assumption --

14 LADY SMITH: Would that be right?

15 A. Partly from a good motivation, a good understanding.
16 Children are the products of their environment. That is
17 true. But then there is a very judgemental attitude
18 towards children, even children in poverty, you have to
19 break that cycle because if the child is brought up in
20 poverty, they are going to be become indolent or idle
21 just like the parents. It is more than just parents who
22 are criminal. It is parents who are just not productive
23 members of society, you insulate children from that, you
24 put them to places which we assume will be better.

25 LADY SMITH: But because that's better for the child or

1 because that's potentially better for society in
2 hopefully producing a child that will, as you put it, be
3 a productive member of society rather than a burden?

4 A. Yes, I think the motives were pretty mixed. What you do
5 see in the parliamentary debates is there is a concern
6 for the child but there's also clearly a more communal,
7 social-based benefit by doing this. You see it in the
8 emigration rules as well as, where a lot of the public
9 statements are about it is good for the children but
10 then when you look at the legislation, it is all about
11 populating the empire with appropriate --

12 LADY SMITH: So that is the emigration rules not the
13 immigration rules and that is the child migrant
14 programmes that we were talking about? Thank you.

15 MR MacAULAY: I will come to that in just a moment.

16 In relation to boarding out, we have these regimes
17 under the Poor Law and also through local authorities.

18 A. Yes.

19 Q. They are still, at this point in time, on the eve of the
20 1948 Act, separate?

21 A. They are separate yes.

22 Q. Just on emigration, I'm aware you have dealt with
23 emigration as you have gone through this part of your
24 report and I haven't taken you to that because that is
25 something we are going to look at quite separately --

- 1 A. I have done a separate appendix --
- 2 Q. -- and indeed you may be called back to tell us a little
3 bit more about that.
- 4 Just to be clear also, so far as we are at the
5 moment -- leaving aside -- I think we will look at this
6 shortly -- no real mention of independent boarding
7 schools in what we have been looking at?
- 8 A. None at all at this period of time.
- 9 Q. Subject to the exemption of boarding schools we saw
10 earlier?
- 11 A. Yes -- although that exemption disappeared in the 1932
12 Act.
- 13 Q. I think we saw that.
- 14 A. That was the only mention.
- 15 Q. You mentioned the Clyde report then and that's the
16 precursor, I think, to the 1948 Act and the equivalent
17 English report was the Curtis report.
- 18 A. The Curtis report.
- 19 Q. The 1948 Act, I think, was a UK statute.
- 20 A. That is correct, yes.
- 21 Q. They are based on both these reports?
- 22 A. Yes.
- 23 Q. But perhaps if we have a look at the Clyde report. You
24 deal with it I think on page 0079 of your report. The
25 report itself is at LEG.001.001.1735.

- 1 A. Are all these documents on your website?
- 2 Q. They are not on the website, they are on a document
3 management system that is available to --
- 4 A. It would be useful gathering them all together because
5 finding them has took me months and if they are all
6 together for future --
- 7 Q. It is because you found them, Professor Norrie, that we
8 can find them much more quickly. But we have this on
9 the screen now. If we just scroll down, can we see, as
10 you point out in the report, that the actual title of
11 the report is "Report of the Committee on Homeless
12 Children"?
- 13 A. Yes.
- 14 Q. Any significance in that as the title?
- 15 A. The title has always -- I have always been curious about
16 the title because the actual terms of reference were
17 wider than just homeless children. But I think the
18 committee was assuming that any child whose home is not
19 suitable needs to be looked after by the State and is
20 therefore homeless. It has always struck me as being
21 an odd title because they are dealing with more than
22 just children who are living on the street.
- 23 Q. Yes. They are dealing indeed with children who are in
24 care?
- 25 A. Yes. But I think that shows a mindset because the

1 assumption again throughout all this period is that once
2 the State becomes involved in accommodating the child,
3 that's it for that child's childhood. There is none of
4 this annual review and send-the-child-home business. It
5 is all about insulating the child from the bad influence
6 and that means keeping the child throughout its
7 childhood. There is an assumption throughout that it is
8 a long-term process. If the State has taken
9 responsibility, that is for the long-term. The State
10 will bring up this child, not just look after it while
11 the family get over its problems.

12 Q. Can we then look at some passages in the body of the
13 report itself and look at page 1738. We have at
14 paragraph 2 the remit. At paragraph 3 we are told that
15 the remit -- that the approach that they have taken is
16 that -- they have omitted from consideration all
17 questions regarding the children and the types of homes
18 with which that council is concerned, and that council
19 is dealing with remand homes, approved schools and other
20 cognate matters.

21 Can we see that the Clyde committee is not looking
22 at approved schools, for example?

23 A. Yes.

24 Q. Perhaps if we can turn to page 1739, which has a heading
25 there "Existing solutions". In paragraph 7, where they

1 set out that:

2 "There are three main solutions at present adopted
3 in Scotland to meet the problem. Children in question
4 may be boarded out with foster parents. They may be
5 sent by local authorities to other persons to homes
6 which are either endowed or supported in whole or in
7 part with voluntary contributions [and that's voluntary
8 homes]. Thirdly, they may be maintained in homes that
9 have been acquired and or provided for this purpose
10 under statutory power by the local authorities."

11 Having made these points, do they go on to say that
12 the approximate number of children and young persons
13 dealt with in each of these ways in the year ending
14 15 March 1945 was 14,329?

15 A. Yes.

16 Q. That is quite a significant number of children?

17 A. Yes.

18 Q. Can you perhaps then give us --

19 A. A lot of children became homeless during the war. That
20 is a very specific time period. I wouldn't like to say
21 that was completely representative, that number.

22 Q. Can you then give us a feel for what the principal
23 recommendations of this committee was and the
24 recommendations that made their way into the
25 legislation?

1 A. Yes, I think there were two. The first structural
2 recommendation was that all the different regulatory
3 mechanisms, all the different government departments
4 responsible for all of these children should be
5 harmonised into one and it should be brought within the
6 remit of the local authority, that local authorities
7 should establish a single body within it, a single
8 department or committee to deal with children in
9 trouble.

10 So the 1948 Act, the Children Act (1948), required
11 every local authority to establish a children's
12 committee. It was also recommended that there be
13 a single person in charge of the children's committee.
14 So the 1948 Act required that every local authority
15 appoint a children's officer who became, in due course,
16 after the 1968 Act, a director of social work. That was
17 effectively it.

18 So structurally it was to bring all the regimes --
19 very much focusing on the local authority. Of course,
20 the 1948 Act imposed on local authorities a duty to
21 receive children into care for the first time. That was
22 the first structural recommendation of the Clyde
23 committee.

24 The other major recommendation of the Clyde
25 committee was in terms of boarding out. They decided

1 very, very clearly that the best option for any child
2 who comes into the care of the State, by whatever means,
3 the best option is to provide a substitute family for
4 that child, to provide what today we would call a foster
5 carer, a foster family.

6 But at this time the distinction between fostering
7 and adoption was far less stark than it is today. The
8 adoption order, which had been introduced in 1930 in
9 Scotland, was not the adoption order we would recognise
10 today. It didn't have the complete transference of
11 parental responsibilities -- of whole parenthood that it
12 has today; that came in the 1970s.

13 The foster care that was assumed in the Clyde report
14 was very much more long-term than we would see in
15 fostering today. So the distinction was really -- it
16 was not clear cut.

17 So how the Clyde committee perceived boarding out
18 was you take the child from their original family, which
19 is a bad environment, and you give the child a better
20 family and that needs to be a real family life and you
21 discourage parental visitation, you discourage contact.
22 But obviously there are dangers. You have to be careful
23 about choosing your family. So the Clyde report also
24 recommended tightening up the process for identifying
25 appropriate, fit persons to take over the boarding out

1 responsibilities.

2 Q. Let me look at the Act itself then. That's
3 LEG.001.001.0389 and begin by looking at section 1,
4 page 392. You deal with this provision, I think, at
5 page 0096 of your report where you, I think, describe
6 this section -- and I think you mentioned this earlier
7 on in your evidence -- as introducing a sea change. Can
8 you just elaborate upon that?

9 A. A sea change in the sense that the responsibility had to
10 be with one clear body, the local authority. But more
11 particularly that the local authority be proactive
12 rather than what tended to happen before, children
13 perhaps through the court system, perhaps having been
14 given up to a voluntary home and then boarded out
15 elsewhere. In a sense it was almost accidental whether
16 children came into the care of the State.

17 What I meant by a sea change under the Children Act
18 (1948) was the local authority had imposed upon it
19 a duty to --

20 Q. To --

21 A. -- almost to seek out children. To ensure that the
22 children in their local authority area were properly
23 looked after and, if not, they had to act.

24 Q. I think we have the section on the screen, part of the
25 section. If we just scroll up a little bit to

1 section 1. We have it now. What we can see at 1(i):

2 "Where it appears to a local authority, with respect
3 to a child in their area, appearing to them to be under
4 the age of seventeen ... [(a) and (b)] ... neither
5 parent nor guardian or parents or guardians are
6 permanently prevented from caring for the child in
7 either case at the intervention of the local authority
8 under the section is necessary in the interests of the
9 welfare of the child."

10 That is the test, is it, the welfare of the child?

11 A. Yes.

12 Q. "It shall be the duty of the local authority to receive
13 the child into their care under this section"?

14 A. I think section 1(i)(b) is the more important. In
15 a sense orphan children are obvious, but 1(i)(b) talks
16 about:

17 "Parents or guardians who are prevented by any other
18 circumstance from providing for his proper
19 accommodation, maintenance and upbringing."

20 This is the neglect to child that they are talking
21 about. So the local authority has to be on the look out
22 and say, that child is a neglected child, and as soon as
23 they make that decision, they are obliged to act.

24 We see at (ii) that:

25 "Where a local authority have received a child into

1 their care under this section, it shall, subject to the
2 provisions of this part of this Act, be their duty to
3 keep the child in their care as long as the welfare of
4 the child appears to them to require it and the child
5 has not attained the age of eighteen."

6 LADY SMITH: Is it a time when school leaving age was still
7 14?

8 A. That is correct.

9 LADY SMITH: I think you alluded to this earlier that there
10 had been a period of requirement to look out for the
11 child's welfare longer than their school age.

12 A. We are talking about children and young persons.

13 LADY SMITH: Indeed.

14 A. It is a UK statute. The English didn't, I think, have
15 the concept of young persons in the way that we do.

16 MR MacAULAY: If we turn to page --

17 A. Sorry. One of the interesting things about that age of
18 18 is the Curtis report in England suggested 16 as the
19 appropriate age. The Clyde report for Scotland
20 suggested 18 as the appropriate age. What's appeared in
21 the British statute is the upper of these two ages.

22 LADY SMITH: Right.

23 MR MacAULAY: Moving on to page 0401 and staying with the
24 same Act, part 2 of the Act is dealing with the
25 treatment of children in the care of local authorities

1 and again I will put the provisions on the screen.

2 Section 12 is just coming on it now. We are told that:

3 "Where a child is in the care of a local authority,
4 it shall be the duty of that authority to exercise their
5 powers with respect to him so as to further his best
6 interests and to afford him the opportunity for the
7 proper development of his character and abilities."

8 So a clear duty on the local authority to look after
9 the welfare of the child?

10 A. Yes.

11 Q. I think in your report, at page 0099, having looked at
12 some of these provisions, you described these provisions
13 as being a fundamental shift in State responsibilities.

14 A. Yes, it was much more focused. The local authority had
15 to take responsibility. That's what I mean by the
16 State.

17 Q. On page 97 of your report, 0097, you go on to say at the
18 top that:

19 "This particular duty was significantly enhanced
20 15 years later. The Children and Young Persons Act
21 (1963) imposed on the local authority for the first time
22 that it should take preventative action."

23 That's going beyond?

24 A. I think it is. As I said, with the 1948 Act it imposed
25 a duty on the local authority to be proactive. What the

1 1963 Act -- it is one of these acts we have kind of
2 forgotten about because it was, a few years later,
3 subsumed into the Social Work (Scotland) Act but it was
4 a really important development because as well as being
5 proactive it required local authorities to take
6 preventative measures. It had to provide services in
7 such a way as would minimise the likelihood of children
8 being received into care.

9 So local authorities, social work departments -- or
10 children's committees at the time -- had to perform
11 their functions not just for children who had been taken
12 into care but for families who were in trouble, who,
13 with a little help and support, we might be able to
14 avoid the child taken into care. That strikes me as
15 a really, really important significant development in
16 the law.

17 Q. We can look at the particular provision. It is in
18 LEG.001.001.0072. The page I'm looking at is 0075. So
19 this is the 1963 Act, section 1, subsection (1):

20 "It shall be the duty of any local authority to make
21 available such advice, guidance and assistance as may
22 promote the welfare of children by diminishing the need
23 to receive children into or keep them into care."

24 Is that the point you are making?

25 A. That is the point I'm making yes.

1 Q. On page 0099 of your report you make some comments about
2 local authority assumption of parental rights and you
3 are a little bit critical, I think, of this aspect of
4 local authority powers. Can you explain what your issue
5 is here?

6 A. Well, it is nothing new to be critical of that provision
7 of the 1948 Act. It allowed -- between 1948 and 1995
8 Scottish local authorities had the power to assume to
9 themselves parental responsibilities and parental
10 rights, to have transferred from parents to themselves
11 parental responsibilities and parental rights without
12 the authority of a court of law.

13 There was, of course, procedures to challenge it but
14 the onus was on the parents to come and challenge and
15 then it had to go to the sheriff. You know, from
16 today's perspective that's an outrageous position, but
17 even in 1948 it wasn't a particularly welcome
18 development.

19 There had been English antecedents under the English
20 Poor Law. The English Curtis committee basically said,
21 this is outrageous, we should not be allowing this
22 anymore, but Parliament in 1948 said we should allow it
23 and indeed we should extend it to Scotland, so they did.
24 That's why I'm critical of it.

25 Q. And it lasted for some time?

1 A. It lasted until it was removed in the 1995 Act, the
2 Children's (Scotland) Act (1995). It generated masses
3 of litigation in the 1970s and 1980s, challenges to
4 parental rights assumptions.

5 Q. The next section of your report, professor, is at 0101
6 and is devoted to looking at the regulatory structures
7 governing the accommodation of children between 1948 and
8 1968.

9 A. Yes.

10 Q. Oddly enough, the first rules and regulations we look at
11 were in fact enacted prior to the 1948 Act, and that is
12 the 1947 rules.

13 A. That is probably in response to the Clyde report. That
14 sort of tightened up the boarding out provisions in
15 1947.

16 Q. In anticipation of the Act?

17 A. Yes.

18 Q. These regulations, I think, were under the 1932 Act, is
19 that right, or the 1937 Act?

20 A. By then it would be the 1937 Act, yes.

21 Q. So these are the Children (Boarding out etc) (Scotland)
22 Rules and Regulations (1947)?

23 A. Yes.

24 Q. They were not just dealing with boarding out, they were
25 also dealing with the placement of children in

1 institutions?

2 A. Yes, that was the "etc" in the title.

3 Q. Can we then look at these. We find them at
4 LEG.001.001.0127.

5 So far as boarding out is concerned, if we look
6 at -- I will put it -- it is on the screen at page 0128.
7 Looking at regulation 7, for example, or rule 7, were
8 there provisions there in relation to -- vetting is not
9 the correct word, but some degree of monitoring of who
10 foster parents might be?

11 A. I think vetting is an appropriate word. Remember what
12 I said about the 1933 regulations? All it did was
13 specify exclusions.

14 Q. Yes.

15 A. You could not be a foster carer or board out or receive
16 boarding out children if you ran a public house, if you
17 were in receipt of poor relief or if you had been
18 an offender. What the 1947 Act regulations does -- and
19 it follows the recommendation from Clyde -- is to
20 require the local authority to:

21 "... satisfy themselves by all necessary inquiries
22 that the person whom they propose to select as the
23 foster carer for the purpose of boarding children is of
24 good character and is in all respects fit to look after
25 the health, education and general well-being of the

1 children."

2 There are exclusions in the 1947 regulations, but in
3 addition the local authority has to take a positive --
4 make a positive judgement that this person is a fit and
5 proper person to carry out these important functions.

6 Q. Is that reinforced by the next rule that:

7 "Before boarding out a child with a foster parent,
8 the local authority shall satisfy themselves that the
9 foster parent is a suitable foster parent for that
10 child ..."?

11 A. Yes. I think section 8 does something even more than
12 the vetting. Regulation 7, I think, is: is this person
13 suitable to be a foster carer in general or a foster
14 parent in general? What 8 does is to say: is this
15 person suitable for that particular child? So there is
16 a matching process going on and this is the very, very
17 first time that we see this matching process, which of
18 course today we take for granted.

19 Q. And religious persuasion is mentioned specifically as an
20 important element of that match.

21 A. If possible, you shall select a person of the same
22 religious persuasion or at least one who will give the
23 undertaking that the child be brought up in the child's
24 own religious persuasion.

25 Q. Do we also see at 9:

1 "So far as reasonably practical, children of the
2 same family shall be boarded out in the same house"?

3 A. That is right.

4 Q. This is new, this provision?

5 A. I think there might be something in the 1933 regulation.

6 Q. We will have to -- I will perhaps check that.

7 A. I'm not convinced it is new. The other ones are
8 definitely new. I'm not convinced about that one.

9 Q. We have moved quite a distance then from the 1933 Act.

10 A. Yes, very much, and this is again reflecting -- he was
11 not Lord Clyde at the time, the Clyde report's
12 recommendation that boarding out is the default option
13 but you have to get your foster parents right and you
14 have to take a lot of care to identify appropriate
15 foster carers.

16 Q. If we move on to page 0130, can we see at 14 that:

17 "Where a local authority board a child in their own
18 area, they shall arrange for his supervision by
19 an officer of the authority duly appointed for the
20 purpose or by some other reliable person resident in the
21 locality where the child is boarding out."

22 Is this telling us that a child had had allocated to
23 him or her a named individual?

24 A. Yes.

25 Q. With a duty of --

1 A. A duty to visit.

2 Q. As we see in the next provision at 15 that if the
3 boarding out takes place in another local authority area
4 then you have to make arrangements for that?

5 A. Yes because it was a relatively common practice at this
6 time for children to be boarded out at some distance
7 from their original home and so it meant different local
8 authorities were involved.

9 Q. At 18 do we see that there is a provision that says
10 that:

11 "The officer appointed under article 17 [that's in
12 relation to an office of experience and knowledge] shall
13 visit or cause to be visited by persons with suitable
14 qualifications or experience every child boarded out by
15 the authority within one month of the boarding out ...
16 and thereafter at intervals of not more than six
17 months."

18 So it is fairly strict visitation powers?

19 A. Yes, though you may notice that the 1933 regulations
20 required visitation every three months.

21 Q. Yes.

22 A. But now it is visitation every six months and again this
23 comes directly from Clyde because Clyde suggested if you
24 are trying to create this replacement family, official
25 visitors coming in and about the house might disturb

1 that, so you do not want that too often and he
2 thought -- the Committee thought once every three months
3 was a bit too often, so the 1947 regulations made it
4 every six months. That didn't last that long because in
5 the 1959 regulations it went back to once every three
6 months.

7 Q. We have a provision also that tells us that a report on
8 each visit would be made.

9 A. Yes.

10 Q. And if you turn to 0131, the details of what could be
11 contained in the report are set out. It also envisaged
12 at (i) that it would contain:

13 "Any complaint made by or concerning the child."

14 A. Yes I think that is the first time there is a
15 recognition that the child should be given
16 an opportunity to have a voice.

17 Q. If we look to the schedule attached to the regulations
18 at page 0135. While it is coming up, I'm looking at
19 paragraph 5 of the schedule, it is headed, "Training and
20 discipline".

21 At (f) can we see that:

22 "The foster parents shall not administer
23 indiscriminate or harsh punishment. Persistent
24 misconduct by the child shall be reported to the local
25 authority ..."

1 So there is a provision there about punishment which
2 I do not think -- can you remind me what the 1933
3 regulations had said on punishment?

4 A. I can't off the top of my mind say what the language
5 was. I think both in 1933 and here words like
6 "indiscriminate" or "harsh", I don't think, actually
7 adds anything to the general law.

8 If corporal punishment is provided, the only defence
9 is that of reasonable chastisement. I don't really see
10 that a prohibition on "indiscriminate" or "harsh" takes
11 us any further because that probably would negative any
12 defence of reasonable chastisement.

13 Q. Yes. You mentioned the Boarding Out of Children
14 Regulations (1959). These are after the 1948 Act, of
15 course, and they replaced the 1947 regulations.

16 A. Yes, that is right.

17 Q. You tell us, I think, a particular change now was that
18 boarding out could be done by a voluntary organisation.

19 A. Well, boarding out had been done by voluntary
20 organisations but now, from 1959, they became subject to
21 the same rules.

22 Q. If I could perhaps turn to your report on this. It is
23 at page 0112. You set out some of the provisions from
24 the regulations and do we have some further particulars
25 in relation to the suitability of foster parents if you

- 1 look at page 0113?
- 2 A. Yes.
- 3 Q. Is this a development then from the 1947 regulations?
- 4 A. It is. So, for example, investigations have to be done
5 about the circumstances of the child's home life. This
6 is part of the matching process. It is just giving
7 further particulars, further elaboration to the 1947
8 rules.
- 9 Q. On page 114, it is towards the bottom, you are quoting
10 from regulation 7.1 and again there is some vetting --
- 11 A. Yes.
- 12 Q. -- process. Is this similar or a development to what
13 had been in the 1947 --
- 14 A. I think it is a bit of a development. It is just
15 elaborating rather on what's expected. This may have
16 happened under the 1947 Act, but it has been much more
17 specific in the rules than before.
- 18 Q. On page 117 of your report, at paragraph 13 -- you set
19 out paragraph 13, where you are dealing with visits by
20 the children's officer or visitor.
- 21 A. Yes.
- 22 Q. Here I think you mentioned a moment ago that we have
23 come back to the three-month period rather than the six
24 months.
- 25 A. Yes.

1 Q. On page 0119, we have some provisions about the keeping
2 of records; is that correct?

3 A. Yes.

4 Q. At 17(3), that is on page 0120, do we see that:

5 "Every case record compiled under this regulation
6 shall be preserved for at least three years after the
7 child to whom it relates has attained the age of
8 18 years or if he had died before that"?

9 A. Yes.

10 Q. Again quite clear duties in relation to the keeping of
11 records?

12 A. That is right and open to inspection by the Secretary of
13 State.

14 Q. Yes. One of the points you make in your report towards
15 the bottom of page 20, although these regulations were
16 detailed, there was no requirement to work towards
17 rehabilitation of the child with its original family.

18 A. That's right. It struck me as a very noticeable
19 omission coming from today's perspective. That really
20 wasn't the point of boarding out, even in 1959. It
21 certainly wasn't in the 1930s, but even as late as 1959,
22 we are still in a case of insulate, keep the child away
23 permanently, set them on for an independent life as
24 a productive member of society. As we would see it
25 today, you are taking a child away from their parents

1 and the primary aim is to reintegrate the child back to
2 the families as soon as you can do so safely.

3 Q. Now, these regulations, you tell us, remain in place
4 until 1985?

5 A. That is right, yes.

6 Q. The next part of this section of your report, professor,
7 you look again at the position of private fostering.
8 What was the position now?

9 A. Well, private fostering under the 1908 Act, you will
10 recall, was when children were placed for reward up to
11 the age of seven. The 1937 Act increased that to
12 children up to the age of nine. The 1948 Act increased
13 that age to 18. So that was a very, very substantial
14 increase in the age at which local authorities had to
15 visit children and had the power to go to court and ask
16 for their removal.

17 Ten years later, in the Children Act (1958), the law
18 was re-structured and again sort of tightened up
19 somewhat and we are told that local authorities who had
20 to visit foster children, they had to satisfy themselves
21 as to the well-being of the children, give such advice.

22 The notification provisions were much more specific.
23 There were provisions about medical arrangements that
24 had to be made and I think for the first time a whole
25 load of disqualifications for keeping children privately

1 was set out in the Children Act of 1958.

2 The 1958 Act was amended slightly in 1968 but it
3 survived until 1984 when the Foster Children (Scotland)
4 Act (1984) came into force, which effectively repeats
5 much of what was said in the 1958 Act.

6 Q. As you tell us in the report there were visitation
7 provisions which meant that --

8 A. Yes.

9 Q. -- the local authority was required to visit children
10 who had been privately fostered.

11 A. Yes, there had been since 1908. The 1958 Act imposed
12 the duty on the local authority's children's officer, so
13 we dropped the position of child protection officer and
14 it all became subsumed into the children's officer or
15 her deputies.

16 Q. Can I then turn onto the next area you look at in your
17 report and that is the regulation of children's homes.
18 You begin looking at that at page 0122.

19 You touch first upon local authority homes on the
20 following page. Can you just give us the background to
21 this because you tell us that there had been no
22 statutory authority before the 1948 Act in relation to
23 local authorities and local authority homes?

24 A. No. Well, yes, that is right, there had not been. Some
25 local authorities had established children's homes

1 before 1948 but they didn't have any statutory
2 obligation to do so. What the 1948 Act did was provide
3 that every local authority might and, if the Secretary
4 of State directed them to do so, they had to provide
5 equipment and maintain homes for the accommodation of
6 children in their care.

7 Before that the 1947 Boarding Out Regulations, which
8 we had -- Boarding Out etc Regulations had imposed some
9 duties on local authorities to visit children in
10 institutions to satisfy themselves that the institutions
11 selected were suitable to the particular needs of the
12 child, for example, and to try to ensure that the child
13 is placed in an institution of the appropriate religious
14 persuasion of the child.

15 So they had some duties before the 1948 Act and then
16 they acquired the power to set up their own homes.

17 Q. Under the 1948 Act?

18 A. Under the 1948 Act.

19 Q. I think it is section 15(1) of the 1948 Act, but did
20 that mean that the 1947 regulations, insofar as they
21 applied to institutions, would also apply to local
22 authority homes, children's homes?

23 A. Yes, they did.

24 Q. So the regulations in relation to visitation and so on
25 in the 1947 Act --

1 A. In the 1947 regulations applied to them. Those were the
2 only provisions that applied until 1959 because even
3 though the 1948 Act gave the Secretary of State power to
4 make regulations in relation to children's homes, he
5 didn't exercise that until 1959.

6 Q. Can we now look then at the position of voluntary homes
7 in the period you are looking at. You begin looking at
8 that at page 0124. You remind us that since 1932
9 voluntary homes had required to be registered and the
10 1948 Act also made certain provisions about these homes.
11 Can you just summarise what the position was?

12 A. Well, under the 1948 Act, homes had to be registered
13 with the Secretary of State and the Secretary of State
14 could remove the home from the register if he wasn't
15 satisfied about the running of the home. So he had some
16 control over the -- how voluntary homes were run.

17 The secretary was also given the power to make
18 regulations, but as I said a moment ago, he didn't
19 actually exercise that until 1959. Before that, in
20 1948, he had the power to effectively remove children if
21 the running of the home was not satisfactory.

22 Q. But the 1947 regulations we looked at, did they also
23 apply to voluntary homes?

24 A. Yes.

25 Q. So the rules about visitation and so on and so forth?

1 A. Yes. They applied to any institutions in which children
2 were kept.

3 Q. You say that although the 1948 Act said -- if I can just
4 find the section -- I think it is section 15(1):

5 "A local authority may and shall, insofar as the
6 Secretary of State so requires, provide, equip and
7 maintain either within or without their area homes for
8 the accommodation of children in their care."

9 A. Yes.

10 Q. But the regulations themselves, you say, didn't come
11 into force until 1959, apart from the 1947 regulations?

12 A. Yes. Remember that provision you have just cited gave
13 the local authority power for children in their care.

14 Q. Yes.

15 A. The 1947 regulations were for children in institutions
16 generally, so that would include children in care or
17 children not formally in the care of the local
18 authority. But then it was not until 1959 that the
19 Administration of Children's Homes regulations dealt
20 with them all.

21 Q. I think you look at these regulations on page 0125 --

22 A. Yes.

23 Q. -- and into 0126, where you set out the main provisions.

24 A. Yes.

25 Q. Regulation 1, for example, focuses upon the well-being

- 1 of children; is that correct?
- 2 A. Yes.
- 3 Q. Regulation 2, I think you tell us, on page 0127, that
4 there was a system of official visitation and do you say
5 that children required to be visited at least once
6 a month when placed within a home?
- 7 A. That is right, yes.
- 8 Q. Regulation 6 deals with the appointment of a medical
9 officer?
- 10 A. Yes.
- 11 Q. Are there also regulations dealing with discipline?
12 Regulation 10, I think you touch upon that on page 128.
- 13 A. Yes.
- 14 Q. Corporal punishment was permitted exceptionally?
- 15 A. That's the language that was used, yes.
- 16 Q. But again there were provisions as to how that should
17 take place?
- 18 A. Yes, and again the sanction of the medical officer was
19 required if the child was weak somehow.
- 20 Q. Again, records required to be kept on what the
21 punishment was and so on?
- 22 A. Yes.
- 23 MR MacAULAY: My Lady, I'm now moving on to a slightly
24 different topic --
- 25 LADY SMITH: Would that be a convenient point at which to

1 break, Mr MacAulay?

2 MR MacAULAY: It would.

3 LADY SMITH: Very well. We will stop now for the lunch
4 break and if everybody could be back ready to start
5 again sharp at 2 o'clock, please, that would be very
6 helpful.

7 We will now adjourn.

8 (1.00 pm)

9 (The luncheon adjournment)

10 (2.00 pm)

11 LADY SMITH: Mr MacAulay, when you are ready.

12 MR MacAULAY: Before I leave looking at voluntary homes,
13 which I had been looking at before lunch, if you turn to
14 page 0128 of your report -- that's INQ.001.001.0128 --
15 do you there set out what you describe as some
16 limitations to the rules dealing with voluntary homes?

17 A. Yes.

18 Q. What limitations do you see?

19 A. The primary limitation, I think, is that there's nothing
20 about staff qualifications. There is no limitation on
21 who could be employed at voluntary homes. There was no
22 requirement that they be particularly qualified in child
23 care or anything like that.

24 I think that was the primary one and it contrasts
25 very much with -- in the same time frame even with

1 foster parents, there is a lot of exclusions and there
2 are no exclusions as to who might be a staff member in
3 a voluntary home.

4 Similarly with approved schools, there was some, not
5 a huge amount, but there was something there. But that
6 doesn't appear at all in relation to voluntary homes.

7 Q. In relation to visitation and inspection -- and you look
8 at that on the following page at 0129 -- what comments
9 do you make on that?

10 A. It basically amounts to self-regulation is my major
11 comment. Unlike with local authority homes and approved
12 schools, even although the managers of approved schools
13 had to visit, so too did the local authority. Whereas
14 with voluntary homes there was rules about officers of
15 the voluntary organisation visiting the voluntary home
16 but no truly independent body. So it was
17 a self-regulatory mechanism.

18 Q. And I think you say that that might be seen as seldom
19 the most robust method of ensuring there is proper
20 maintenance --

21 A. Yes, that's the comment I make.

22 Q. The next part of your report is devoted to looking again
23 at approved schools in this period of 1948 to 1968.

24 A. Yes.

25 Q. I think we had seen this morning that you had identified

1 the Children and Young Persons in Scotland Care and
2 Training Regulations (1933) as the relevant regulations
3 at that time.

4 A. Yes.

5 Q. Did they continue in force in fact until December 1961?

6 A. That's right. They applied until the Approved Schools
7 (Scotland) Rules (1961) came into force.

8 Q. Perhaps I can put these on the screen. That is
9 LEG.001.001.2696. I'm hoping to see shortly the
10 Approved Schools (Scotland) Rules (1961).

11 I think you in your report devote quite a number of
12 pages to examining these rules. Can we subsume what you
13 say -- and I want to focus on rules under reference to
14 staffing, discipline and monitoring. So if we look at
15 staffing, first of all, and we turn to page 2699,
16 perhaps beginning at 2698, in fact, do we have rule 10
17 that deals with staff and 10.1:

18 "Subject to the approval of the Secretary of State,
19 the managers shall, in consultation with the headmaster,
20 determine the number, type and qualifications of staff
21 to be employed by them"?

22 A. Yes.

23 Q. If we look at 10(4) on the next page, 2699, can we see
24 that:

25 "Except with the consent of the Secretary of State,

1 the manager shall ensure that all schoolroom teaching,
2 including the systematic teaching of all practical
3 subjects, shall be given by teachers"?

4 A. Teachers qualified according to the rules set down by
5 the Scottish Education Department, yes.

6 Q. While we have that page on the screen, the next section
7 is dealing with the headmaster. He essentially was to
8 be responsible for the efficient conduct in the
9 interests of the welfare, development and rehabilitation
10 of the pupils.

11 A. Yes.

12 Q. And he was responsible in particular for keeping the
13 records in respect of the pupils.

14 A. I think this is a development from the 1933 rules, that
15 somebody is ultimately responsible for the welfare of
16 the children there. I think that's one important
17 development in the 1961 rules.

18 Q. When we look at records, for example, at 2(b), they
19 have:

20 "A duty to keep an adequate record of the progress
21 of each individual pupil."

22 A. Yes, it is more than just the welfare of the children in
23 general; it is looking at each individual child and
24 ensure they are progressing sufficiently.

25 Q. Again, as we had seen before at (e), that one of the

1 records to be kept was a punishment book.

2 A. Yes.

3 Q. And that these records, as we see at (3), shall be
4 available to the manager at all times.

5 A. Yes.

6 Q. Then dealing with discipline, if we turn on to --
7 I think it begins at the bottom of page 2703, there is
8 a heading "Discipline and punishment". Regulation 28 on
9 the top of the next page, 2704, we see there that we are
10 told that:

11 "Discipline and punishment are the responsibility of
12 the headmaster, who, except for matters for which
13 special provision is made in the rules, may give such
14 instructions and delegate such responsibility as he sees
15 fit."

16 But we are then told in the next rule what that
17 discipline -- what form it might take.

18 A. Yes.

19 Q. We are given a number of options, but the final option
20 is corporal punishment.

21 A. Corporal punishment yes.

22 Q. But then in rule 31 do we see that corporal punishment
23 is conditional upon a number of particular conditions?

24 A. Yes.

25 Q. And we can look at these conditions for ourselves.

1 A. Can I just draw attention to -- I think a really
2 significant change --

3 Q. From 1933?

4 A. From the 1933 provisions. It is 31(c) and you need
5 a witness. If corporal punishment is to be administered
6 under the 1961 rules, you need a witness. Previously
7 there was no such. So this was, I think, a recognition
8 that you are in a vulnerable situation when corporal
9 punishment is being provided.

10 Q. What it says:

11 "Except when punishment is inflicted in the presence
12 of a class in a schoolroom an adult witness must be
13 present."

14 A. Yes. I think it is somewhere that you can't call upon
15 a pupil to assist.

16 Q. Yes, there is.

17 At (h) on the next page, 2705, can we see that once
18 again there is the reference to the light tawse as
19 opposed to the cane.

20 At rule 32, while we are on this page, again, we are
21 given details as to the entries into the punishment
22 book.

23 A. Yes.

24 Q. In relation then to monitoring, if we go back to rule 2
25 on page 2696, at 2(1) -- if we can get that on the

1 screen, I will start to read that:

2 "The manager or managers or a committee consisting
3 of not less than four of them shall normally meet not
4 less often than once a month. They shall arrange for
5 the school to be visited by one or more of their number
6 at least once a month, and more frequently if
7 circumstances appear to warrant it, to ensure that the
8 conditions of the school and the welfare, development
9 and rehabilitation of pupils under their care are
10 satisfactory."

11 A. Yes.

12 Q. I think there is an obligation to sign the logbook --

13 A. Yes.

14 Q. -- at that time.

15 A. Yes. And the interesting thing is in paragraph -- one
16 of the interesting -- paragraph 2:

17 "A visiting manager shall take the opportunity to
18 speak with individual pupils."

19 Again that didn't appear in earlier legislation.

20 They are encouraged actually to speak to the pupils.

21 Q. And does 4 imply that in speaking to a pupil a pupil
22 might make a complaint?

23 A. Yes.

24 Q. Because it provides:

25 "A manager shall discuss with the headmaster any

1 complaint made by a pupil."

2 So that is new, is it not?

3 A. Yes, that is new.

4 Q. Also in relation to monitoring, if we look at rule 40 on
5 page 2707. This again is dealing with the appointment
6 of a medical officer. We have seen this before in other
7 contexts, but here:

8 "The manager shall appoint a medical officer whose
9 duty shall include ..."

10 For example at (b):

11 "A quarterly inspection of each pupil."

12 And then also at (d):

13 "A visit to the school at least once a week."

14 Do you see that as an important element in the
15 monitoring of this kind of establishment?

16 A. I think it is important because the medical officer is
17 an independent person. The medical officer is not the
18 manager of this school, a manager, an officer of any
19 authority or voluntary organisation. The medical
20 officer is an independent pair of eyes that's coming in
21 that is required to go in on a pretty regular basis and
22 examine pupils -- each individual pupil regularly. So
23 he -- usually it would be a he at the time -- would be
24 able to give this an independent perspective.

25 Q. Yes. So far as inspection by any other inspector is

1 concerned, if we look at rule 48 on page 2709, can we
2 see that there it provides that:

3 "The school shall be open at all times to
4 an inspector and the manager shall give him all
5 facilities for an examination of the books and records
6 of the school and for the interviewing of staff or
7 pupils."

8 A. Yes.

9 Q. I think we are told in the interpretation provisions on
10 the next page that "inspector" means one of Her
11 Majesty's Inspectors of Schools?

12 A. Yes, a school inspector.

13 Q. So far as these rules are concerned, then,
14 Professor Norrie, I think you tell us they remained in
15 place until June 1988?

16 A. That is correct.

17 Q. That then brings me on to look again at remand homes and
18 also remand centres and detention centres where you
19 begin to deal with these institutions on page 0137 of
20 your report.

21 We looked at this earlier in relation to remand
22 homes. I think, as you told us before, these were seen
23 as places for short sentences, within one month. After
24 the coming into force of the Remand Homes (Scotland)
25 Rules (1946) that you tell us about on page 137, what

- 1 was the position then?
- 2 A. The position under the 1946 rules -- the 1946 rules were
3 designed to give the regulations for the management of
4 the remand home. They were really much more detailed
5 than what had gone before. There is a lot about
6 corporal punishment again. There is quite a bit about
7 monitoring and inspection and record keeping. It is
8 significantly more detailed than previously.
- 9 Q. We needn't look at the detail because it is set out in
10 your report and I think you have in fact adopted what
11 was in the Shaw report in relation to the 1946
12 regulations.
- 13 A. Yes.
- 14 Q. But I should point it out that there are rules about
15 corporal punishment: again striking, cuffing and shaking
16 is forbidden and they are to be open for inspection at
17 all times and there are detailed rules about record
18 keeping.
- 19 A. Yes.
- 20 Q. You tell us on page 140 that the Criminal Justice
21 (Scotland) Act (1949) created detention centres for 14
22 to 21-year-olds; is that correct?
- 23 A. Yes.
- 24 Q. You could be detained in these centres for a period of
25 up to 3 months?

- 1 A. Yes that is right.
- 2 Q. You also say, I think, that that piece of legislation
3 created remand centres. Now can you explain the
4 difference between --
- 5 A. I'm not sure I can to be honest. I could not really
6 find anything that described what the crucial
7 differences were.
- 8 Q. But I think you do tell us that there were rules, for
9 example, the Remand Home Rules (1964). You set these
10 out in your report and they deal with staffing,
11 punishment and inspections.
- 12 A. That's right. The 1964 rules built upon the 1936 rules
13 but I think perhaps there is a terminological
14 development. They start talking about children in
15 remand homes rather than inmates. But more important
16 substantively the 1964 rules refer to the welfare of the
17 children, the local authorities have to run these homes
18 for the welfare of the children therein, and that didn't
19 appear in the earlier rules.
- 20 Q. You set out on page 0142 the provisions in relation to
21 corporal punishment. Again, we have seen this type of
22 language before: for example, the use of the light tawse
23 and the prohibition of striking, cuffing and shaking;
24 that's the case?
- 25 A. Yes. The curious feature is that in remand homes

1 corporal punishment was prohibited on girls, which
2 wasn't the case with approved schools. Just a curious
3 distinction, I don't know why.

4 Q. By the way, there were clear rules about inspections?

5 A. Yes.

6 Q. They'd be by three people, one of them a woman, once
7 a month?

8 A. Yes.

9 Q. Borstals you also re-visit, I think, at the bottom of
10 page 0143, running into the following pages.

11 I think we had seen under the 1932 Act that young
12 persons not less than 16, nor more than 21, could be
13 sent to a borstal institution and that the 1911 rules
14 regulated the management of these institutions.

15 A. Yes.

16 Q. Those provisions were, I think, replaced by the Criminal
17 Justice (Scotland) Act, is that correct, of 1949?

18 A. Yes.

19 Q. And in 1950 the Borstals (Scotland) Rules replaced the
20 1911 rules?

21 A. That is correct.

22 Q. I think you tell us on page 0145 that now at least
23 corporal punishment was not permitted in a borstal
24 institution?

25 A. That is correct. I think it never was.

1 Q. You do not think it was.

2 But you also tell us that a young person in
3 a borstal institution could request to see the governor
4 or visiting committee and make complaints.

5 A. Yes.

6 Q. That is new, I think?

7 A. Yes.

8 Q. I think it is also said at page 0146 that there was
9 monitoring through the visiting committee system, but
10 there was also the role of the medical officer in that
11 context.

12 A. Yes.

13 LADY SMITH: Was it likely, Professor Norrie, that any
14 single medical officer might have responsibility for
15 visiting and monitoring more than one such school,
16 depending on the area in which he worked?

17 A. I would have thought so. I would have thought it is
18 a particular specialty. You know visiting once a month
19 for a particular -- it's quite time-consuming, so --
20 I have no doubt -- I don't know what sort of financial
21 arrangements would be made there, but I would imagine it
22 was a sort of specialist aspect of certain doctor's
23 practice.

24 LADY SMITH: It just occurred to me if that is what
25 happened, it wouldn't just be an outside eye, but it

1 would be an informed outside eye knowing comparatively
2 how other institutions were operating.

3 A. Mm-hmm.

4 MR MacAULAY: Can I then turn to look at independent
5 boarding schools, Professor Norrie?

6 A. Yes.

7 Q. I think we had seen in the 1908 Act that that Act
8 excluded boarding schools from the infant protection
9 provisions.

10 A. Yes.

11 Q. I think you told us that that exclusion was removed by
12 the 1932 Act.

13 A. Yes.

14 Q. But did that mean that somehow the door was open to some
15 form of inspection regime at that time?

16 A. If you read the Infant Life Protection Acts literally,
17 which was receiving children for reward, then boarding
18 schools, who took children in for reward, seemed to come
19 within at least these provisions.

20 It wouldn't have covered terribly many children
21 because of the age limit. Under the 1908 Act, the age
22 limit was 7, so there wouldn't be very many children
23 boarding before the age of 7.

24 Q. But that was extended by the 1937 Act to 18?

25 A. No. That was extended to nine in the 1937 Act and then

1 in the 1948 Act it was extended to 18. In the 1948 Act
2 it was extended to 18. So by that stage it could
3 potentially cover all children or the vast majority of
4 children at boarding schools.

5 However, there was a decision of the English court,
6 of the English Chancery court, in the 1950s where the
7 judge basically said, "Of course the provisions don't
8 cover boarding schools; parents are not abandoning their
9 children when they send their children to boarding
10 schools". Doubtless in the vast majority of cases that
11 is so, but looking at the literal terms of the
12 legislation, I'm not sure it says anything about
13 parental intent. So, you know, I wasn't wholly
14 convinced by the reasoning in the English decision.

15 But nevertheless that was the case in England. The
16 Scottish legislation was worded identically. It is
17 probably unlikely that the Scottish court would have
18 come to a different decision, but in fact I could find
19 no discussion of the point at all.

20 Q. This is a point I think you make on page 0150 of your
21 report where you make reference to the decision of
22 Wallbridge v Dorset County Council.

23 A. Yes, I think that is the case.

24 Q. Although I think you indicate that Cowan in her book
25 might have suggested that these provisions would have

1 caught --

2 A. Yes, private boarding schools.

3 Q. But if we look at the legislation in relation to
4 education -- I will put on the screen the Education
5 (Scotland) Act (1946) and that's LIT.001.1691. We have
6 the Act -- the 1946 Act on the screen. I just wanted to
7 look at selected pages. If we go to 1693. That should
8 be section 61. This section -- the headnote for the
9 section is "Inspection of educational establishments".

10 Shall I read the provisions? I think you are aware
11 of the provision, it is section 61(1):

12 "It shall be the duty of the Secretary of State to
13 cause inspection to be made of every educational
14 establishment, being a school or a junior college, at
15 such intervals as appear to him to be appropriate."

16 And so on and so forth.

17 When we look at the interpretation provisions --
18 this is in section 143 at subsection (1) -- a school is
19 defined as meaning:

20 "An institution providing primary or secondary
21 education, or both primary and secondary education,
22 being a public school, a grant-aided school or
23 an independent school."

24 A. Yes.

25 Q. So can we take from that that under the education

1 legislation there was provision for the inspection of
2 independent boarding schools?

3 A. From that independent boarding schools were subject to
4 the same rules of inspection as private schools from the
5 1946 Act.

6 Q. There is a provision also -- it is section 62 of the
7 1946 Act -- that's headed "Inspection of schools on
8 request of managers". I think you are aware of that
9 provision and it reads:

10 "Where the managers of a school other than a public
11 school apply ..."

12 And I think "public school" here is a state school?

13 A. It is defined in section 143 as a school operated by
14 an education authority which, by this stage, is the
15 local authority.

16 Q. "... apply to the Secretary of State for an inspection
17 of the school with a view to ascertaining its general
18 efficiency or the efficiency of the instruction in any
19 specified subject and undertake to pay towards the
20 expenses of such inspection such sum that the Secretary
21 of State may fix. It shall be lawful for the Secretary
22 of State to cause the school to be inspected either by
23 one or more of His Majesty's Inspectors or by such other
24 persons as the Secretary of State may appoint for the
25 purpose."

1 So there's another provision where the school can
2 call in, if you like, an inspection?

3 A. That is right. You have got the normal inspection
4 process but if a non-public school wishes -- I suspect
5 a particular aspect of the provision to be inspected,
6 they could ask the Secretary of State to arrange --
7 to -- the Inspector of Schools effectively to do that
8 for that purpose with them bearing the costs.

9 Q. The only other provision under this Act I want to
10 perhaps draw to your attention again is section 51 which
11 is headed, "Medical inspection and treatment of pupils".
12 Subsection 1:

13 "It shall be the duty of an education authority to
14 provide for the medical inspection at appropriate
15 intervals and for the medical supervision of all pupils
16 in attendance at any school ..."

17 Again with that catch, an independent school because
18 of the definition of school?

19 A. Yes.

20 Q. The other point, just to look at independent schools, is
21 the issue of registration. If we perhaps just on that
22 go back to your report at page 151. You talk about that
23 on page 151 through to page 152. So there was a process
24 for the registration of independent schools?

25 A. That's correct. Though curiously that particular

1 provision wasn't brought into force until much later.
2 The ones you have been talking about so far, about
3 inspection, came into force with the rest of the 1946
4 Act at the beginning of 1947.

5 The registration provisions, I don't know why, took
6 another ten years and they came into force in 1957.

7 Q. Perhaps we can look at these briefly, it is
8 LEG.001.001.2294.

9 As you indicated, these are the Registration of
10 Independent Schools (Scotland) Regulations (1957). They
11 came into force on 30th September 1957 --

12 A. Yes.

13 Q. -- although, as we read, they were being made under
14 section 109 of the 1946 Act.

15 A. Yes.

16 Q. Turning to the second page of the regulation at
17 page 2295, we are provided in the schedule with some
18 details of the particulars that were to be made
19 available.

20 A. Mm-hmm.

21 Q. For example, the name of the school, address and so on
22 and so forth. That's in part 1. Then part 2, the
23 number of pupils in the school, arranged in groups
24 according to their year of birth, their sex and whether
25 or not they are a boarder, and the names, date of birth

1 and qualifications of each teacher employed by the
2 school. So these are the particulars. Not a great deal
3 but there are some details being requested.

4 A. Yes.

5 Q. This was in order to become registered?

6 A. Yes.

7 Q. In the final part of your report then you deal with
8 a number of other types of organisations or institutions
9 and the first you look at is home for the disabled at
10 154. Of course we are dealing with children, but the
11 preposition is that there will be children being housed
12 in such places?

13 A. The rules don't distinguish, but obviously some of the
14 residents would be underage.

15 Q. But as you point out, under the National Assistance Act
16 (1948), such a place is required to be registered.

17 A. Yes.

18 Q. Thereafter the Secretary of State had the power to enter
19 and inspect any such home.

20 A. That is right and could withdraw registration if he had
21 serious concerns.

22 Q. The next part of your report you return to detention
23 under the mental health legislation during this period
24 we are looking at. Of course we already looked at the
25 1913 Act --

- 1 A. Yes.
- 2 Q. -- but the relevant Act now is I think an Act -- the
3 Mental Health (Scotland) Act (1960)?
- 4 A. That is correct.
- 5 Q. So did the 1913 Act remain in force up until that point
6 in time?
- 7 A. It did, yes.
- 8 Q. It was that Act that established the Mental Welfare
9 Commission?
- 10 A. Yes.
- 11 Q. And that had an overriding responsibility in respect of
12 these places?
- 13 A. Yes. An overriding commitment towards -- duty towards
14 the residents and people suffering from mental
15 disability.
- 16 Q. And as you tell us on page 0155, the Mental Welfare
17 Commission had a clear monitoring function which
18 included regular visits.
- 19 A. Yes.
- 20 Q. At page 0158, you tell us that there was a special
21 offence in relation to the ill-treatment of patients.
- 22 A. Yes.
- 23 Q. What does that tell us?
- 24 A. This was new. The 1913 legislation had a particular
25 offence about carnal knowledge. The 1960 Act had sexual

1 offences as well, but it also had this one in section 95
2 about the ill-treatment of patients:

3 "It shall be an offence for any person being
4 an officer on the staff of or otherwise employed in
5 a hospital or nursing home ... to ill-treat or wilfully
6 neglect a patient ..." in a mental hospital.

7 I do go on to point out there is a very odd
8 provision subsequently in section 107 which removed any
9 civil criminal liability in respect of any act
10 purporting to be done in pursuance of this Act.

11 That has a curious history because the previous
12 legislation protected people from criminal or civil
13 liability for wrongful detention in a mental
14 institution. The 1960 Act extended that beyond just
15 receiving a person in a mental institution to any act
16 done.

17 I looked at the parliamentary debates, I looked at
18 the English Royal Commission that led to the English act
19 upon which the Scottish act was based. I found no
20 discussion as to why this defence was extended but the
21 fact of the matter is that it was and in my report
22 I refer to a case -- a Scottish case from 1980 in which
23 a nurse was charged with assaulting a number of mentally
24 handicapped children, aged eight to 11, by throwing cold
25 water over them and hitting them on the head with his

1 knuckles. He was charged under section 95. His defence
2 was section 107, he was doing it in the course of -- and
3 the defence succeeded.

4 Q. You have set out an extract from Sheriff Fulton's
5 decision on that on page 0159 through to 0160 of your
6 report?

7 A. Yes.

8 LADY SMITH: I suppose that would not exclude any act done
9 in bad faith --

10 A. Yes.

11 LADY SMITH: -- and that the defence being, I'm performing
12 my statutory duty, would of itself imply good faith?

13 A. Yes and remember the onus of course would be on the
14 prosecution to establish bad faith --

15 LADY SMITH: To exclude bad faith.

16 A. -- which would be quite difficult.

17 MR MacAULAY: But as in the 1913 Act, there was also some
18 protection against the sexual abuse of mental health
19 patients.

20 A. Yes, there was. Quite importantly, both patients in
21 hospital and patients under guardianship. I suppose it
22 is there because of the difficulty with consent. You
23 know, if there is no consent, the crime's rape and you
24 don't a statute to tell us that, but of course with
25 mentally disabled patients they are much more vulnerable

1 to exploitation and persuasion so these crimes -- it is
2 important that we have these crimes (sic) to prevent
3 women and girls who might be persuaded against their
4 better judgement, as it were.

5 Q. But as before, as with the previous legislation, the
6 focus is on females, there is no equivalent provision
7 dealing with any sexual involvement with males?

8 A. No, though the Common Law crime of the homosexual
9 offences might well capture that but only at the cost of
10 criminalising the patient as well. It is just the way
11 that legislation was structured. So there were real --
12 that to me is a real, real gap in the legislation.

13 LADY SMITH: I am just wondering -- I think this is right --
14 there was no express protection of children from sexual
15 exploitation. Was the reason for that the protection
16 from the Common Law because of the availability of the
17 offence of lewd and libidinous practices and such like?
18 Was that the thinking?

19 A. I think one of these provisions in the 1960 Act say the
20 victim is "woman" and then the provision says something
21 like "woman includes girl" --

22 LADY SMITH: Right.

23 A. -- but not them all curiously.

24 LADY SMITH: So perhaps falling back on the Common Law for
25 the protection of children from sexual exploitation of

1 any sort.

2 A. I can't remember if -- there was a case in the Law
3 Reports, or I read it somewhere -- I am sure it is
4 mentioned somewhere, but there is a case of a woman
5 warder being charged with sexually assaulting a woman
6 patient under the Common Law, but they would not have
7 been caught by these provisions.

8 MR MacAULAY: I think that completes this part 2 of your
9 report, professor.

10 Like before, can you give us a fairly broad overview
11 of the position then from 1948, where you say that was
12 a sea change brought about by that Act, up to 1968 when
13 I think we will see when next you come back what
14 happened after that?

15 A. As I think I said earlier, the sea change in 1948 was to
16 focus attention much more on the local authority as the
17 primary player in child protection in most of its
18 manifestations.

19 The underlying rules and regulations began to be
20 much more detailed in what was required. The concept of
21 the welfare of the child or, as it is often expressed,
22 the well-being of the child begins to appear in the
23 subsidiary legislation as the purpose of keeping
24 children away from home, whether boarded out or in
25 an establishment of whatever nature. We are seeing much

1 more detail and the beginnings of a focus on the welfare
2 of the individual child.

3 Q. As we have gone through these various provisions, as we
4 did indeed for the earlier period, we see there is
5 a focus on inspection and also discipline and the
6 keeping of records?

7 A. Yes.

8 MR MacAULAY: My Lady, as far as I'm aware, no questions or
9 written questions have been submitted to the Inquiry
10 team for me to put to Professor Norrie and none of my
11 learned friends have approached me to suggest that they
12 have any sort of last-minute thinking on this but
13 I think that's the position.

14 LADY SMITH: Thank you very much, Mr MacAulay. Likewise,
15 nothing has filtered its way to me as indicating that
16 any of the representatives here are seeking permission
17 to ask any questions. Am I right about that? Thank you
18 very much.

19 Professor Norrie, thank you for all your help today
20 and all the work you have done on these parts of the
21 report so far and. Look forward to the next instalment
22 when it is ready at a later point. Thank you.

23 I'm able to let you go at this stage but, as I say,
24 on the basis that you will be back.

25 (The witness withdrew from the witness box)

1 MR MacAULAY: My Lady, a short break -- I think my Lady was
2 intending to have a short break --

3 LADY SMITH: I was going to allow a 5-minute break for the
4 transcription service anyway; would now be convenient?

5 MR MacAULAY: It would be, my Lady.

6 LADY SMITH: Very well, we will do that. Just 5 minutes
7 please.

8 (2.40 pm)

9 (A short break)

10 (2.49 pm)

11 LADY SMITH: Mr MacAulay.

12 MR MacAULAY: My Lady, the next witnesses I would like to
13 call are Professor Lorraine Radford and
14 Dr Christine Barter.

15 LADY SMITH: Thank you. Professor Radford, if I can take
16 you first.

17 PROFESSOR LORRAINE RADFORD (affirmed)

18 LADY SMITH: Thank you do sit down. Now you, Dr Barter.

19 DR CHRISTINE BARTER (affirmed)

20 LADY SMITH: Thank you, also please do sit down.
21 Mr MacAulay when you are ready.

22 Questions from MR MacAULAY

23 MR MacAULAY: Yes, your Ladyship.

24 Can I begin with you, Professor Radford.

25 Are you Lorraine Radford?

1 PROFESSOR RADFORD: Yes, I am.

2 MR MacAULAY: What position do you hold at present?

3 PROFESSOR RADFORD: I'm a professor of social policy and
4 social work at the University of Central Lancashire in
5 England.

6 MR MacAULAY: I propose to put your CV on the screen and you
7 will be able to see that. It is at INQ.001.001.0825.

8 So you set out there what your current position is
9 and, moving down from there, you identify your academic
10 qualifications, the latest being a PhD in applied social
11 sciences in 1988.

12 PROFESSOR RADFORD: Yes.

13 MR MacAULAY: You then set out your professional positions
14 beginning with your present position from 2012 onwards;
15 is that correct?

16 PROFESSOR RADFORD: That is correct.

17 MR MacAULAY: I needn't take you through the detail but you
18 provide us with your track record from 1984 when you
19 became a lecturer through up to date.

20 PROFESSOR RADFORD: That is correct.

21 MR MacAULAY: Then on page 0826, the next page, you provide
22 us with some information about your publications, books
23 and research reports?

24 PROFESSOR RADFORD: Yes.

25 MR MacAULAY: So if we pick up the latest that you made

1 reference to, I think that in fact is a piece of work
2 you did for the English and Wales Child Abuse Inquiry.

3 PROFESSOR RADFORD: Yes, that is correct.

4 MR MacAULAY: The next item is in fact the work you have
5 done for this Inquiry?

6 PROFESSOR RADFORD: Yes, that is correct.

7 MR MacAULAY: Then you identify a piece of work that's in
8 press or at least was in 2016; is that still in press or
9 has that been published?

10 PROFESSOR RADFORD: No, it is not published yet.

11 MR MacAULAY: That is with the title "Preventing and
12 responding to child sexual abuse and exploitation" and
13 it is an evidence review.

14 PROFESSOR RADFORD: Yes, that is correct.

15 MR MacAULAY: I don't propose to look at the detail of these
16 entries but you provide us with a number of publications
17 that you have been involved with.

18 PROFESSOR RADFORD: Yes.

19 MR MacAULAY: Also, journal articles on the next page, 0827.
20 Again, some very recent work here towards the bottom of
21 the page. The second item in 2017:

22 "Researching violence with children: experiences and
23 lessons from the UK and South Africa."

24 Again, that is 2017 in fact.

25 PROFESSOR RADFORD: Yes.

1 MR MacAULAY: We can go through to page 0829 where you set
2 out some information about contributions you have made
3 to books. If we can just get to the page. That's 0829.
4 So for example, if I just pick up the most recent in
5 2017, you have written a contribution chapter, "Child
6 abuse and neglect: Preference and incidence", in a book
7 by Dixon, Perkins and Craig "What Works in Child
8 Protection?"

9 PROFESSOR RADFORD: That is correct.

10 MR MacAULAY: We can see for ourselves the contributions you
11 have made over the next page or so and then you have
12 also set out other publications that you have been
13 involved in.

14 PROFESSOR RADFORD: Yes.

15 MR MacAULAY: You provide us with some further detailed
16 information through the rest of the CV. Perhaps I can
17 just pick up on some aspects of your teaching experience
18 on page 0837. It may be that we are not getting that on
19 the screen because -- have you not --

20 PROFESSOR RADFORD: I have had them so far; it is just the
21 page on teaching experience isn't currently on screen.

22 MR MacAULAY: That is the one I'm looking at now.

23 PROFESSOR RADFORD: I do remember my teaching experience!

24 MR MacAULAY: It was immemorable was it?

25 LADY SMITH: I should probably explain Professor Radford

1 that today is our first day in going live in using the
2 document management system and it is taking a little
3 time to familiarise itself with our requirements. We
4 are working on it.

5 MR MacAULAY: Then it is from 2012 onwards when I think you
6 have been teaching on domestic violence and child
7 protection and so on; is that correct?

8 PROFESSOR RADFORD: That is correct yes, teaching
9 postgraduate, post-qualifying and undergraduate social
10 work students and professional social workers mostly in
11 my current position.

12 MR MacAULAY: Perhaps I can now turn to you, Dr Barter.
13 I will put your CV on the screen; that is
14 INQ.001.001855.

15 Perhaps I should ask you first of all what is your
16 current position?

17 DR BARTER: I'm a reader in young people and violence
18 prevention in the Connect Centre at the University of
19 Central Lancashire.

20 MR MacAULAY: If we just move down on the screen for your
21 CV, can we see that your PhD was in social policy,
22 "Young people's experiences of peer violence".

23 DR BARTER: That is correct.

24 MR MacAULAY: You obtained that in 2014?

25 DR BARTER: Correct.

1 MR MacAULAY: You then provide us with some details as to
2 your professional appointments beginning, I think, in
3 1991 and 1992 and moving towards the position you
4 presently hold.

5 DR BARTER: Yes.

6 MR MacAULAY: Turning to the next page where you set out
7 some information about your relevant publications,
8 perhaps looking at the first one on the list, it is on
9 page 0856. There is a joint publication "Foregrounding:
10 young people's experiences of intimate violence and
11 abuse". What date was that? They don't have a date on
12 the --

13 DR BARTER: That's to come out next year.

14 MR MacAULAY: That is in process?

15 DR BARTER: Forthcoming, yes.

16 MR MacAULAY: Well again the next one, "Preventing violence
17 and abuse in young people's relationships"; is that
18 still in process or has that been published?

19 DR BARTER: That's forthcoming; that will be published in
20 two months' time.

21 MR MacAULAY: Moving on, 2016:

22 "Peer violence in foster care: a review of the
23 research evidence."

24 DR BARTER: Correct.

25 MR MacAULAY: Just focusing on foster care for a moment,

1 about three entries from the bottom of that page, we
2 have a piece of work, 2015, "A life less ordinary:
3 foster carers' views and experiences of negative peer
4 interactions in fostering households".

5 DR BARTER: Yes.

6 MR MacAULAY: We can see that much of the focus of your work
7 has been on peer violence; is that correct?

8 DR BARTER: It has yes, recently.

9 MR MacAULAY: You also provide us, if we turn to page 0859,
10 with a number of pages setting out selected
11 presentations that you have been engaged in.

12 Insofar as the Inquiry is concerned -- perhaps I can
13 direct this to Professor Radford because, unlike
14 politicians, we can't have you speaking both at the same
15 time. So, Professor Radford, can I focus first on your
16 remit for this Inquiry. Correct me if I'm wrong, but
17 you were asked to produce a review of research evidence
18 and published sources on the prevalence and nature of
19 child abuse and neglect in Scotland from 1930 to 2014.

20 PROFESSOR RADFORD: That is correct, yes, with specific
21 reference to children in care.

22 MR MacAULAY: Yes. The report that you have produced -- and
23 I will put that on the screen -- and that's at
24 INQ.001.001.0294 -- has the title "The abuse of children
25 in care in Scotland: a research review".

1 PROFESSOR RADFORD: That is correct, yes.

2 MR MacAULAY: I'm just waiting for it to come up. If we
3 turn to the second page of the report, 0295, apart from
4 yourselves, you also had some contributions from another
5 three people.

6 PROFESSOR RADFORD: That is correct.

7 MR MacAULAY: Ather Akhlaq, Steven Dodd and Professor Nicky
8 Stanley?

9 PROFESSOR RADFORD: That is correct.

10 MR MacAULAY: Can you give us some feel as to how the work
11 was distributed?

12 PROFESSOR RADFORD: Yes. It was distributed in that I was
13 the principal investigator, which meant that I was
14 responsible for basically leading the work, and also
15 taking the lead role in the analysis and the
16 presentation and writing up of the results.

17 Ather Akhlaq is somebody who had his PhD at the
18 University of Edinburgh and he helped with the
19 literature search. His PhD was actually in the area of
20 conducting systematic reviews and so, because he was
21 experienced in that area, he helped with the search
22 processes because, as you will be aware, you need
23 specific skills to be able to identify the research
24 resources that we used for this work.

25 So he took, under my supervision, major

1 responsibility for identifying the online databases and
2 helping with some of the online searches.

3 Christine Barter helped with doing the quality
4 reviews of the research that we identified once we had
5 screened it and also helped with reviewing sections of
6 the report as we were writing up the results.

7 Steven Dodd was also a PhD researcher who helped
8 with working on what's called the grey literature. Grey
9 literature are materials such as government reports and
10 reports from other Inquiries and reports from
11 organisations which will not come up when you search
12 academic research literature databases and so
13 Steven Dodd worked with Ather Akhlaq to identify those
14 materials and to find those materials.

15 Steven did a lot of the work, with my supervision,
16 on looking at and interpreting the grey literature
17 materials. I also played quite a large part in
18 identifying those materials because it requires
19 a certain amount of background knowledge to know what
20 you are looking for.

21 Professor Stanley also helped with the quality
22 assessment of the materials and with reviewing the
23 writing up. So that was the division of labour on the
24 project.

25 MR MacAULAY: I'm looking actually at the report prepared

1 for the England and Wales Child Abuse Inquiry, "Rapid
2 evidence assessment: What can be learnt from other
3 jurisdictions about preventing and responding to child
4 sexual abuse?" I think yourself and Dr Barter and
5 Professor Stanley were also involved in that work.

6 PROFESSOR RADFORD: That is correct.

7 MR MacAULAY: Has that been presented to the Inquiry?

8 PROFESSOR RADFORD: It has, yes. We gave evidence to the
9 Inquiry on 12th April and the report is now available on
10 their website plus a copy of the proceedings from the
11 Inquiry when we presented the findings.

12 MR MacAULAY: Can I take you to that section of the report
13 where you deal with -- you have a glossary and
14 definitions and that's at page 0298. I think you set
15 out here some definitions for some of the terms that you
16 used in the report itself. For example, "abuse" you
17 have taken effectively from the terms of reference of
18 this Inquiry.

19 PROFESSOR RADFORD: Yes, where it was possible we wanted --
20 because you need to have clear definitions. To
21 effectively use this type of methodology, we needed to
22 have clarity over those definitions and to set them out
23 in the research report. Where it was possible, we used
24 the Inquiry's definitions. Obviously because, you know,
25 the work was for the Inquiry.

1 MR MacAULAY: So if it was "child", for example, and
2 "children in care", you have taken that effectively from
3 the terms of reference?

4 PROFESSOR RADFORD: Yes we have.

5 MR MacAULAY: One phrase I would like you to tell us
6 about -- and that's on the next page, it is 0299,
7 because I think this is relevant to the work you did and
8 that is the description "High income country".

9 PROFESSOR RADFORD: Yes.

10 MR MacAULAY: What does that mean?

11 PROFESSOR RADFORD: When we were looking at the information
12 on the prevalence of child abuse in the general
13 population, we wanted to look at what we know from the
14 global literature and particularly looking at
15 jurisdictions that might be similar to Scotland, so that
16 we could put the Scottish data in context.

17 So one way to approach that is to take the World
18 Bank definition of a high-income country. So that means
19 it is a country that would fall within that category of
20 being high income so that they have got a comparable
21 level of economic resources. What we also did is that
22 we looked at countries that may have highly developed
23 children's services because if you are looking at things
24 like the prevalence of child abuse, it makes sense to
25 have a fairly comparable context. So that is where we

1 got the definition of high-income country from.

2 MR MacAULAY: The other two particular definitions I would
3 like to explore with you is that of "incidence", which
4 is mentioned at the bottom of 299, and "prevalence"
5 which is mentioned on the following page. Can you just
6 explain the nuances between those two definitions?

7 PROFESSOR RADFORD: Yes. There are some nuances. Incidence
8 refers to the number of cases that are reported or
9 detected by agencies within a given period of time.

10 MR MacAULAY: So if the police detect 12 cases, that would
11 be the incidence in that particular period?

12 PROFESSOR RADFORD: So if the police detect 12 cases say in
13 a week, yes, then that would be the incidence.

14 The prevalence figures are usually the actual levels
15 of that particular experience within the general
16 population. The problem with prevalence for child abuse
17 is that it is something that's never entirely totally
18 known and so the best way of getting a prevalence figure
19 is to ask young people about their experiences. The
20 reason that you never get an entirely accurate figure is
21 that young people may not be willing to tell you about
22 their experiences and that's a problem that you have.

23 The term prevalence is often used in relation to say
24 looking at epidemiological studies where you are trying
25 to say how common a disease like chickenpox is and you

1 can tell that because you can look at the number of
2 children with spots or the number of children who may
3 report being unwell. It is not quite as easy with
4 experiences of child abuse. But basically the
5 distinction is it is a level within a population versus
6 the level that is reported or known about in a given
7 period of time.

8 MR MacAULAY: Perhaps I should also take you to that part of
9 your report where you deal with objectives and
10 methodology; that is at page 0311. You have mentioned
11 the grey literature already. But at 2 you say:

12 "The review included published and grey literature
13 on all forms of physical and sexual violence and abuse
14 affecting the children in care over the Inquiry's
15 timescale, with 'within living memory' taken to be
16 1930."

17 I think the grey literature, as you have explained,
18 really includes non-published research type literature;
19 is that correct?

20 PROFESSOR RADFORD: That is correct yes.

21 MR MacAULAY: Would you include in that reports of
22 inquiries, for example?

23 PROFESSOR RADFORD: Yes, where those were published and
24 available. It was not within our remit to collect new
25 data. So where things have not been published, where

1 an agency might have case records, we were not able to
2 gather together those case records and do any counting
3 exercises for ourselves. So it was only literature
4 which could be found and which was published.

5 MR MacAULAY: We know, for example -- and I think you
6 mentioned these in the report -- that there have been
7 a number of reports in Scotland in relation to abuse in
8 certain institutions. So you would describe these as
9 the grey literature?

10 PROFESSOR RADFORD: Yes, we do. The reason for that is that
11 they would not be listed in the online research
12 databases that we searched. The other thing is that
13 when we assessed the information that we had, we
14 assessed the academic research literature for quality.
15 So to look at whether this is good evidence and can we
16 use it? Whereas with the inquiries it didn't make sense
17 to apply the research criteria to those inquiries, so we
18 took them as authorities in their own right.

19 MR MacAULAY: Thereafter you have set out six questions that
20 you sought to address in the course of the research; is
21 that correct?

22 PROFESSOR RADFORD: Yes, we addressed these six questions.
23 So the first three relate to what we know about the
24 prevalence in general amongst the populations and the
25 last three questions look specifically at the prevalence

1 of the abuse of children in care.

2 MR MacAULAY: That's the distinction the between two --

3 PROFESSOR RADFORD: Yes.

4 MR MacAULAY: Can I say the two yellow folders that are in

5 front of you do contain hard copies of the report if you

6 are having difficulty --

7 PROFESSOR RADFORD: Let's hope it doesn't come up on screen!

8 LADY SMITH: This isn't an oral exam; you are allowed to

9 look at your reports!

10 MR MacAULAY: What I want to do next, Professor Radford and

11 Dr Barter, is to invite you to present us with

12 a PowerPoint presentation because I think -- and I think

13 you agree with us Professor and Dr Barter -- that it is

14 probably the best way of putting forward what you found

15 as a result of this research; would that be a fair

16 comment?

17 PROFESSOR RADFORD: Yes, I think so, because we can

18 highlight the key points and obviously there is then the

19 opportunity for people to ask questions on specific

20 areas.

21 MR MacAULAY: I think the plan is, Professor Radford, you

22 will start with your presentation first and then I think

23 you will hand over to Dr Barter.

24 PROFESSOR RADFORD: That is correct, yes.

25 MR MacAULAY: Your presentation, professor, is at

1 INQ.001.001.0841.

2 I think the plan is you will go through each slide
3 and explain what's on the slide and between yourself and
4 Mr Fleming, who will operate the move-on button.

5 PROFESSOR RADFORD: That is right.

6 MR MacAULAY: You will develop some sort of communication
7 that will allow that to happen.

8 PROFESSOR RADFORD: Yes, I will probably say "next slide".

9 MR MacAULAY: We have on the screen then -- can I just
10 confirm this is your presentation that we have on the
11 screen at the moment?

12 PROFESSOR RADFORD: That is correct, yes. So there are
13 going to be two presentations. So I'm going to present
14 the key messages from the research that we did on the
15 prevalence of child abuse in Scotland and then
16 Christine Barter is going to make the second
17 presentation looking specifically at what we know and
18 don't know about the abuse of children in care in
19 Scotland between those dates.

20 MR MacAULAY: The ball is in your court, professor, if you
21 want to begin.

22 LADY SMITH: When you are ready, professor, please go ahead.

23 Presentation by PROFESSOR RADFORD

24 PROFESSOR RADFORD: Can we go to the next slide please.

25 Before I start giving you the key messages,

1 I thought I would just explain very briefly how we went
2 about identifying the materials that we used for this
3 work. The purpose of the work, as everybody probably
4 knows by now, was to inform the work of this Inquiry.

5 So if we could move to the next slide, please. This
6 slide actually just shows the six research questions
7 that everybody here has just looked at.

8 MR MacAULAY: Can you take us through them?

9 PROFESSOR RADFORD: Yes, of course.

10 So what we were doing is that we wanted to know
11 about the prevalence of child abuse in similar
12 jurisdictions, so to look at the international
13 literature as well as the literature in Scotland because
14 it is helpful to know whether the rates are similar or
15 different in Scotland and also, particularly when you
16 are looking at this historically, you know, to see what
17 the state of the literature in general is historically
18 over that period of time. Also, to put the findings in
19 context.

20 So for the research on the prevalence amongst the
21 general population we wanted to know what we know about
22 the nature and the prevalence of child abuse in general.
23 Then we wanted to know what we know about it between
24 that period of time, from 1930 to 2014. Thirdly, we
25 wanted to be able to identify what the gaps in knowledge

1 might be, certainly in Scotland and in similar
2 high-income countries.

3 MR MacAULAY: Just to understand then, the second question:

4 "What is known from research into the nature,
5 prevalence and incidence of child abuse in the UK
6 generally and in Scotland."

7 So there you are focusing on the UK?

8 PROFESSOR RADFORD: Yes.

9 MR MacAULAY: Whereas question 1 is focusing on a global
10 map?

11 PROFESSOR RADFORD: That is correct yes. We took a similar
12 approach to looking at the literature on the abuse of
13 children in care. So we looked firstly at what we know
14 about current levels, the prevalence of the abuse of
15 children in care from the global literature.

16 The next question was what we know from the research
17 literature, specifically about the prevalence and the
18 incidence of the abuse of children in care in Scotland
19 within this time period from 1930 to 2014 and, finally,
20 whether there are any gaps in the existing published
21 research on child abuse relating to Scotland and whether
22 or not these gaps might be addressed by further research
23 and whether or not this is something that could be
24 achieved in the time period allowed for this Inquiry.

25 If we could have the next slide. So there are full

1 details of the methods that we took to do this research
2 in the research report, but briefly the approach that we
3 took used recognised methods to systematically search
4 for the research literature.

5 MR MacAULAY: Are these the methods set out in the
6 appendices to the report?

7 PROFESSOR RADFORD: That is correct. So there is a detailed
8 technical summary to the approach there.

9 So we basically used agreed search terms to identify
10 literature from the online research databases and also
11 to search this body of work called "grey literature".

12 We included within the research literature,
13 literature from peer-reviewed researched journals. We
14 were asked to look for literature that was in English
15 and also in Gaelic. Unfortunately, we didn't find any
16 research literature in Gaelic within this period of
17 time.

18 We limited the search on the prevalence in the
19 population to the years 2008 to 2016 because the data
20 would have been collected before 2016, even though
21 that's beyond the remit for this Inquiry. The reason
22 that we limited the search in that way was that a number
23 of systematic reviews had already been done of the
24 global prevalence literature and it didn't seem sensible
25 to waste our time on reproducing that work.

1 So for the searches for the abuse of children in
2 care we had a much wider remit for the search and we
3 concentrated on literature from 1930 to 2014. But as
4 members of the Inquiry will appreciate, that was fairly
5 challenging because the electronic databases are really
6 relatively recent and there's not a lot that goes back
7 beyond, you know, the 1990s to be honest.

8 All the research was assessed against agreed quality
9 criteria and we also conducted what's called a weight of
10 evidence assessments which asked questions like: what's
11 the overall quality of the research; how well does it
12 address the research questions that we have; how useful
13 is it; and was the material gathered ethically?

14 MR MacAULAY: Do you have a guide that guides you on that
15 assessment?

16 PROFESSOR RADFORD: Yes, for conducting a weight of evidence
17 assessment there is a recognised methodology which was
18 developed from somebody called Professor David Goff at
19 the London School of Economics.

20 MR MacAULAY: Can I go back to the second bullet point so
21 I can understand the difference between the time frames
22 you have chosen.

23 For 2008 to 2016, you are looking at population
24 prevalence; is that abuse in the population as a whole?

25 PROFESSOR RADFORD: Yes, there were studies of prevalence

1 amongst given populations, yes.

2 MR MacAULAY: But in contradistinction the next period, 1930
3 to 2014, there you are looking at abuse in care during
4 that period?

5 PROFESSOR RADFORD: The difference is we only searched from
6 2008 through to 2016 for the first set of studies but
7 studies that appeared in 2009 may well have been looking
8 at publications that are much earlier than 2008.

9 LADY SMITH: So you are expecting them to have historical
10 information in them?

11 PROFESSOR RADFORD: Yes, we didn't exclude historical abuse
12 studies.

13 LADY SMITH: A study may have been dated, for example, 2010
14 but no doubt you would hope that you would find out
15 information about a period prior to 2010, prior to 2008
16 from such a study?

17 PROFESSOR RADFORD: Yes, with the studies that we were
18 looking for -- so a lot of them basically drew together
19 a lot of other studies that had already been published
20 and were based on very extensive pieces of research.

21 So, yes, it is reasonable to have taken that shorter
22 cut-off period because we knew from previous work that
23 we had been involved in that there were a number of
24 these large-scale reviews that had been completed on the
25 global prevalence rates because that is an area where

1 I have been working for some time.

2 LADY SMITH: And that wasn't just for Scotland, that was for
3 the whole of your high-income jurisdiction group that
4 you identified?

5 PROFESSOR RADFORD: That is correct.

6 LADY SMITH: Thank you.

7 PROFESSOR RADFORD: So the wider timescale was that if we
8 set the search terms back to 1930, we were hoping that
9 we would find things that maybe nobody else had found
10 yet, but unfortunately we didn't.

11 MR MacAULAY: Okay, I understand that. We are moving on to
12 the next slide?

13 PROFESSOR RADFORD: Yes, if we can move to the next slide.
14 So the technology is a little bit slow here. I do
15 not know whether I should talk ahead of the slide or
16 whether that would just confuse people. It is coming.
17 So I mean this slide -- I'm afraid the picture has
18 not come out very well. We printed them in purple but
19 they have come out in black and white on your systems.
20 I do apologise, I had not realised that that might be a
21 problem.

22 MR MacAULAY: I think I can see it is an inverted pyramid.

23 PROFESSOR RADFORD: It is an inverted pyramid and what it
24 gives you is -- basically the number of records we
25 identified from our searches was over 3,000 -- 3,773

1 records -- from the online searches. We screened those
2 for relevance for the subject of study. A lot of
3 studies, when you do these online searches, you will
4 find that they are not actually research studies, so
5 a lot of them were commentaries or opinion pieces or
6 sometimes you might find something completely unrelated
7 to the area that you are looking at, even if you set up
8 your search very carefully.

9 So at this point, when they were screened for
10 relevance, we lost 2,972 and of the studies that were
11 remaining, we then reviewed for quality 147 full text
12 articles and reports and, at that point, 85 were
13 excluded on quality grounds. So it was 62 research
14 studies which we included in the review which were
15 high-quality research studies.

16 LADY SMITH: That's having started with ball park -- 3,500
17 did you say?

18 PROFESSOR RADFORD: That is correct. That is not unusual.

19 LADY SMITH: Easy for you to give us the figures; I am sure
20 it was very hard work to pare it down to 62.

21 PROFESSOR RADFORD: Yes, it does take a fair amount of work
22 to sort through them all and read them for relevance and
23 assess them according to the quality criteria.

24 MR MacAULAY: You say that sort of sifting out from that
25 large figure to a smaller figure is not unusual in the

1 work that you do?

2 PROFESSOR RADFORD: That is not unusual for these types of
3 reviews, yes, and particularly if you are doing
4 a quality assessment. One of the challenges you will
5 find when you are looking at literature on children and
6 child protection -- and particularly historically -- is
7 that the quality criteria that we have now for research
8 might not match the types of quality criteria that there
9 used to exist when people were still really learning how
10 to do research with children.

11 So I have tried to cope with that in my own work by
12 sometimes basically not totally excluding those studies,
13 but, if you like, keeping them in a park folder so that
14 if we find that they don't meet the quality standards,
15 but they may have some interesting messages because they
16 were conducted, say, in 1960 where the ethical standards
17 for researching with children might not have been so
18 good as they are nowadays or our knowledge about how to
19 basically sample children and ask them about abuse might
20 not have been so good --

21 LADY SMITH: Can you give me an example of the type of thing
22 that would arise in an ethical standard?

23 PROFESSOR RADFORD: Probably not for the ethics; it is
24 mostly the methods. I mean the big difference has been
25 that up until about 2000 it was often considered

1 unethical to ask children and young people themselves
2 about their experiences. So we tended -- researchers
3 tended to ask adults retrospectively about their
4 experiences. That doesn't mean that adult experiences,
5 of course, aren't important and relevant, but what it
6 does mean is that if you are wanting to look at what are
7 the current levels of child abuse then an adult can be
8 somebody of 69 who experienced that abuse at the age of
9 9, who is talking about abuse 60 years ago. Ideally if
10 you want to know about the current prevalence of child
11 abuse, then you should be asking children and young
12 people, possibly as well as adults about some historic
13 experiences.

14 So that is the type of example. A lot of the early
15 studies were based on adult views and they were using
16 those views and those experiences to estimate the
17 current levels in the population which is problematical
18 to estimate current levels. It may be not problematical
19 to look at historic experiences.

20 LADY SMITH: Because the fact something was happening
21 50 years ago doesn't tell you it is happening now; is
22 that the short point?

23 PROFESSOR RADFORD: That is the short point, yes, but it
24 might tell you what was happening 50 years ago.

25 LADY SMITH: Absolutely, and detail will vary from person to

1 person.

2 PROFESSOR RADFORD: Yes.

3 MR MacAULAY: Of course we are interested in what has
4 happened historically and I think that is one of the
5 difficulties you found in the work you have been doing.

6 PROFESSOR RADFORD: That is correct, yes.

7 MR MacAULAY: Moving on to the next slide.

8 PROFESSOR RADFORD: The next slide, I believe, is one we
9 need to skip because we have already covered that. That
10 was just the presentation structure.

11 Basically I'm now going to move on to look at some
12 of the key messages from the first set of findings, so
13 looking at what we know about the prevalence of child
14 abuse and neglect in Scotland currently and also between
15 that period of 1930 to 2014.

16 If we could have the next slide. So I do need to
17 flag up before we highlight the key messages that there
18 are still some problems with the research literature
19 that exist even though we were focusing on high-quality
20 studies. It is very difficult globally, and even within
21 the same country, to compare the findings from one study
22 with another study because there are so many variations
23 in the methodologies in this type of research.

24 So the basic variations that we have in these
25 studies are basically who the researchers decide to ask,

1 how they ask people about their experiences and
2 basically what they ask them about. So that is the
3 basic summary of the difficulties that we have.

4 So the studies will vary as to the age of the person
5 that they are asking. A lot of the studies will ask
6 young people at a certain age, typically older
7 teenagers, so between the ages of 16 to 17, whereas
8 another study will be asking young people from the ages
9 of 11 to 17, so they are reflecting over different
10 periods of time. Obviously the longer the period or the
11 older the child the more likely you are to get reports.

12 They vary the terms of how they count the type of
13 abuse. A number of the studies look at just one type of
14 abuse, commonly child sexual abuse, and not the other
15 forms, or commonly physical violence.

16 Some studies just ask families about experiences of
17 violence in the home from a caregiver or a family member
18 whereas other studies will look more broadly at
19 children's experiences of all forms of victimisation
20 from adults or from peers, within the home, within their
21 communities, and basically across all settings in which
22 children might spend their lives.

23 The samples will vary. So there are samples which
24 take convenience samples. Convenience samples are
25 samples that can easily be found through services, for

1 instance, who would be a particular type of population
2 or whether they take a community sample and they
3 rigorously get a sample that is representative, say, of
4 the population in Scotland.

5 Some of them, as we said earlier, will ask adults,
6 some will ask children, some will ask a range of
7 different age groups.

8 One of the difficulties with a lot of these studies
9 is that the figures that they report are lifetime rates
10 of abuse. So it is reflecting across the whole course
11 of a child's lifetime which, again, if you are looking
12 at current levels you want to be able to say, have they
13 asked them about stuff which has been more recent which
14 will give you a better measure of how common it
15 currently is.

16 Some studies will ask about experiences across your
17 whole childhood as well as asking children and young
18 people about what they have experienced in a given
19 period of time, like what's happened in the past year.
20 If you ask them that question then you know what might
21 be recent and you have a better estimate of current
22 prevalence.

23 There are also variations in how to ask and also the
24 number of questions. The number of questions you ask
25 can influence whether or not somebody says yes; it

1 happens.

2 Bearing that in mind, these are the key messages --

3 MR MacAULAY: We have to bear these limitations in mind.

4 PROFESSOR RADFORD: I'm afraid so, yes.

5 Some of the conclusions we can draw are on the next
6 slide. Looking at some of the findings on the recent
7 levels of child abuse on the global studies in similar
8 countries. We included 31 high-quality studies in this
9 part of the review and the key messages are that
10 basically that we know that there is this huge gap
11 between cases that agencies know about, so cases
12 reported to the police and child protection, and also
13 what children and young people themselves report when
14 they are asked in a confidential survey.

15 Typically the number of cases that children will
16 report will be between 7 and 17 times higher than the
17 cases that we know about.

18 MR MacAULAY: That's bullet point 2, is it?

19 PROFESSOR RADFORD: That is bullet point 2, yes.

20 We know that globally more than 1 in 8 children and
21 young people say that they have experienced some form of
22 sexual abuse in their lifetimes. More than 1 in 5 will
23 say that they have experienced physical violence from
24 a parent or caregiver. More than 1 in 3 will say that
25 they have experienced emotional abuse from a parent or

1 caregiver. Between 1 in 6 and 1 in 5 children and young
2 people will say that they have experienced neglect from
3 a parent or caregiver.

4 MR MacAULAY: So this is the global picture?

5 PROFESSOR RADFORD: That's the global picture that despite
6 over 200 years of awareness about child abuse, we know
7 that it is globally still very prevalent and it is very
8 prevalent still in high-income countries even though we
9 have 200 years of efforts and services to tackle some of
10 these issues.

11 MR MacAULAY: If we take the statistic at the third bullet
12 point where more than 1 in 8, which is 12%, children and
13 young people say they have experienced sexual abuse, is
14 that a lifetime or current?

15 PROFESSOR RADFORD: Yes. Because these are --

16 MR MacAULAY: Which?

17 PROFESSOR RADFORD: These are lifetime figures here because
18 there are very few studies that have asked children and
19 young people to report on experiences within the past
20 year. Some of the data we present later will give you
21 the past year figures.

22 The reason that the lifetime figures are longer is
23 that if you are alive for a longer period of time -- so
24 if you are a 17-year old child and you compare their
25 experiences with a 11-year-old child then the

1 17-year-old would have been here longer and the
2 opportunity to have been abused would have been probably
3 higher.

4 MR MacAULAY: The 31 studies included in the review here, is
5 that 31 out of the 62?

6 PROFESSOR RADFORD: That is correct, yes.

7 So we move on to the next slide. So we can draw
8 conclusions about who is vulnerable from this research
9 and these are some of the key messages.

10 In high-income countries, boys and girls are equally
11 likely to be victims of maltreatment by a parent or
12 caregiver. But the data also shows that girls in
13 high-income countries typically tend to report rates of
14 sexual abuse which are around 3 times higher than the
15 rates reported by boys, although we will show that there
16 are specific vulnerabilities of boys in institutional
17 care.

18 MR MacAULAY: I think religious institutional care in
19 particular?

20 PROFESSOR RADFORD: Yes, and the findings -- what that
21 basically shows is -- the next bullet point on this
22 slide -- that the risks and the vulnerabilities for
23 children will vary according to their individual
24 factors. So things like their age and stage of
25 development. So younger children are likely to be at

1 greater risk from parental maltreatment because they
2 spend more time with their parents and are dependent on
3 their parents, whereas older children will be exposed to
4 additional people and then obviously the risks will be
5 greater so they are more likely to experience abuse from
6 adults outside of the family home.

7 The place where children are most likely to
8 experience abuse -- study after study shows that the
9 place where the child lives, the home where they reside,
10 is the place where the abuse happens, either their home
11 or somebody else's home. But again that risk will vary
12 depending on the specific circumstances in which a child
13 might live and also on their age.

14 The family and the environment in which the child
15 lives will have an impact on their vulnerabilities. So
16 if a child is homeless or separated from their parents
17 and their family, or if there are high levels of
18 violence in the communities in which they live, they are
19 much more vulnerable to experiencing violence and abuse
20 themselves.

21 We also know that children who have been previously
22 abused in some way are at higher risk of then being
23 re-victimised, so experiencing further abuse, and
24 a particularly high-risk category for what's called
25 poly-victimisation. So the child that's, say, abused by

1 a parent or caregiver is then more likely to be abused,
2 in different contexts, by different perpetrators. So
3 the child abused at home is more likely to be abused at
4 school and abused in care and also abused in the
5 community. So poly-victimised children are the children
6 that experience the most severe and the most types of
7 abuse.

8 All of these messages add up to a message that
9 suggests that children in care will be highly vulnerable
10 as a population of children and in need of extra
11 protection.

12 MR MacAULAY: I wonder if the technology allows us to do
13 this, if we can perhaps bed this into the report itself,
14 because you have taken this from the report.

15 PROFESSOR RADFORD: Yes.

16 MR MacAULAY: If I could get the report on the screen at
17 INQ.001.001.0321. You have the report in front of you
18 in fact, professor.

19 PROFESSOR RADFORD: I do, yes, "Abuse in specific
20 populations."

21 MR MacAULAY: Yes, "Abuse in specific populations" and the
22 material you have been looking at has been taken from
23 that section of the report in the main.

24 PROFESSOR RADFORD: Yes.

25 MR MacAULAY: You make reference to a number of reviews and

1 I think you pulled together from these reviews the
2 bullet points you set out.

3 PROFESSOR RADFORD: That is correct.

4 MR MacAULAY: We are told in a review by Jowans(?) that
5 disabled children are almost three times more likely to
6 report lifetime experience of sexual abuse than
7 nondisabled children.

8 PROFESSOR RADFORD: That's correct, yes.

9 MR MacAULAY: That particular factor you set out in your
10 report, although you don't bring it out in that way in
11 the bullet points.

12 PROFESSOR RADFORD: It is mentioned as a specific
13 vulnerability, disability.

14 MR MacAULAY: But it is covered in the third bullet point
15 that you set out.

16 PROFESSOR RADFORD: Yes, that is correct.

17 MR MacAULAY: The 31 papers that you relied on for these
18 conclusions, do they begin at 0323?

19 PROFESSOR RADFORD: Yes. All the evidence that we have used
20 for each of these presentations are listed in tables at
21 the end of each chapter of the report.

22 What we have done in these tables is we have
23 provided the reference, the countries that were covered,
24 the types of violence that were included in the studies,
25 whether they asked adult or child participants and how

1 many of them, the methodology, how they measured
2 experiences of abuse, and also we have given, in the
3 last table, a summary of the findings.

4 LADY SMITH: Just on measuring experiences of abuse, one of
5 the things I was wondering about as you have been going
6 through the last ten minutes or so, Professor Radford,
7 is how do the statistics accommodate the fact that one
8 child may speak of many instances, or one adult may
9 speak of many instances, whereas another may just have
10 a vivid memory of a single incident. How is that dealt
11 with?

12 PROFESSOR RADFORD: Memory is a difficult thing to address
13 in a survey, although some research has been done
14 looking at memories and how you can ask about
15 experiences of abuse. It has been found that when you
16 are doing research with children that directly asking
17 about experiences, so not asking that question, "Have
18 you been abused?", because that's not direct, but saying
19 to a child, "Has anybody at any time in your life
20 touched you sexually on your genitals or other private
21 parts?" So that type of direct questioning is how you
22 would ask a child or a young person. That gives you
23 a more direct answer.

24 In terms of the number of times it happens, then
25 typically it depends on the study design but typically

1 a researcher will ask, have these specific things
2 happened to you, and then they will also ask follow-up
3 questions saying, has it happened more than once, how
4 many times.

5 When you are asking children questions like that,
6 particularly if they have experienced a lot of abuse,
7 then there are issues with -- you know, if it is
8 something that happens all the time, then it is too many
9 times to remember and so in the studies that I have been
10 involved in, they have had that category: it was so
11 frequent that it was impossible to estimate the number
12 of times.

13 LADY SMITH: Just going back to the ratios you gave us
14 earlier for instance, some were 1 in 8 or 1 in 10, that
15 would be people subject to abuse not the amount of abuse
16 taking place? Do you see what I mean?

17 PROFESSOR RADFORD: Yes. It would be, yes. It would
18 include people who had one abusive experience, if the
19 survey was designed to ask about just one experience,
20 and also children who had experienced abuse over
21 a considerable period of time and may have experienced
22 it on many occasions by several different types of
23 perpetrators.

24 LADY SMITH: We can broadly look at this evidence as telling
25 us about how many people are affected by abuse, looking

1 at it from their perspective, rather than from abusers'
2 perspective as to how active were they in carrying out
3 acts of abuse?

4 PROFESSOR RADFORD: You can read this --

5 LADY SMITH: Is that right?

6 PROFESSOR RADFORD: -- because it is what the victims
7 themselves are reporting happened to them, yes. So it
8 is not the perpetrators' perspective, absolutely not,
9 although there are studies that have looked at that. We
10 didn't include those studies in this review.

11 LADY SMITH: Looking at it from a societal aspect, there are
12 plainly limitations with this type of study and maybe we
13 are never going to get a really accurate feel, to use
14 a colloquialism, of how much of it is going on; is that
15 right?

16 PROFESSOR RADFORD: It would be very difficult to get
17 a truly accurate figure for this but that's the same
18 with any crime survey.

19 LADY SMITH: Of course. Thank you.

20 MR MacAULAY: Just to get an understanding of the
21 literature, you had regard to the 31 pieces of
22 literature. If you turn to page 0326 of the report, the
23 second entry relates to an author and others,
24 Stoltenborgh.

25 PROFESSOR RADFORD: Yes.

1 MR MacAULAY: Can we see they were looking worldwide at:

2 "Sexual abuse, physical violence, emotional abuse,
3 neglect (physical and emotional)."

4 That goes back to the point you made earlier that
5 although the work by Stoltenborgh is dated 2015, it is
6 in fact looking historically at other work that has been
7 reviewed.

8 PROFESSOR RADFORD: Yes, so that material would have been
9 collected much earlier from those other studies.

10 MR MacAULAY: Whereas if we look at page 0328, the second
11 piece of work by Annerback in Sweden, "Physical
12 violence" and so on. That involved actually a paper
13 survey direct of 5,000, nearly 6,000, schoolchildren.

14 PROFESSOR RADFORD: Yes. So what we included in these
15 reviews is that we included what were called systematic
16 reviews and also a methodology called meta-analyses
17 where they look at all of the studies that have been
18 done and published and they merge the findings with
19 a specific statistical approach and so we have included
20 those high-quality meta-analyses but we have also
21 included primary data-gathering studies. That
22 particular study you referred to from Sweden produced
23 primary data on Sweden, whereas the Stoltenborgh study
24 was a meta-analysis.

25 MR MacAULAY: I think you were going to move on to the next

1 slide.

2 PROFESSOR RADFORD: Yes. If we could move to the next
3 slide.

4 So looking at the current levels of child abuse,
5 unfortunately we did not identify any study which is
6 looking specifically at Scotland and the best evidence
7 that we have is a UK-wide study which included Scotland
8 but doesn't separate the rates of child abuse out
9 specifically for Scotland.

10 So we included seven studies in this part of the
11 review, which were all studies within the UK, and some
12 studies which were in Scotland but not at the whole
13 range of abuse that we wanted to look at.

14 So the studies that were included were on sexual
15 exploitation for instance. So this UK study basically
16 surveyed young people themselves between the ages of 11
17 to 17, parents of children between the ages of 2 months
18 to 10 years old, and also young adults between the ages
19 of 18 to 24 who were asked retrospectively about their
20 experiences whilst children.

21 They were asked about childhood experiences and
22 past-year experiences, apart from the 18 to
23 24-year-olds, of course. The findings show that for the
24 UK that the levels of child abuse are -- well, quite
25 similar to other studies that we have of the levels of

1 abuse in high-income countries.

2 This was a study of childhood victimisation, so it
3 is looking at what children reported happened to them in
4 any area of their life, from any perpetrator, whether it
5 was an adult or harmful behaviour from a peer.

6 So, not surprisingly, in children and young people,
7 the most prevalent form of victimisation that they
8 reported was harmful behaviour from their peers, mostly
9 physical violence, and over a third of the young
10 people -- if we just look at the findings for ages 11 to
11 17, this is what this slide is showing us -- over
12 a third of the young people reported having that
13 experience in the past year.

14 It was 16% of them who said that they had had
15 an experience of abuse from a sibling within the past
16 year and for sexual victimisation almost 1 in 10 of the
17 young people had experienced some form of sexual
18 victimisation in the past year.

19 In terms of maltreatment from a parent or caregiver,
20 6% of children and young people had experienced parental
21 or caregiver maltreatment in the past year and the
22 rates, actually, if you look at the European rates for
23 lifetime maltreatment across the course of a childhood
24 of 21.9% are pretty similar to the European study
25 findings, where it is 1 in 5 children across Europe. So

1 the rates in the UK are really, unfortunately, no
2 different.

3 For exposure to domestic violence, 2.5% of children
4 had had this experience in the past year and 5% of the
5 children and young people said that they had experienced
6 abuse in their own relationships with an intimate
7 partner.

8 MR MacAULAY: Again, these conclusions have been taken from
9 the reports. So if I can put 0344 on the screen. 3.5,
10 towards the bottom of the page, where you are looking at
11 current UK prevalence, is that where these figures have
12 been taken from?

13 PROFESSOR RADFORD: Sorry, are you looking at 0345?

14 MR MacAULAY: 3.5. You begin by saying:

15 "No research on the prevalence of child abuse that
16 focused on Scotland alone was found in the search."

17 PROFESSOR RADFORD: Yes.

18 MR MacAULAY: One of those was by Dr Barter, is that right,
19 and the other was by yourself?

20 PROFESSOR RADFORD: Yes, conducted for the NSPCC and
21 unfortunately there are no other studies that we could
22 find.

23 MR MacAULAY: Again, there is a table setting out the
24 studies in this section of the report on page 346?

25 PROFESSOR RADFORD: That is correct.

1 MR MacAULAY: Again, perhaps we will move on to the next
2 slide then.

3 PROFESSOR RADFORD: Okay. So we also wanted to look at the
4 state of the evidence on prevalence rates historically,
5 so looking at this period which is of interest to the
6 Inquiry between 1930 to 2014.

7 Unfortunately it is not possible to estimate
8 accurately the prevalence of child abuse in the UK or in
9 Scotland for this period is the main conclusion that we
10 can draw from this evidence.

11 Basically I think that's an indication of how little
12 importance was attached to this problem and also the
13 state of research knowledge. People just didn't know
14 how to ask and didn't think of asking.

15 There is data on reported crimes but even if we
16 tried to collate the data on things as severe as a child
17 dying, it is still quite difficult to get reliable
18 figures on levels of violence and abuse from that crime
19 survey data historically.

20 The research on the prevalence of child abuse,
21 really the literature only started to develop in about
22 the 1970s when awareness about child abuse really
23 revived in the UK and in other high income countries.

24 The best data that we have for estimating historical
25 prevalence from the research literature is the homicide

1 data and there has been a team at the University of
2 Cambridge who have been looking at rates of violence and
3 violence in the family.

4 So taking a longer term view, looking at the
5 historical data on homicides and again looking at high
6 income countries and also other European countries, the
7 conclusion from the University of Cambridge study is
8 that there has been a general reduction in levels of
9 interpersonal violence against adults and against
10 children since the mid-19th century.

11 So what you can conclude, it is likely that child
12 abuse in terms of homicides is less prevalent in 2014
13 compared with certainly the 19th century and possibly
14 the 1930s.

15 If we move on to the next slide.

16 MR MacAULAY: Before we do that, the first bullet point when
17 you say it is not possible to estimate accurately the
18 prevalence of child abuse in the UK or in Scotland in
19 this period 1930 to 2014; that's not looking at children
20 in care, this is children across --

21 PROFESSOR RADFORD: In the population, yes.

22 MR MacAULAY: We can move on to the next slide, it is
23 entirely up to my Lady, but we will not finish today.

24 LADY SMITH: Well I think there are some other matters to
25 attend to, not least of which seeing if we can help with

1 the document management system moving on.

2 I think we will break there for today

3 Professor Radford. Perhaps you can give us

4 an indication of how much longer you will require --

5 PROFESSOR RADFORD: I have two slides, so I think this can
6 be done in five minutes actually.

7 LADY SMITH: Well, if it is only going to take five minutes
8 that would be good if we can finish your presentation
9 and go on to Dr Barter tomorrow. Very well, let's do
10 that.

11 PROFESSOR RADFORD: Let's continue with this slide then.

12 LADY SMITH: Yes, thank you.

13 PROFESSOR RADFORD: Looking at prevalence in the UK between
14 1930 and 2014, we know that there have been changes in
15 the pattern and awareness which have influenced
16 reporting rates.

17 We also know that policy definitions of violence
18 against children have shifted in that period of time.
19 So we have had a shift from early definitions in public
20 policy, which were based on child cruelty, which
21 basically in legislation meant that the things that
22 counted as a crime were severe physical violence towards
23 the child by a parent and also severe forms of physical
24 neglect.

25 So we have had a broadening of the definition from

1 child cruelty to incorporate a wider range of types of
2 abuse. So including within the definition child sexual
3 abuse in public policy; more recently exposure to
4 domestic violence and emotional abuse from a parent or
5 a caregiver; more recently still an expansion to cover
6 emotional educational and medical neglect of children's
7 needs; more recently again concerns about different
8 types of child sexual exploitation. So we have had
9 an expansion of the definition.

10 We have also had a nature in -- the changing
11 opportunities for abuse. In recent years new
12 technologies which can support routes of access for
13 abusers to children. So online abuse as an avenue which
14 have affected the information that we have.

15 So we can say that the reported cases of child abuse
16 have increased historically, possibly and most likely as
17 a result of expanded definitions, but the actual
18 prevalence rates of certain types of abusive experience
19 may have declined because of changes in attitudes and
20 behaviour.

21 Self report studies of child victimisation in the UK
22 and the USA, which are more recent, also show some
23 reduced rates in self reports for certain acts of
24 physical violence and also sexual abuse amongst
25 children. But no decline in rates of parental neglect.

1 So the very last slide. What are the knowledge
2 gaps? I think they are very obvious by now. There are
3 a lot of them and I wish I had something more positive
4 to say.

5 But the knowledge gaps are that we are lacking
6 recent data which is specific to Scotland on this
7 subject.

8 We have very poor data particularly on the extent of
9 child sexual exploitation because this is a more recent
10 area and hasn't been asked about in a lot of the
11 studies.

12 There is a lack of data which allows us to robustly
13 track trends across different national contexts and over
14 time, which actually for policymakers, if we wanted to
15 show: is this making a difference for children, we can't
16 do that because we can't see if the rates are changing
17 going up or down.

18 There is a terrible lack of historic data on the
19 prevalence of child abuse and also this changing
20 definitions which makes trying to compare across time
21 very difficult. There are very notable gaps in the
22 experiences of particularly vulnerable groups of
23 children, so very young children who we know are
24 particularly likely to be killed and also children with
25 disabilities. So specific groups.

1 MR MacAULAY: Very well. Thank you for that and I think

2 Dr Barter tomorrow you will look at children in care --

3 DR BARTER: I will.

4 MR MacAULAY: -- more specifically. I think you have been
5 looking at children generally.

6 LADY SMITH: Thank you very much. If I could ask you both
7 to return tomorrow please and we will sit at 10 o'clock.

8 PROFESSOR RADFORD: Thank you.

9 LADY SMITH: We will now adjourn.

10 (4.05 pm)

11 (The Inquiry adjourned until 10.00 am
12 on Friday, 2nd June 2017)

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