

1 Tuesday, 6th June 2017

2 (10.00 am)

3 LADY SMITH: Good morning and welcome to the second week  
4 that we are going to be hearing evidence in this phase  
5 of the hearings. As has been indicated on the website,  
6 we start this morning with evidence from the Scottish  
7 Government.

8 Before I invite Mr Peoples to call the first  
9 witness, I would like to tell everybody that in the  
10 light of the attacks in Borough Market in London on  
11 Saturday night we are going to observe the minute's  
12 silence this morning at 11 o'clock. So if we can watch  
13 for that time, please; I am sure Mr Peoples will be  
14 aware of it when it is coming.

15 Mr Peoples.

16 MR PEOPLES: My Lady, good morning. The next witness is  
17 Lesley Irvine.

18 LADY SMITH: Thank you.

19 MS LESLEY IRVINE (affirmed)

20 Questions by MR PEOPLES

21 LADY SMITH: Thank you, do sit down. Mr Peoples, when you  
22 are ready.

23 MR PEOPLES: Good morning, Ms Irvine.

24 A. Good morning.

25 Q. You are Lesley Irvine; is that correct?

- 1 A. I am.
- 2 Q. And you are an advocate and currently standing junior  
3 counsel to the Scottish Government?
- 4 A. That is correct.
- 5 Q. By way of background, and I will keep this fairly brief,  
6 you were admitted to the Faculty of Advocates in 2012?
- 7 A. I was.
- 8 Q. And you were appointed as standing junior counsel to the  
9 Scottish Government in 2016?
- 10 A. Just at the end of 2016 and the position took effect  
11 from the beginning of 2017.
- 12 Q. So far as your areas of practice and specialisation are  
13 concerned, my understanding is that you specialise in  
14 areas of public and commercial law with a particular  
15 focus on judicial review and you act for both  
16 petitioners and responders in such proceedings,  
17 including local authorities and the Scottish Government?
- 18 A. That is correct.
- 19 Q. So far as the present proceedings are concerned of the  
20 Inquiry, I think it is sufficient to say at this stage  
21 that you were instructed by the Scottish Government's  
22 Legal Directorate on behalf of the Scottish Government  
23 Response Unit to draft and research part B of a report  
24 that has been provided to the Inquiry in response to  
25 a notice from the Inquiry.

1 A. That is correct.

2 Q. Today you will be speaking, I think, solely to part B of  
3 that report which relates to legal responsibilities of  
4 Scottish Central Government?

5 A. That is right.

6 Q. I think your appearance here is on behalf of the  
7 Scottish Government Response Unit to speak to the facts,  
8 contents and production of that part of that report.

9 A. Indeed.

10 Q. If I could take you now to the report itself, which is  
11 SGV.001.001.0001. Perhaps we could begin at page 0002,  
12 which is headed "Preface" --

13 LADY SMITH: Could I just interrupt for a moment. I have  
14 had it brought to my notice that there may be  
15 a difficulty with the sound at the rear of the hearing  
16 room; is that right?

17 NEW SPEAKER: We can't hear too well, both the witness and  
18 the presenter.

19 LADY SMITH: Right. It may just be a matter of positioning  
20 the microphones; they are certainly all switched on.

21 You will have heard that exchange, Ms Irvine. A lot  
22 of that depends on the position of the head in relation  
23 to microphone. Feel free to move it around and move it  
24 to whatever is the position that's most comfortable for  
25 you.

1           Is that better?

2       MR PEOPLES:   Is this better for those at the back?

3       NEW SPEAKER:   Much better.

4       MR PEOPLES:   I will try to speak as close to the microphone  
5           as I can.

6       LADY SMITH:   Thank you for letting us know.   Do say if you  
7           have any further difficulty in hearing and we will  
8           adjust the microphones again.

9           Mr Peoples.

10      MR PEOPLES:   My Lady, I was asking you Ms Irvine to look at  
11           page 0002 of the report, which is headed "Preface".

12           I don't suppose you are responsible for this part of the  
13           report as such, but I think it is perhaps important to  
14           at least cast our eye over it before we look at part B  
15           itself.

16           Taking it short, I think the background to the  
17           report and to your participation in it is contained in  
18           this preface which indicates that the report was  
19           prepared at the request of the Inquiry itself, using  
20           a notice procedure and that it required the government  
21           to produce what is described as:

22           "A high-level report on the legal and administrative  
23           responsibilities of Scottish Central Government from  
24           1930 to the present day."

25      A.   That is right.

1 Q. I think that for present purposes, "Scottish Central  
2 Government" is intended to cover both the present  
3 Scottish Government and its executive agencies -- we may  
4 come back to that terminology -- and all its  
5 predecessors.

6 A. That is my understanding, yes.

7 Q. So we would be looking at both the Scottish Government,  
8 what was known as the Scottish Executive prior to 2007,  
9 in other words, the post-devolution governments in  
10 Scotland and also the UK Government and, in particular,  
11 the Scottish Office prior to devolution which occurred  
12 in 1999?

13 A. That is correct.

14 Q. I think that the exercise was to be confined, so far as  
15 possible, to the responsibilities of central government,  
16 which related to the terms of reference of the Inquiry.

17 A. That is right.

18 Q. I think that the preface records that these  
19 responsibilities concerned the protection and welfare of  
20 children in care and cover a range of what are described  
21 as policy portfolios, namely, education, health, justice  
22 and social care.

23 A. That is right.

24 Q. The preface goes on to record that the report provides  
25 information on four particular areas of responsibility

1 and I will perhaps confine my remarks here to part B,  
2 which I think is your area, which is the legal  
3 responsibilities of Scottish Central Government,  
4 including what are termed "specific statutory duties and  
5 powers".

6 A. That is right.

7 Q. I may also, I think, at this stage take you to  
8 paragraph 1.5 of the preface. It is there recorded  
9 that:

10 "The content of this report is factual in nature."

11 It is stated:

12 "It does not express the opinion of the Scottish  
13 Government on the information contained within it nor  
14 the issues to which it relates; rather, the purpose of  
15 the report is to provide an overview of relevant  
16 Scottish Central Government responsibilities [during the  
17 period covered] based on evidence available to the  
18 Scottish Government."

19 It goes on to state that:

20 "A substantial portion of that evidence has been  
21 researched and ingathered by the Scottish Government (eg  
22 from libraries) for the purpose of compiling [this  
23 report that we are looking at today] in an endeavour to  
24 provide an overview which is as full and as helpful as  
25 possible to the Inquiry and those who may read it."

1 A. That is correct. It may well be useful to highlight  
2 that insofar as there is any opinion expressed in part B  
3 it is essentially there to try and assist the reader  
4 with what is a fairly dense topic and it is necessarily  
5 my own, albeit I do not understand those who instruct me  
6 to depart from it.

7 Q. So while part B is essentially factual in nature in  
8 terms of identifying relevant primary and secondary  
9 legislation, I think we can -- we will see that from  
10 time to time you do make comments or observations and  
11 I think you have explained the basis on which these have  
12 been tendered.

13 A. That is right.

14 Q. I think, so far as sources for the report is concerned,  
15 at paragraph 1.6 of the preface:

16 "The source material for this report has been cited  
17 in the annexes relevant to ..."

18 And contained within the various parts of the report  
19 and that there is a methodology for the whole report in  
20 part E of the report itself.

21 A. Yes, and there is a small paragraph in part E which  
22 pertains specifically to part B.

23 Q. Yes, I will perhaps come back to that if I may.

24 With that introduction, if could I turn to part B,  
25 which is to be found at page 50, 0050 of the report. It

1 is headed "Legal responsibility". I think there we see  
2 what the notice required of this part of the report and  
3 I think in paragraph 1 we see that one matter to be  
4 covered was:

5 "Areas relating to matters within [the Inquiry's  
6 terms of reference] where central government departments  
7 had specific statutory powers or duties."

8 And that:

9 "This should include areas in which central  
10 government had a regulation-making role and areas where  
11 they might be said to have had a more direct operational  
12 role."

13 A. That is right and it is those two areas I was  
14 essentially trying to pick out.

15 Q. I will pass over the examples which I think were simply  
16 those to assist those compiling the report, but the  
17 second area which was to be covered was areas where  
18 there was a possibility of central government inspection  
19 which was relevant to the work of the Inquiry;  
20 inspections of, for example, care establishments and the  
21 like. Is that --

22 A. That is correct.

23 Q. I think you have sought in your report -- your part of  
24 the report -- to identify provisions that concerned that  
25 particular aspect of responsibility.



1 A. Yes, and those of other bodies insofar as relevant.

2 Q. Indeed. Then the third area which was referred to was:

3 "Areas relating to matters within the Inquiry's  
4 terms of reference, where [what are described as]  
5 central government agencies had specific statutory  
6 powers or duties."

7 A. That is correct.

8 Q. Are you able to assist us very briefly at this stage as  
9 to what is meant by "a central government agency"? Is  
10 that another term for "executive agency"?

11 A. It is not a phrase that I'm familiar with but as  
12 I understand it an executive agency is essentially  
13 a body which is legally indistinct from the  
14 Scottish Ministers in contradistinction to something  
15 like the Care Inspectorate, which is the informal name  
16 of the body mentioned at the beginning of that sentence,  
17 which is in fact a body corporate and accordingly  
18 legally distinct from the Scottish Ministers.

19 Q. What might be described as an executive or central  
20 government agency is, to some extent, a vehicle within  
21 which executive functions of government are discharged  
22 whereas the Care Inspectorate is an independent body --

23 A. Indeed and --

24 Q. -- set up by statute?

25 A. As I understand it the executive agency is essentially

1 for administrative purposes only.

2 LADY SMITH: There are various examples of administration  
3 having moved from taking place through government agency  
4 to independent bodies such as the Judicial Appointments  
5 Board, which is an independent body -- although before  
6 2008 it didn't exist as an independent body -- or the  
7 Scottish Courts and Tribunals Service, which is  
8 an independent corporate body, whereas previously the  
9 Scottish Courts Service was operating as a government  
10 agency. I am sure you have come across other examples  
11 as well.

12 A. Indeed, my Lady, and there appears to be two themes.  
13 One is the rise of executive agencies and the second is  
14 the essential devolution of power to an external agency.

15 MR PEOPLES: Without perhaps taking that too far at this  
16 stage, I think one of the points that you make based on  
17 your researches is that increasingly, and perhaps more  
18 so in modern times and more recent times, there has been  
19 a move towards creating independent bodies with specific  
20 functions such as those given to the Care Inspectorate.

21 A. Indeed. The area of inspection is perhaps the most  
22 notable area in which it has occurred.

23 Q. Whereas in the past -- and I think this again is brought  
24 out in your report -- matters such as inspection would  
25 be handled, so far as central government was involved,

1 by inspectors who were both appointed and overseen by  
2 central government itself?

3 A. Indeed.

4 Q. If I could pass on to page 0051, which is headed  
5 "Introduction". I take it this is a part which you  
6 prepared?

7 A. It is.

8 Q. It states in paragraph 1 that:

9 "Part B is directed to the legal responsibility of  
10 Scottish Central Government in areas relating to matters  
11 within the Inquiry's terms of reference.

12 "It seeks to identify and to put into context  
13 matters in respect of which central government had or  
14 has specific statutory powers and duties (such as the  
15 power to make regulations or provision by a statutory  
16 order) and also those in respect of which the role of  
17 government was and is more direct."

18 And you give as an example the power, the historical  
19 power of the Secretary of State to authorise the  
20 emigration of individual children which is matter you  
21 deal with in your report. You also mention the powers  
22 in relation to the named person legislation --

23 A. Yes.

24 Q. -- which I think we know is not yet in force for various  
25 reasons which I don't think we need to trouble ourselves

1 with today.

2 The second paragraph of your introduction states  
3 that the role and remit of relevant central government  
4 agencies and inspectorates, with specific and relevant  
5 statutory powers and duties are also considered and  
6 placed in their historical context and you give as  
7 an example the inspection powers and duties of Her  
8 Majesty's Chief Inspector of Prisons.

9 A. Indeed. That is one area that seems to have developed  
10 quite a lot over the historical period covered.

11 Q. I think another one we might just refer to at this stage  
12 is Her Majesty's Inspector for Schools, which became Her  
13 Majesty's Inspector for Education in more recent times.

14 A. Indeed.

15 Q. These would be positions which where central government  
16 appointed the Chief Inspector and the Chief Inspector  
17 was answerable in general terms to central government.

18 A. Yes, the inspectors themselves, I think, are appointed  
19 on the warrant of Her Majesty.

20 Q. Yes. But in reality the process of appointment was on  
21 the recommendation of central government?

22 A. Indeed.

23 Q. Is that correct?

24 A. Yes, that is correct.

25 Q. Technically it was Her Majesty who made the appointment

1 but on the recommendation of her ministers?

2 A. Indeed.

3 Q. You state that:

4 "The intention of this part of the report is to  
5 provide in the time available as comprehensive as  
6 possible a picture of central government  
7 responsibilities in the areas in which the Inquiry is or  
8 is likely to be concerned."

9 You also indicate that you do at various points in  
10 your report touch upon aspects which are outside central  
11 government responsibility, areas which are the  
12 responsibility of other bodies, including local  
13 authorities for example.

14 A. Yes, the intention behind that sentence I think was to  
15 allude to what we were discussing a moment ago, namely  
16 the devolution of power outside government to external  
17 bodies.

18 Q. I see. Then you, at paragraph 3, make reference to the  
19 various pieces of legislation that you refer to in your  
20 report, from legislation beginning in 1904 up until 2014  
21 and you then say that:

22 "The constitutional background against which these  
23 Acts and those that were made between them is submitted  
24 to be important."

25 A. Yes, that is a very obvious opinion.

1 Q. It is an opinion but perhaps I might use that opinion as  
2 a basis for asking a little bit about that. But before  
3 I do so I think this might be an appropriate time simply  
4 to record that I understand you have certain corrections  
5 you would like to make to your report and maybe I could  
6 deal with those and dispose of that.

7 A. Yes, I didn't actually bring the note with me that  
8 records them but I should be able to --

9 Q. Can I perhaps help you on that. I think I have been  
10 given a note of the proposed corrections and perhaps we  
11 could just deal with those at this stage before we get  
12 into the substance of your report.

13 The first correction which I think you would like to  
14 make is to be found at paragraph 3.3 of part B at 0140.

15 A. Yes, this is a section which is discussing the Social  
16 Work (Scotland) Act (1968).

17 Q. If I can at this stage, without getting into the  
18 background of the section, I think what you are  
19 proposing to do is to remove part of a sentence in that  
20 section, being the sentence which begins on line 7  
21 I think.

22 A. Yes, beginning "thus".

23 Q. So you would wish to remove the words that read:

24 "Thus on 15th April 1971, the responsibility as  
25 regards children in approved schools was transferred

1 from central to local government, although the ..."

2 You wish to take those words out?

3 A. Yes, that is right and then capitalise --

4 Q. The next word "responsibility"?

5 A. That is correct. It is simply a confusion which has  
6 arisen and the suggestion which I'm seeking to remove is  
7 that there was a transfer of responsibility and it may  
8 be something that you want to come back to in terms of  
9 what is an education authority which --

10 Q. I think we will come back to that. But broadly speaking  
11 education authorities are now a local government --

12 A. Indeed. It is no longer a body that exists and  
13 unfortunately --

14 Q. Or at least it is a local government function and there  
15 were education authorities historically which were local  
16 bodies.

17 A. Indeed. That essentially those functions are now held  
18 by local authorities -- as we would understand them in  
19 modern terms.

20 LADY SMITH: So the point you are making is that although we  
21 know that nowadays each local authority is charged with  
22 responsibility for the provision of education, it wasn't  
23 always the local authority who had that responsibility;  
24 there was a time when one had to identify the relevant  
25 education authority, which was not the same thing as the

1 local authority?

2 A. Indeed. In practical terms, I'm afraid, I do not  
3 actually know what the distinction would be but  
4 certainly there was a legal distinction.

5 MR PEOPLES: One of things I was going to ask you about was  
6 the constitutional background so we perhaps we could  
7 return to that once I have dealt with the corrections,  
8 if I may.

9 The next correction you would wish to make is  
10 contained in paragraph 3.26 at 0154. I think that if we  
11 go down to line 10 --

12 A. Yes, it was just to insert some words which I noticed  
13 were missing.

14 Q. The words to be inserted on line 10 are to be inserted  
15 at the end of the sentence that begins "the latter  
16 register" and the words you wish to insert are "was to  
17 be provided to" and we add "the relevant education  
18 authority by the keeper of the register"?

19 A. That is correct.

20 Q. So that is:

21 "... the relevant education authority by the keepers  
22 of the area."

23 The third correction you wish to make is at  
24 page 0175 at paragraph 4.5, which is dealing with the  
25 Children (Scotland) Act (1995). I think that what you



- 1 wish to do is to substitute "20" for "21" where it  
2 appears in line 4.
- 3 A. That is correct.
- 4 Q. And "20" for "22" where it appears in line 5?
- 5 A. Yes, that is correct.
- 6 Q. So it is Section 20 by way of publication of information  
7 and then Section 21 by way of cooperation between  
8 authorities?
- 9 A. That is right. You will see from the following  
10 paragraph that section 22 is discussed elsewhere.
- 11 Q. I see. The final correction that you wish to deal  
12 with -- to deal with is at page 01 -- I think I have  
13 got --
- 14 A. It is 0216.
- 15 Q. I think I have the wrong page for that one. It is at  
16 paragraph 4.67, which if you bear with me --
- 17 A. I have it as 001.001.0126.
- 18 Q. I see.
- 19 A. This is in the section dealing with the most recent  
20 amendments to inspection of prisons.
- 21 Q. I see. (Pause). What you wish to do in relation to  
22 that change is to add some words after the word "OPCAT"?
- 23 A. That's right. Again I realised that there were some  
24 words missing from the sentence.
- 25 Q. The words that are missing if I may read them:

1            "... may visit prisoners, access information,  
2            monitor conditions, etc."

3            A. That is correct.

4            Q. So you would wish to add those words --

5            A. I would.

6            Q. -- within that sentence beginning, "Bearing in mind  
7            however"?

8            A. Indeed. I see.

9            Q. If I could just ask you this: at this stage, we have  
10           already looked at the preface and I think -- would it be  
11           fair to say that this part of your report is essentially  
12           factual rather than an analysis of the legislation,  
13           primary and secondary, which you have been researching?

14           A. Indeed and that's maybe a distinction between the  
15           evidence which I will give and which Professor Norrie  
16           has given and will give in future.

17           Q. Yes. I will take you to Professor Norrie's evidence  
18           because it does have a relevance to what you say but  
19           clearly if you feel that there's any area which he has  
20           dealt that you don't feel able to express a view on  
21           based on the exercise you carried out, then please say  
22           so.

23           So far as part B and the preparation is concerned,  
24           do I take it that so far as this part of the report was  
25           concerned, that you carried out this exercise without

1           essentially any assistance? It was not a team effort?

2       A. It was not a team effort albeit I was assisted at  
3           certain stages by the Scottish Government Library and  
4           also the Advocates' Library.

5       Q. To obtain source material?

6       A. To obtain source material but not actually to consider  
7           it.

8       Q. Do I take it from that answer that there was no readily  
9           available single source within government to answer or  
10          to meet the requirements of the notice so far as part B  
11          was concerned?

12      A. I'm not --

13      Q. One couldn't find in one place a handy description of  
14          the responsibilities of Scottish Government over the  
15          years?

16      A. I can only infer from my instruction that the answer  
17          must be no to that but beyond that I don't actually  
18          know.

19      Q. In preparing your report, can I ask you this: did you  
20          have regard to Professor Norrie's report, which I think  
21          was on the Inquiry website or has been on the Inquiry's  
22          website prior to them giving evidence?

23      A. I considered it in the course of writing my report but  
24          essentially I undertook to draft it from the very  
25          beginning, essentially as a process of discovery, in

1 order to try to ensure that I produced as comprehensive  
2 a material as possible.

3 Q. Would I be right in thinking, however, that having read  
4 Professor Norrie's report and having carried out your  
5 own exercise in the way you have described, that there  
6 is very little difference in terms of the material which  
7 has been discussed in Professor Norrie's report and the  
8 material which you discovered as part of your brief and  
9 remit?

10 A. Indeed. There is very little difference and  
11 I familiarised myself with his report and his evidence.

12 Q. So, would I be right in thinking that, at least largely  
13 speaking, you don't take any issue with his description  
14 of the legal and regulatory framework over the period up  
15 to 1968?

16 A. No, I don't, not from a factual narrative perspective.

17 Q. Perhaps I can, just for your assistance and for those  
18 here today, state what my general intention is today and  
19 to make this point that I would wish to focus today  
20 largely on the period up to 1968. You will appreciate  
21 that Professor Norrie is preparing a further part of his  
22 report to deal with the legal and regulatory framework  
23 from 1968 up to the present time.

24 A. I am aware of that, yes.

25 Q. Conscious of that, I think -- and it is no disrespect to

1 the report you have prepared, but I am not intending at  
2 this stage to deal in any detail with the chapters which  
3 deal with the legislation post-1968, but I will perhaps  
4 deal with them briefly today, but we may re-visit it on  
5 another occasion if necessary.

6 A. Okay, that's fine.

7 Q. What I would like to do in focusing on the period up to  
8 1968 is to perhaps have particular regard to legislation  
9 conferring rule-making powers because I think that is  
10 one of the areas that your report covers in some detail.

11 A. It does.

12 Q. What that really means is the power of central  
13 government to regulate -- in other words to make rules  
14 and regulations -- in relation to children in care --

15 A. Indeed.

16 Q. -- in various settings.

17 That power is often one which is exercised by the  
18 Secretary of State for Scotland, but sometimes by other  
19 specified bodies, which would be seen as part of central  
20 government; is that correct?

21 A. As I understand it, the regulation-making power is  
22 essentially exercised by the Secretary of State.

23 I can't think offhand of an example in which it would be  
24 exercised by another body but I'm happy to be corrected.

25 Q. I think historically perhaps the Scottish Education

1 Department might have had responsibility for making  
2 regulations --

3 A. Indeed.

4 Q. We can come back to that if we need, but is that maybe  
5 one example where they are specifically charged with  
6 making rules and regulations --

7 A. Indeed, that is an example.

8 Q. I think the modern tendency is that -- certainly  
9 pre-devolution would be that the Secretary of State for  
10 Scotland would have made the regulations, certainly up  
11 to the period we are looking at, certainly up to 1968.

12 A. Indeed.

13 LADY SMITH: Can you think of any modern piece of  
14 legislation where the regulation-making power is given  
15 to anybody other than Scottish Ministers? Off the top  
16 of my head I can't.

17 A. I can't. I would probably find it quite surprising if  
18 I came across one.

19 MR PEOPLES: Sorry, I think we are at cross-purposes here.  
20 I think prior to devolution and up to 1968, before we  
21 had devolution, the point I was making was that even at  
22 that time these regulations would be made by the  
23 Secretary of State for Scotland. I think that is what  
24 you were saying. Post-devolution regulations would be  
25 made by Scottish Ministers under the devolved

1 arrangements.

2 A. Indeed. After 1939 the role for the Secretary of State  
3 increased insofar as various departments which had  
4 existed prior to that were essentially subsumed within  
5 the Secretary of State's remit. So from 1939 onwards  
6 essentially any regulations that were made -- legally at  
7 least -- were made by the Secretary of State.

8 Q. And I think in your report, looking at the matter  
9 generally, when looking at this particular area of  
10 rule-making powers that were conferred on central  
11 government, your report discloses when such powers were  
12 conferred on central government?

13 A. That is right.

14 Q. When, according to your researches, they were exercised  
15 by central government?

16 A. Yes.

17 Q. To some extent whether there was any period of or  
18 interval or delay between the granting of the power and  
19 the exercise of the power?

20 A. Yes, and also, to the best of my knowledge, instances of  
21 the power not being exercised -- and the 1904 Act is  
22 a fairly notable example of that.

23 Q. Yes. I think that when you talk about the 1904 Act,  
24 that is a reference to the Prevention of Cruelty to  
25 Children Act (1904); is that correct --

- 1 A. It is.
- 2 Q. -- which gave certain powers to the Secretary of State  
3 or the then Secretary for Scotland to make rules in  
4 relation to persons who were entrusted with the care of  
5 children?
- 6 A. Yes, that is correct. By 1930, of course, the secretary  
7 for Scotland was the Secretary of State for Scotland and  
8 the point I'm making there is, albeit the power existed  
9 to make rules for the care of children in custody -- and  
10 custody there I think is essentially a reference to care  
11 rather than what we might understand custody to mean in  
12 modern terms -- but as I understand it no rules were  
13 actually made under that statute.
- 14 Q. Yes. So one of the points I think you perhaps -- we can  
15 see from your report in part B -- and we can perhaps  
16 look at if necessary -- is that from an early stage in  
17 the 20th century, from 1904 indeed and beyond, we see  
18 a number of instances where the Secretary of State is  
19 given a rule-making power in relation to children in  
20 care in various types of settings and that on certainly  
21 a number of those occasions the rule-making power has  
22 not, so far as your research has disclosed, been  
23 exercised; is that a fair way of putting matters?
- 24 A. It is certainly a fair statement according to the 1904  
25 Act which we have referred to and also the following



1 Acts, in particular the Education (Scotland) Act (1908).

2 Q. So the early acts which gave these powers don't seem to  
3 have been followed up by the making of rules and  
4 regulations?

5 A. To the best of my knowledge, but I'm cautious of  
6 putting --

7 Q. I appreciate the limits of what you are saying, but  
8 according to your researches -- and you have obviously  
9 conducted considerable research -- you have not been  
10 able to find examples?

11 A. I haven't.

12 Q. I think that, to some extent, reflects very much the  
13 evidence of Professor Norrie; would that be fair to say?

14 A. That would be fair to say, yes.

15 Q. I think another aspect of your report, which obviously  
16 we can read for ourselves, is that where powers were  
17 exercised over the years, the regulations varied in  
18 terms of the level of detail and the matters covered  
19 within them.

20 A. It did and that may in part be to do with the  
21 specification in the enabling provision as much as  
22 essentially the intention behind the person drafting the  
23 statutory instrument.

24 Q. I mean ultimately these powers were broadly expressed  
25 and if they related, for example, to the conduct of

1 a voluntary home by an organisation, a private or  
2 a non-state institution, the power was generally  
3 expressed and would enable the Secretary of State to  
4 make detailed rules had he chosen to do so?

5 A. Indeed. It may be a modern tendency to specify in the  
6 primary legislation what any rules or regulations are  
7 intended to contain. That may be a modern technique.

8 Q. But I think even before the modern times we do see some  
9 examples in the legislation of where assistance is given  
10 to the Secretary of State as to the sort of matters he  
11 might wish to cover in regulations. I think we  
12 certainly see that in some of the acts that were passed  
13 in the 1930s and 40s; is that right?

14 A. I can't think of an example but certainly that sounds  
15 correct.

16 Q. Yes. We might get the general power but then they may  
17 say, for example, that the rules may make provision for  
18 certain matters such as discipline or matters of that  
19 kind?

20 A. Again, I can't think of a specific example but that  
21 certainly sounds correct.

22 Q. We can perhaps return to that, just to get a flavour of  
23 what we see. Perhaps I can -- at this stage, it may be  
24 convenient to return to what I referred to as the  
25 constitutional background before we look at both

1 Professor Norrie -- and I intend to take you to a little  
2 of his evidence if I may -- and indeed part B of your  
3 own report.

4 Can we look briefly at the constitutional  
5 background, which I think you refer to as important to  
6 put some matters in context. I don't want to take this  
7 at too much length, but I would like to get some  
8 understanding of what was going on particularly in  
9 earlier times because I think that's something that you  
10 refer to or touch upon in your report itself; is that  
11 correct?

12 A. That is correct.

13 Q. Can I perhaps start in this way, that if one is trying  
14 to do a historical exercise, one wants to have in mind  
15 some of the milestones. I think that is the expression  
16 you use in your report at one point about various  
17 developments that are relevant to this whole area.

18 I think, for example, if we go back to the 19th  
19 century -- I think Professor Norrie dealt with this in  
20 his report -- that, for example, in 1845 responsibility  
21 for administration of the Poor Law was transferred by  
22 statute from the Church of Scotland to newly appointed  
23 parochial boards.

24 A. That's my understanding, yes, although the boards  
25 themselves did not subsist for too long.

1 Q. No and we may come to that. But that was an example of  
2 the State taking over a responsibility for Poor Law  
3 administration which involved helping people in need and  
4 including children in need; is that fair to say?

5 A. I would say that's fair in legal terms. I'm afraid  
6 I don't know the manner in which the parochial board was  
7 constituted, but I do not understand them to be elected;  
8 that being the latest development.

9 Q. I don't think at that stage they were elected and in  
10 fact they may well, given the time we are dealing with,  
11 have been the land owners and people of some status in  
12 the local community.

13 LADY SMITH: I think Professor Norrie suggested two things  
14 in particular: one, the board would be chaired by the  
15 local minister, no doubt because of the church history;  
16 and, two, otherwise one would expect to find what he  
17 called "local worthies" on the board.

18 A. I was thinking of the same comment, my Lady.

19 MR PEOPLES: I think perhaps --

20 LADY SMITH: Whatever we are to make of that --

21 MR PEOPLES: I think that is perhaps a neat way of putting  
22 it: it was a local body, it was not elected, and it had  
23 responsibility at local level for administration of the  
24 Poor Law, which was to assist people in need, including  
25 children in need, and that might involve them ending up

1 in what would be called a poor house or possibly being  
2 boarded out or fostered with a family in the community;  
3 is that right?

4 A. Indeed.

5 Q. I think Professor Norrie helpfully told us that the  
6 Poor Law was a fairly ancient system, which continued in  
7 the 19th century and was eventually abolished in 1948.

8 A. Yes, on the coming into force of the National Assistance  
9 Act, I think.

10 Q. If I could move on to another important year, if I may,  
11 to put some of the things in context that we have heard  
12 about. Professor Norrie did touch on this as well that  
13 1872 was quite an important year in terms of this was  
14 the year in which the Education (Scotland) Act (1872)  
15 introduced a system of compulsory education for children  
16 between the ages of five and 13.

17 A. Yes.

18 Q. This statute also created what you refer to in your  
19 report as the "Scotch Education Department", which later  
20 became the "Scottish Education Department".

21 A. Yes, and I did have to check it was actually called the  
22 Scotch Education Department.

23 Q. I think you are right; it is called the Scotch Education  
24 Department. I think, at that time, that department  
25 would be based in London as part of a government

- 1 department, probably the Home Office --
- 2 A. I think that is correct.
- 3 Q. -- because there was no Scottish Office until 1885; is  
4 that right?
- 5 A. That is right.
- 6 Q. Am I right in understanding that the Act, as well as  
7 introducing compulsory education for all children  
8 between the age of five and 13, created what were called  
9 school boards, which were local bodies which had  
10 a responsibility for the provision of this compulsory  
11 education?
- 12 A. That's my understanding, yes.
- 13 Q. And that that was funded by local taxation?
- 14 A. I'm afraid the funding is not known to me but that  
15 certainly sounds correct.
- 16 Q. Don't worry. If you don't know, just say so. I do not  
17 think it is too material at this stage. But that's the  
18 general picture.
- 19 Then, if I could move on to 1885. That saw the  
20 creation of what was known as the Scottish Office and  
21 the creation of the post of Secretary for Scotland?
- 22 A. Yes, and I think around the same time in local  
23 government that's when county councils were being  
24 formed.
- 25 Q. Yes. I don't want to get too bogged down in the history

1 of local government in the 19th century. I may come  
2 back to that and summarise what might have been the  
3 position at the end of the 19th century because it is  
4 quite complicated, local government in the 19th century,  
5 because there are all sorts of bodies like --

6 A. I would agree with that. It is quite interesting how it  
7 becomes more -- maybe it is not quite interesting --

8 Q. Well, it is for lawyers perhaps!

9 A. It becomes more focused and easier to follow when the  
10 responsibilities of local government increase.

11 Q. Yes, I mean I'm not -- I don't think we need to trouble  
12 ourselves too much but there were all sorts of bodies in  
13 the 19th century doing things locally, including people  
14 who were called "commissioners of supply", who kind of  
15 preceded what we would know as county councillors and  
16 town councillors and borough councillors and so forth.  
17 It is one of the bodies that was in existence?

18 A. It is not one I am particularly familiar with but it  
19 sounds correct.

20 Q. I think I can help you there that these would be  
21 effectively county committees of land owners who had  
22 responsibilities for various matters locally and they  
23 preceded what we would regard as a more modern form of  
24 local government. That's the sort of thing that was  
25 operating locally.

1 A. Did it perhaps precede the town council?

2 Q. Yes. Well, broadly speaking.

3 LADY SMITH: Another example lawyers will have come across  
4 in 19th century litigation are harbour trustees, a local  
5 group who took on the local responsibility for operating  
6 the harbours, from a commercial interest as much as  
7 anything. They seemed to be quite litigious.

8 MR PEOPLES: Yes, all of these areas might have been divided  
9 up between local bodies with different names like  
10 commissioners and trustees and so forth and that was the  
11 position at local level. I think at national level  
12 there was a fashion for having boards and commissioners  
13 who had overall national responsibility for various  
14 areas, such as the Board of Lunacy for Scotland, for  
15 example.

16 A. Indeed.

17 Q. There was, I think, a board of supervision in Edinburgh  
18 for the Poor Law. So there was a form of national body  
19 as well as these local bodies in the 19th century.

20 A. Yes.

21 Q. That all changed in the 20th century and indeed by the  
22 end of the 19th century things were changing.

23 A. That sounds correct, yes.

24 Q. But we have to understand that when we look at some of  
25 the background, just as we understand that the care



1 system didn't simply start as a statutory process, it  
2 started from non-state institutions, to a large extent,  
3 supplementing the Poor Law and providing institutions  
4 like Quarriers, for example, Barnardo's and Aberlour  
5 which created these institutions in the 19th century  
6 which didn't have a statutory basis, but provided or  
7 supplemented the provision made under Poor Law for  
8 children in need of care.

9 A. Indeed.

10 Q. Because I suppose they were starting from a clean slate  
11 and a blank piece of paper. We wouldn't necessarily  
12 start in that way.

13 A. Certainly I wouldn't start in that way.

14 Q. Indeed, just following up that point, because it is not  
15 entirely historical, even when the State became more  
16 involved, as I think you show in your report, there was  
17 still a significant role -- and indeed there is today --  
18 for non-state institutions in the care of children in  
19 Scotland.

20 A. I am sure that is correct. I'm not sure to what extent  
21 legally that is necessarily the position as compared  
22 with very recent history but I am sure that certainly  
23 the role of them --

24 Q. We still have a lot of private care providers, albeit  
25 they may be much more heavily regulated in modern times

1 than in the past.

2 A. Yes, I think that is the key, the regulation.

3 Q. Perhaps the regulation, if I might put it this way, as  
4 Professor Norrie described, was rather light touch for  
5 a very long time.

6 A. I would very much agree with that.

7 Q. I think that applied, for example, particularly to  
8 voluntary homes run by non-State institutions.

9 A. I would agree with that, yes.

10 Q. I think just on that point, so that we understand, am  
11 I right in thinking that in the case of voluntary  
12 organisations, funded at least partly by donations, that  
13 there was really very little regulation until 1959?

14 A. I would need to go to the detail of my report.

15 Q. We can come back to it but am I right in thinking  
16 broadly speaking that it didn't have the regulation of  
17 some care settings, like approved schools or reformatory  
18 schools and so forth?

19 A. I would need to look at the detail in my report, I'm  
20 afraid.

21 Q. We will come back to that if I may. So far as the  
22 constitutional background is concerned, I think we had  
23 got to the creation of the Scottish Office and the post  
24 of the Secretary for Scotland. I think the point you  
25 make, if I may refer you to your own report at page 052

1 is that the 1904 Act -- do you see that at line 2:

2 "The Prevention of Cruelty to Children Act (1904)  
3 was passed by the Westminster Parliament at a time when  
4 Scotland did not have a principal Secretary of State"?

5 A. Yes, that is a reference to the office of Secretary for  
6 Scotland. The distinction, just to make the point,  
7 between the types of Secretary of State being that one  
8 is entitled to sit in the cabinet and one isn't. It was  
9 only on the Secretary of State becoming a principal  
10 Secretary of State that he was entitled to do that.

11 Q. Which I think came about in about 1930; is that right?

12 A. It is 19 --

13 Q. Or 26?

14 A. 1926.

15 Q. It is in the 1920s after the First World War that the  
16 Secretary of State for Scotland became a principal  
17 Secretary of State with an entitlement to sit in  
18 cabinet?

19 A. Indeed. It may well be that he sat in cabinet prior to  
20 that date but certainly the entitlement flows from it.

21 Q. My understanding is that individual secretaries for  
22 Scotland did, from time to time, sit in cabinet, but not  
23 as of right as a principal Secretary of State; is that  
24 your understanding?

25 A. That is my understanding, yes.

1 Q. Am I right in thinking that, largely speaking, on the  
2 creation of the Scottish Office and the post of  
3 Secretary for Scotland, the responsibility for Scottish  
4 affairs largely passed through the Secretary for  
5 Scotland and the Scottish Office?

6 A. That is right, yes.

7 Q. So far as education was concerned, that was a little bit  
8 complex, wasn't it, because -- am I right in thinking  
9 that the Scotch Education Department was not technically  
10 part of the Scottish Office and didn't become part of  
11 the Scottish Office until about the 1920s or 1918 or  
12 1920; is that what your report tells us?

13 A. I don't think it does actually go into that level of  
14 detail.

15 Q. Maybe it doesn't go into that level of detail, but it --  
16 what I will put to you is that my understanding is that  
17 when the new Scottish Office was created in 1885,  
18 a Scotch Education Department was created, but didn't  
19 formally come under the remit of the Secretary for  
20 Scotland but came under the Vice President of the Scotch  
21 Education Committee of the Privy Council, who happened  
22 to be the Secretary for Scotland.

23 A. I'm afraid I didn't get into that level of detail.

24 Q. By a round about route the Secretary for Scotland did  
25 have a responsibility, but that might explain to some

1 extent that there was this division of responsibility  
2 and constitutional arrangements which may have affected  
3 the way that legislation was passed or regulations were  
4 made, is that --

5 A. It may well have done, yes. As I previously mentioned,  
6 there was a reorganisation in 1939.

7 Q. Yes. By the end of the 19th century, can we just come  
8 back maybe to the local government position. Generally  
9 speaking by that stage we had a system of government,  
10 involving county councils, town and borough councils,  
11 school boards and parish councils responsible for poor  
12 relief. So there were a number of bodies at local  
13 level?

14 A. That's my understanding, yes. I don't think the  
15 position changed until the early 1920s.

16 Q. Well, I think there was a substantial reform of local  
17 government in 1929 and that created what was called  
18 "a county system of government"?

19 A. I think at that point the education and poor relief  
20 responsibilities were transferred.

21 Q. Yes. These councils became the education authority as  
22 well. As part of their functions, they took over the  
23 function of education authorities.

24 A. That's my understanding and, as I understand it, that  
25 system subsisted for quite a period of time.

1 Q. So prior to 1929, as we have seen this morning, we had  
2 school boards which were created by the 1872 Act. They  
3 seemed to have survived until, as I understand it, 1918,  
4 when the Education (Scotland) Act then created education  
5 authorities; is that your understanding?

6 A. I would need to consider --

7 Q. Don't --

8 A. -- the report.

9 Q. We can check this for ourselves but --

10 A. In broad terms that is my understanding, yes.

11 Q. And that in due course the education authorities  
12 themselves became subsumed into local government in  
13 1929?

14 A. Indeed.

15 Q. And that that created a system of county councils and  
16 also --

17 A. I think education authorities might have lasted a little  
18 bit longer than 1929.

19 Q. Okay. But certainly we had county councils by then and  
20 some town or borough councils in the cities, Edinburgh  
21 or Glasgow --

22 A. Yes, I think the borough and the county systems seem to  
23 have co-existed for some time.

24 Q. Yes, there were counties responsible for local  
25 government, but within the counties, in large urban

1 areas, there were town or borough councils in the 1930s  
2 and before.

3 A. I think that only changed in 1973.

4 Q. Yes. Maybe we just follow that through. Because we  
5 will hear from -- no doubt some of these matters are  
6 important because in 1973 there was another major  
7 reorganisation of local government, following the  
8 Wheatley Commission report in 1969, which created the  
9 two-tier system of government --

10 A. That's my understanding, yes.

11 Q. -- regional councils and district councils.

12 A. Indeed.

13 Q. For present purposes it is probably enough to record  
14 that regional councils took on responsibility for  
15 education and social work.

16 A. I'm afraid I didn't go into that detail but --

17 Q. I think you can take --

18 LADY SMITH: Some of us are old enough to remember that!

19 MR PEOPLES: Unfortunately, some of us are old enough to  
20 remember these changes and their effect, but I think in  
21 broad terms matters like housing was a district council  
22 function. There were a division of functions at local  
23 government level by reason of these reforms in the  
24 1970s.

25 A. And it was only in 1994 that it changed.

1 Q. In 1994 there was another reorganisation and we get to  
2 the unitary local authorities that we have today where  
3 there are unitary councils with responsibilities for all  
4 of these matters.

5 A. Indeed.

6 Q. Just going back to education again, I did mention the  
7 1918 Education Act. I think you do touch upon that in  
8 your report. That was a major reform of education in  
9 Scotland and I think which had one -- one major reform  
10 at that stage was that Roman Catholic schools were  
11 brought into the state system of education, although  
12 they continued to be denominational schools.

13 A. I think that is the reality. Certainly the wording is  
14 more neutral.

15 Q. I am trying to summarise the effect. We can no doubt  
16 explore the detail, but is that in broad terms what  
17 happened?

18 A. Indeed.

19 LADY SMITH: Was that when -- you may not remember,  
20 Ms Irvine -- it wasn't the that the Roman Catholic  
21 schools were forced to go into the State system, but  
22 they could require the local authority to take them  
23 over?

24 MR PEOPLES: I think it was perhaps more --

25 LADY SMITH: At some point that became the position --



1 I think it still is the position.

2 MR PEOPLES: I think there are some provisions for private  
3 schools but I think they became part of the State system  
4 as a matter of requirement, but no doubt we can check  
5 that. Certainly it had that effect, that the State  
6 system of education was enlarged by the reception of --

7 A. Indeed. My Lady is correct. There is a provision,  
8 which I can't put my finger on, where the schools had  
9 the option essentially of bringing themselves within the  
10 State sector.

11 LADY SMITH: Yes.

12 MR PEOPLES: Was this before 1918 perhaps?

13 LADY SMITH: I think it was the 1918 Act. I may be wrong  
14 about that; I remember having to look at this some time  
15 ago.

16 MR PEOPLES: Forgive me, I may have taken that too short.

17 But, my Lady I think we are probably at a convenient  
18 time to -- because it is nearing 11 o'clock.

19 LADY SMITH: If I could remind everybody, it is very nearly  
20 11 o'clock and when we get there we are going to observe  
21 the minute's silence in the light of the attacks at the  
22 Borough Market at the weekend, which I am sure have  
23 affected all of us in this room, even although we are  
24 geographically remote from it.

25 It is now 10.59 and I invite everybody to focus on

1 those who suffered at the weekend, and indeed are still  
2 suffering, when we get to 11 o'clock in a moment.

3 (Pause)

4 That's 11 o'clock now.

5 (A minute's silence was observed)

6 Thank you. It is 11.01 am. When you are ready  
7 Mr Peoples.

8 MR PEOPLES: If I can just continue again on the 1918 Act.

9 That did represent a major reform in education, I think  
10 as I indicated and I think you agreed.

11 I think one effect of that Act was to replace school  
12 boards by education authorities --

13 A. That is correct.

14 Q. -- which later became part of the local authority --

15 A. Indeed.

16 Q. -- I think around the time of the reform of local  
17 government in 1929 but I don't think --

18 A. I think it was the 1929 Act.

19 Q. At that time, as I say, there were four cities and  
20 larger boroughs and county councils responsible for  
21 local government in Scotland, including for the  
22 provision of education, wherein their education  
23 authority had.

24 A. Indeed.

25 Q. Perhaps I should have said that one other matter that

1 perhaps was relevant is that the school leaving age,  
2 which was 13 in 1872, was raised to 14 in 1902. I don't  
3 know if that's something you picked up on.

4 A. I don't think that was picked up in my report.

5 Q. You can perhaps take it from me that it did change from  
6 around that time and just again following that through  
7 so that we understand the context of certain regulations  
8 and provision for children and young persons, I think  
9 that in some of the earlier legislation a child is  
10 someone under 14.

11 A. That is right.

12 Q. And a young person is under the age of 17, isn't it?

13 A. That is right, yes.

14 Q. While that remained, I think the position -- and I think  
15 Professor Norrie may have said this -- was that the  
16 school leaving age, I think, was raised again to 15 by  
17 the Education (Scotland) Act 1945 or thereabouts  
18 perhaps; am I right?

19 A. I can't recall off the top of my head, I'm afraid.

20 Q. But there was a raising of it?

21 A. There was.

22 Q. Just after the war, I think, and indeed it was raised  
23 again to 16 in the early 1970s, which I think is --

24 A. That's my understanding, yes.

25 Q. So far as central government is concerned, we have

1 already touched upon the fact that the Secretary for  
2 Scotland became the Secretary of State for Scotland in  
3 the late 1920s and became a principal Secretary of State  
4 from that time on.

5 A. That is correct.

6 Q. I think that was an important time. We have had  
7 reorganisation of local government, we have had the  
8 creation of a principal Secretary of State, and I think  
9 around that time there was a significant reorganisation  
10 of central government in terms of creating what I might  
11 term a departmental structure, creating departments such  
12 as the -- it is similar to the Scottish Education  
13 Department.

14 A. Yes, that was in 1939, I think.

15 Q. So there is quite a lot happening in that time and these  
16 departments of central government, which I think endured  
17 for quite a long time -- you are not dealing with this  
18 part of the report, but I think they continued and we  
19 had departments like the Scottish Home Department and  
20 the Department of Health in Scotland and the Department  
21 of agriculture and so forth became government  
22 departments which supported the Secretary of State for  
23 Scotland.

24 A. Indeed, the four that I can think of in 1939 were home,  
25 education, health, and agriculture.

- 1 Q. Yes. So that must have been the introduction of the  
2 departmental structure of government?
- 3 A. Indeed.
- 4 Q. Which I think continued for most of the period that we  
5 are looking at?
- 6 A. In one form or another.
- 7 Q. I think their name changes to some extent and I think  
8 the fashion today is to call the department something  
9 different, like directorates or so forth or directorate  
10 generals, but that is the broad structure of central  
11 government?
- 12 A. It probably wouldn't be unrecognisable to somebody from  
13 that period.
- 14 Q. What that did essentially was to replace these various  
15 national boards and so forth, such as the Board of  
16 Control for Lunacy, there was a Scottish Board of  
17 Health, there was a local government board and various  
18 things of that nature pre-1929 and these were all  
19 replaced by this departmental structure.
- 20 A. Yes, and I think the prison commissioners were another  
21 example.
- 22 Q. Yes. They would become part of one of the departments  
23 or at least assigned to them or would fall within one of  
24 these government departments?
- 25 A. Indeed.

1 Q. Perhaps the only other point that may be worth making --  
2 I do not know if this is something you researched at  
3 all -- is that the Scottish Office, which of course then  
4 was part of the UK government, I think just at the start  
5 of the Second World War, largely relocated to Edinburgh  
6 from London; is that something you are aware of?

7 A. In very broad terms, but the detail of it I'm not aware  
8 of.

9 Q. I think I will perhaps leave the constitutional  
10 background for moment. I wonder if I could now go to  
11 Professor Norrie's evidence. I think you said you had  
12 a chance to look at his report and the evidence he gave  
13 to the Inquiry.

14 A. Yes, I read the transcript of his evidence.

15 Q. Just to perhaps pick up on one or two points that he  
16 made, if you feel able to express views on matters that  
17 he dealt with. Just bear with me.

18 I think the essential purpose of Professor Norrie's  
19 report was to give an exposition of the legal and  
20 regulatory framework and to put some kind of analysis  
21 into that exercise and to try to help us to understand  
22 the development of the law and the regulation of care in  
23 Scotland over the years.

24 A. That's my understanding, yes.

25 Q. I think that the way he did it -- and I don't want to go

1 over his whole evidence again, but the way he did it was  
2 to take it from its earlier stages and he started with  
3 the Poor Law -- and we touched upon this that morning as  
4 well -- and about how that had been in existence for  
5 a long time and in 1845 the responsibilities transferred  
6 to the State and to the newly created parochial boards  
7 and there was this National Board of Supervision as part  
8 of these new arrangements. I think that accords perhaps  
9 with your understanding of how things were at that  
10 stage.

11 A. It does.

12 Q. Although that perhaps didn't represent adequate  
13 provision for children in need and, of course, we saw  
14 the rise of institutions for the care of children, such  
15 as the Quarrier's Village and Aberlour Orphanage.

16 LADY SMITH: Mr Peoples, can you remember the microphone,  
17 please.

18 MR PEOPLES: Such as Quarrier's Village and Aberlour, so we  
19 saw the rise of these, which were largely through  
20 philanthropical efforts of such people such as  
21 William Quarrier and Dr Barnardo and so forth, so that  
22 was supplementing the Poor Law provision.

23 A. I can see how one could infer the inadequacy of support  
24 but clearly the focus of my instruction was to provide a  
25 factual narrative and accordingly I wouldn't feel in

- 1 a position to --
- 2 Q. Okay --
- 3 A. -- agree or disagree with that.
- 4 Q. One thing that may be relevant to some of the things you  
5 looked at later on in terms of the legal framework was  
6 that Professor Norrie told us that in practice Poor Law  
7 authorities at that stage boarded out many children;  
8 that was the way that they dealt with the  
9 responsibilities. They didn't all end up in poor houses  
10 and some were boarded out or fostered if you like.
- 11 A. Certainly that's my understanding.
- 12 Q. That might reflect the fact that regulations  
13 subsequently have, in the 20th century, made provision  
14 for rules that could be made in relation to that type of  
15 boarding out. I think --
- 16 A. Sorry, could you --
- 17 Q. We will come back to that but I think there were some  
18 regulations that may have dealt with the power of the  
19 Secretary of State to make regulations about children  
20 boarded out by Poor Law authorities or national  
21 assistance authorities. I think that's something you  
22 dealt with in your report.
- 23 A. It is. Is the point that it was the practice which gave  
24 rise to the legal --
- 25 Q. Yes, yes.



- 1 A. -- requirement?
- 2 Q. It was a practice and then it got a statutory kind of  
3 regulation and then there was a power given to the  
4 State, exercised by the Secretary of State, to make  
5 rules and to regulate this area of child care?
- 6 A. I would agree with that, yes.
- 7 Q. Then I think also Professor Norrie also told us a little  
8 bit about the predecessor to approved schools which came  
9 into being in 1933?
- 10 A. Yes, the industrial versus reformatory schools.
- 11 Q. Yes, reformatory and industrial schools that had started  
12 again as a practice of being schools that were run by  
13 voluntary organisations outwith a legal framework, if  
14 you like, but rapidly became subject to legislation and  
15 state control.
- 16 I think Professor Norrie told us that in the 1860s  
17 there was quite a number of pieces of legislation  
18 intended to introduce requirements for certification or  
19 approval of these schools and to lay down requirements  
20 as to how they were operated and run.
- 21 A. Certainly that's my understanding of when certification  
22 first came in.
- 23 Q. So again we see the idea of the practice and then the  
24 State gets involved, recognises that the practice --
- 25 A. And seeks to regulate it.

1 Q. And seeks to regulate. Indeed, I think that what  
2 Professor Norrie told us -- and I think this will  
3 perhaps explain some of the more modern -- when I say  
4 modern, some of the legislation in the 20th century that  
5 the practice developed initially of the courts, as  
6 an alternative to prison, sending children to  
7 reformatory schools or young offenders to reformatory  
8 schools as an alternative and that that was then  
9 formalised in 1866, I think it was. The courts were  
10 given the power, without the consent of the child  
11 offender, to send them to a reformatory or industrial  
12 school, which at that stage had to be certified or  
13 approved by the State.

14 A. Yes, I'm not sure of the precise date when it began but  
15 I'm certainly aware of that being made an alternative  
16 disposal.

17 Q. Yes, so at that stage it was seen as an alternative to  
18 prison, for example, because we didn't have young  
19 offenders' institutions or retention centres or remand  
20 homes or anything of that kind at that time.

21 A. Yes, it would have been to a reformatory school in that  
22 context.

23 Q. Of course, even when this degree of control came in,  
24 that was before the compulsory education which began in  
25 1872, when the universal education was brought in.

- 1 A. Yes, I suppose there are degrees of compulsion.
- 2 Q. I think what Professor Norrie told us was that although  
3 the reformatory and industrial schools were technically  
4 different, in practice, they operated in very much the  
5 same way and were subject to essentially the same rules  
6 and regulations.
- 7 A. Yes, I think I make the point in the report that  
8 ultimately when they were -- where the distinction was  
9 abolished in law it was following the lack of  
10 a distinction in practice.
- 11 Q. Yes. I think we learned from him that both types of  
12 school, from about 1866, were subject to a regulatory  
13 regime that included inspection.
- 14 A. I'm afraid I didn't go quite that far back.
- 15 Q. Well, perhaps moving forward, so far as statutory  
16 interventions are concerned, I think that certainly from  
17 the early 1900s the broad obligation on managers of  
18 these schools, which were often private organisations  
19 was to -- I think this was from the Children Act of 1908  
20 -- "lodge, clothe, feed, teach and train"; is that your  
21 opinion?
- 22 A. Yes, that's my understanding and that's dealt with in  
23 the report.
- 24 Q. I suppose it might be said that, on the face of things,  
25 that the focus then seems to be very much on meeting the

1 material needs of the child or young person, rather than  
2 anything more sophisticated like emotional needs.

3 A. Certainly the words would suggest that.

4 Q. Well, they didn't mention these other needs in the  
5 legislation as part of the obligations.

6 A. No, I suppose to some degree it is partly modern  
7 language but certainly --

8 Q. Well --

9 A. -- welfare doesn't get mentioned until later on.

10 Q. It is perhaps more than that, is it not, because, as  
11 Professor Norrie pointed out, we can come to this, the  
12 concept of welfare and well-being, these start to be  
13 introduced and find expression in legislation which  
14 imposes obligations and duties on those who care for  
15 children, whether in the public sector or the private  
16 sector. We see reference to "welfare" and "interests of  
17 the child" and "well-being" but we don't see those in  
18 the earlier to the same extent?

19 A. It is not explicit, no.

20 Q. I think, as we touched upon earlier, 1932, the Children  
21 and Young Persons (Scotland) Act (1932), I think, saw  
22 the disappearance of certified schools to be replaced by  
23 a system of approved schools.

24 A. Yes, it saw the abolition of the distinction between  
25 reformatory and industrial schools. I noticed in

1 paragraph 1.46 that the long title to that Act refers  
2 to:

3 "Making further and better provision in Scotland for  
4 the protection and welfare."

5 Q. So there is some reference---

6 A. Some reference to it at the very least.

7 Q. In the 1930s there is the beginnings of references to  
8 welfare of children as part of the aim of legislation --

9 A. Indeed.

10 Q. -- which is maybe not a feature of some of the earlier  
11 legislation that was passed.

12 A. I would say that was fair.

13 Q. Again, I don't want to get into this in too much detail.  
14 Professor Norrie did deal with this in some length in  
15 his report and evidence and I think you also deal with  
16 it in your report, that so far as settings for children  
17 in care are concerned, using that term broadly, approved  
18 schools -- that was an area where there was a fair  
19 degree of regulation, even from early times, in contrast  
20 perhaps to some other care settings such as, for  
21 example, voluntary homes?

22 A. Yes, I would agree with that.

23 Q. You mentioned I think in your report the Prevention of  
24 Cruelty to Children Act (1904), if I can take you back  
25 to that time.

- 1 A. Of course.
- 2 Q. I think that Professor Norrie in his exposition of the  
3 matter in evidence and in his report explained to us  
4 that an earlier Prevention of Cruelty Act of 1889 had  
5 created a new crime which was aimed at addressing the  
6 ill-treatment of children and the neglect of children by  
7 persons of over 16 in whose care, custody, control or  
8 charge these children were.
- 9 A. Yes, that was his evidence.
- 10 Q. And that as part of the legislative arrangements courts  
11 were given statutory power to remove children from the  
12 care of those convicted of ill-treatment and neglect.  
13 They were given a power under this --
- 14 A. That was my understanding. I didn't actually go that  
15 far back, so I could not say from first-hand experience.
- 16 Q. Okay. And that the -- perhaps we can take it from when  
17 you did go, that one of the ways in which this power was  
18 exercised of removing the child was to remove the child,  
19 bring them before a court, and the court could then  
20 place the child with a relative or, as the expression  
21 came to be used, "other fit person".
- 22 A. Yes.
- 23 Q. That was colloquially known as a "fit person order",  
24 I don't know if that's something --
- 25 A. I read Professor Norrie's evidence on that. It

1 certainly sounds correct, albeit it is not a phrase

2 I have come across myself.

3 Q. That is the gist of what could be done. The State were  
4 starting to say, we can take the child away who has been  
5 ill-treated or neglected and we can place them in the  
6 care of another individual or organisation or fit person  
7 and they can deal with their welfare.

8 A. Indeed.

9 Q. I think he told us that in 1889 a fit person could not  
10 be an institution, but by 1904 voluntary organisations  
11 and corporate bodies and local authorities were all  
12 deemed to be fit persons into whose charge a child  
13 victim of ill-treatment could be placed.

14 A. I think the criteria was that the society or body had  
15 been established for the reception of poor children or  
16 the prevention of cruelty to children.

17 Q. Yes. But that would include the sort of voluntary  
18 organisations that set up homes for children in need of  
19 care?

20 A. Presumably.

21 Q. I don't know whether you are able to give us  
22 an observation or a comment on this: this development  
23 was described by Professor Norrie -- and you may have  
24 picked this up in his evidence -- as essentially  
25 State-mandated fostering of children. I don't know if

1           you saw that.

2       A. I saw that and no doubt I could offer a comment but I'm  
3       not sure it is really my remit to do so.

4       Q. Well, what he did say though was that this process was  
5       a statutory process, which was introduced under these  
6       prevention of cruelty acts, but it had much the same  
7       effect as boarding out under Poor Law arrangements.

8       That was --

9       A. I can certainly see the analogies.

10      Q. Indeed. He said that if a fit person, such as  
11      a voluntary organisation, received a child under  
12      an order of the court, in practice, one way in which  
13      they would care for that child was then to board them  
14      out with some form of person described as a responsible  
15      person, I think was how he put it.

16      A. That may well be the practice; unfortunately it is not  
17      something I really considered.

18      Q. Maybe this is something you can comment on: by the time  
19      of the 1904 legislation that you referred to in your  
20      report, the Prevention of Cruelty to Children Act,  
21      a question was asked by the Chair of Professor Norrie,  
22      about shifting of parental rights and responsibilities  
23      from the natural parents to others who may have a care  
24      of children under these arrangements and I think  
25      Professor Norrie's explained that at least at that stage



1 the law did not have provision or mechanisms to shift  
2 parental responsibilities and rights in the situation  
3 where the child was brought up with a person who was  
4 seen as a fit person. Did you find anything to suggest  
5 otherwise?

6 A. I didn't find anything to suggest otherwise, no.  
7 I suspect, like most people in the room, I would defer  
8 to Professor Norrie on those matters.

9 Q. Just in case you had come --

10 A. Certainly I didn't come across anything --

11 Q. I think in the later legislation we will see sometimes  
12 provision that, in effect, gives bodies with care of  
13 children the same rights and responsibilities as  
14 a parent would have while they are in that body's care.  
15 We see legislative expressions of that kind in some of  
16 the later acts.

17 A. Yes. I can't think of a specific example --

18 Q. Don't worry at this stage, but it is again to look at  
19 the differences and the development of this process.

20 Another matter which Professor Norrie dealt with --  
21 and I will take this hopefully reasonably short -- was  
22 the position of juvenile offenders. You deal with that,  
23 I think, over the period covered by part B of your  
24 report in some detail and you look at various -- you  
25 track the development of the treatment of juvenile

1 offenders/young offenders over the years --

2 A. Yes, I did.

3 Q. -- both before and after 1968. If I may say, you look  
4 at it in some depth and in terms of the provision that  
5 has been made --

6 A. I do.

7 Q. -- as part of what might broadly be treated as the  
8 criminal justice aspect of -- that touches on children  
9 in care.

10 A. Indeed, obviously the 68 Act was fairly seminal in that  
11 regard.

12 Q. We will maybe come to that in due course.

13 Professor Norrie's view was that -- and I think you  
14 make reference to the Children Act (1908) in your  
15 report. I think you set it out. It starts at page 0060  
16 and you consider that legislation. I think he indicated  
17 that in his view that represented the start of what he  
18 described as the concept of juvenile justice being  
19 a process which was different from the normal criminal  
20 justice processes.

21 A. Yes, I read his evidence and --

22 Q. Do you have any quarrel with that view?

23 A. Pardon?

24 Q. Do you have any quarrel --

25 A. I wouldn't, no.

1 Q. He also said -- and it may be implicit in what emerged  
2 from the legislation at that time -- that it reflected  
3 a philosophy that young offenders were more likely to be  
4 amenable to reformation and rehabilitation.

5 A. I'm afraid we are probably getting to matters that are  
6 beyond my remit.

7 Q. That could be implicit in the approach one sees in the  
8 legislation itself, one could infer that?

9 A. I can see how one would infer that.

10 Q. What you can perhaps tell us is that the 1908 Act tried  
11 to set up juvenile courts for persons or young persons  
12 under 16, albeit these were not necessarily to be  
13 separate courts from the ordinary courts of law dealing  
14 with adult offenders.

15 A. They had certainly features which were distinctive but  
16 they were not physically separate.

17 Q. I think one of the features was that hearings would be  
18 held in private.

19 A. That was my understanding, yes.

20 Q. Another feature was that -- and I think one can see this  
21 from the Children Act itself -- that there was quite  
22 a wide range of disposals available to the juvenile  
23 court and these included sending a young offender to  
24 what was then a certified reformatory or industrial  
25 school.

- 1 A. Yes, this was one of the alternative disposals that we  
2 were discussing.
- 3 Q. Yes. Another was committing the offender to the care of  
4 a relative or other fit person?
- 5 A. Yes.
- 6 Q. In relation to juvenile courts, Professor Norrie also  
7 made reference to the Children and Young Persons  
8 (Scotland) Act (1932) and I think you do so too in your  
9 report.
- 10 A. I do.
- 11 Q. I think your discussion of that starts at page 0088.
- 12 A. It does.
- 13 Q. Professor Norrie provided some background context to the  
14 1932 Act and am I right in thinking you probably do the  
15 same, that he mentioned the Morton Committee report of  
16 1925 and another report in 1927 or 1928 which I think is  
17 a reference to the Molony report that you mention in  
18 part B; is that right?
- 19 A. That is right and it is referred to in part B in the  
20 context of the abolition of the distinction between the  
21 reformatory and industrial schools.
- 22 Q. Yes.
- 23 LADY SMITH: Mr Peoples, before we get any further into this  
24 matter, it is now 11.30 am, so we will stop now for the  
25 morning break and we will sit again at 11.45 am, please.

1           The hearing is now adjourned.

2           (11.30 am)

3                               (A short break)

4           (11.47 am)

5           LADY SMITH: Mr Peoples.

6           MR PEOPLES: My Lady.

7           Ms Irvine, before we had our break, I was asking you  
8           some questions about the Children and Young Persons  
9           (Scotland) Act (1932) which is at SGV.001.001.0078, the  
10          report that has been prepared.

11          Reference was made to the Morton Committee report  
12          and the Molony report. It would appear that the  
13          background and recommendations of that report was that  
14          it was recommending the creation of a separate juvenile  
15          court system in a separate building, staffed by trained  
16          magistrates. That was the broad thrust of  
17          recommendations, was it not?

18          A. I'm afraid I can't actually recall the recommendations  
19          that were made, save insofar as they relate to the  
20          schools.

21          Q. Well, perhaps I will come back to that in a moment. So  
22          far as the 1932 Act was concerned, the Children and  
23          Young Persons (Scotland) Act (1932), one of the main  
24          features of it was the creation of a new system of  
25          approved schools which would be schools approved by the

1 Scottish Education Department, as it then became or had  
2 become.

3 A. Yes.

4 Q. What were known as certified reformatory industrial  
5 schools ceased to be such, but existing certified  
6 schools became approved schools essentially  
7 automatically.

8 A. I think it was essentially automatically, yes. I can't  
9 recall where the precise provision is. I think it is in  
10 the --

11 Q. I think that's what Professor Norrie indicated in his  
12 evidence and if a new school was set up it would require  
13 approval of the Scottish Education Department, so in  
14 other words there would be central government  
15 involvement in the process.

16 A. Yes.

17 Q. Indeed. I think this is something you perhaps bring out  
18 in your report and I don't want to take it at length,  
19 but the legislation itself, I think, made provision for  
20 an approval process --

21 A. Yes.

22 Q. -- and indeed for an inspection regime.

23 A. Yes.

24 Q. I think another feature of the Act -- although it was  
25 not a new feature because I think it had also been in

1 the Children Act (1908) -- was that there were  
2 provisions -- it contained after care provisions, in  
3 other words, that a child or young person would be  
4 supervised for some years after discharge from the  
5 approved school.

6 A. Yes, I think the phrase "after care" is essentially  
7 a modern one but, yes, certainly there are indications  
8 of something similar.

9 Q. Yes.

10 A. Although that's of course to make a qualitative  
11 judgement of "supervision". It could well be something  
12 quite different.

13 Q. At least there was some form of continuing support for  
14 the person who was discharged.

15 A. Yes, I would agree with that.

16 Q. It was called supervision. Whatever that might in  
17 practice have entailed is something you say you can't  
18 comment on and I understand that and we would have to  
19 find out from others whether it was given and how it was  
20 given in practice. That's really where the practice  
21 showed what supervision amounted to under the  
22 legislation.

23 A. Yes.

24 Q. I think that perhaps to pick up on something that we  
25 talked about earlier this morning, one important

1 provision, I think as Professor Norrie pointed out in  
2 his evidence on Thursday, was that the 1932 Act  
3 contained an express provision vesting parental rights  
4 and responsibilities in the manager's own approved  
5 school. I think that was the first schedule at  
6 paragraph 17.1, he said. I don't know if that was  
7 something you note in your report but --

8 A. It is not something that I touched upon.

9 Q. Okay. But I think he certainly indicated we would find  
10 a provision to that effect.

11 So far as the new juvenile court system was  
12 concerned, Professor Norrie said that in reality the  
13 separate courts did not in reality happen to any great  
14 extent between 1932 and 1964, and I don't know whether  
15 you are able to comment on that. You don't know?

16 A. I don't really feel able to comment on that.

17 Q. But what he did say is that the provisions contained in  
18 the 1932 Act, which I think you obviously have had  
19 a look at, provided a blueprint for the Kilbrandon  
20 Committee. Indeed he made the observation that the  
21 report itself didn't invent something entirely new when  
22 it recommended the setting-up of what became the  
23 children's hearings system. Do you recall his  
24 evidence --

25 A. I do recall evidence to that effect.



1 Q. Indeed. He said -- and I don't know if you make  
2 reference to it in your report, but he pointed out that  
3 or he said that if one looked at the Juvenile Courts  
4 Constitution (Scotland) Rules (1933), which were made  
5 under the 1932 Act, these would look quite familiar to  
6 a Children's Panel and that the process was, I think in  
7 his words, "astoundingly similar".

8 A. I'm afraid I didn't look at those rules so I couldn't  
9 comment.

10 Q. That was not something you picked up on? We could no  
11 doubt compare --

12 A. No doubt.

13 Q. -- and indeed he is well placed to do that. He also  
14 explained that the various grounds upon which the court,  
15 if they were made out, would have power to select  
16 between a range of disposals, one of which could be the  
17 sending of the child to an approved school, and I think  
18 the Act itself does contain provisions setting out that  
19 that is a disposal available to the court, the juvenile  
20 court.

21 A. Yes.

22 Q. Another disposal being the committal of the child to the  
23 care of a fit person was another form of disposal under  
24 the legislation.

25 A. From recollection, yes.

1 Q. He also made the point that the grounds of jurisdiction  
2 of the court included both the commission of a criminal  
3 offence and what could be described, as he put it,  
4 broadly speaking, care and protection grounds, such as  
5 having no parent or guardian, being beyond parental  
6 control, having bad associations, being the victim of  
7 a sexual offence, non-attendance at school, and parental  
8 ill-treatment and neglect. Does that accord with  
9 your --

10 A. That accords with my understanding. As I understand it,  
11 it was essentially children who offended and those who  
12 were offended against.

13 Q. He moved from there to practice and said that in  
14 practice, following this legislation -- and I can maybe  
15 give you this information to you -- that the norm was  
16 boarding out because where orders were made committing  
17 to the care of a fit person, who by that stage was  
18 normally an institution rather than an individual, that  
19 that fit person would in general terms board or foster  
20 out the child who was the subject of the order.

21 A. I did read Professor Norrie's evidence to that effect,  
22 but clearly practice was not an area that I was  
23 concerned with.

24 Q. But the relevance of that for him was that by the time  
25 of the Clyde report in 1946, which was one of the bases

1 of the Children Act (1948), which you had a look at, the  
2 main systems that were in place, in other words, the  
3 Poor Law system and the juvenile court system and the  
4 making of committal orders, had the result of placing  
5 many children or had resulted in many children being  
6 boarded out in practice. That's not something you --

7 A. It is just not something I looked at, the practice.

8 Q. Indeed he said -- and I think you did refer to this in  
9 your report -- that the Poor Law authorities made great  
10 use and practice of boarding out and that the statutory  
11 authority for that practice was to be found, by the  
12 1930s, in section 10 of the Poor Law Amendment Act of  
13 1934. Is that how you saw things?

14 A. It is not a provision that, from memory, I actually  
15 covered in the report, so it may well be relevant but it  
16 is not a matter that's included.

17 Q. What he told us was that where the court committed  
18 a child to the care of a fit person, frequently that  
19 resulted in boarding out and one example would be where  
20 the fit person was an education authority, which was one  
21 of the bodies to which children were entrusted by the  
22 court.

23 A. It is just not a matter that I considered, I'm afraid.

24 Q. I'm going to ask you something about the regulations and  
25 I will just give you this additional information: that

1 where a child was sent to an approved school, the  
2 managers of the school, which might often be private  
3 organisations, would also have had the power to board  
4 the child away from school with some form of responsible  
5 or fit person.

6 A. Yes.

7 Q. That was what he told us. Against that background, he  
8 considered some of the regulations that were made under  
9 or following the 1932 Act and I think you probably are  
10 aware that he gave evidence about those regulations.

11 A. Yes, I think the regulations tended to be made under the  
12 1937 Act.

13 Q. Yes. I think he made reference, I think, to the  
14 Children and Young Persons Care and Training Regulations  
15 of 1933 --

16 A. Yes.

17 Q. -- which were made, I think, under the 1932 Act.

18 A. Yes, that is right.

19 Q. Part A of those regulations applied to approved schools.

20 Do you want to refer to them? Would you like to --

21 A. I would prefer to have them in front of me.

22 Q. Perhaps we can do that. Could we put up  
23 LEG.001.001.0646, which I hope are the relevant  
24 regulations. (Pause). Sorry, I think I have got the  
25 wrong number there. Sorry, can we try another one,

1           2880. (Pause). I think we are having some difficulty  
2           with that one.

3       LADY SMITH: Third time lucky!

4       MR PEOPLES: Third time lucky.

5           Could we try LEG.001.001.0634. I think that is at  
6           least a part of the 1933 regulations that were made by  
7           the Scottish Education Department under the Children and  
8           Young Persons (Scotland) Act (1932) -- I'm just reading  
9           from page 0634 -- with regard to approved schools and to  
10          children and young persons committed to the care of  
11          education authorities.

12       A. My screen has actually gone blank. (Pause). It is  
13       back.

14       Q. Yes. We see that, do we not, at section A or part A  
15       that there are rules for the management and discipline  
16       of approved schools.

17       A. Yes.

18       Q. These cover a range of matters, including a provision  
19       dealing with staff and that's at page 0635. Do we see  
20       that at paragraph or regulation 7? And there's also  
21       provision about education and training at rule 8. If we  
22       go over to the next page at 0636, there's also at  
23       rule 11 and following rules for the provision of  
24       discipline and punishment; do we see that?

25       A. Yes.

1 Q. Including that, at rule 14, that:

2 "If corporal punishment is considered necessary,  
3 a light tawse only may be used. A cane or any form of  
4 cuffing or striking are forbidden."

5 Do you see that?

6 A. Yes.

7 Q. It goes on that:

8 "No boy or girl who shows any sign of physical or of  
9 mental weakness shall receive corporal punishment  
10 without the sanction of the medical officer."

11 And that:

12 "Corporal punishment should rarely be imposed on  
13 girls whose treatment in other respects may differ from  
14 that required for boys or be a modification of it."

15 Do you see that?

16 A. Yes.

17 LADY SMITH: Can we just look back to rule 11, which seems  
18 quite interesting? What do you read to be the thrust of  
19 rule 11, Ms Irvine?

20 A. In terms of who is responsible?

21 LADY SMITH: Well, both who is responsible and what is being  
22 foreseen in terms of the approach to punishment?

23 A. The first sentence makes it very clear that it is  
24 ultimately a matter for the headmaster or headmistress  
25 and the members of staff.

1 LADY SMITH: Through their "personal influence",  
2 interestingly.

3 A. It is an interesting reference.

4 LADY SMITH: Then does it seem to you that there is some  
5 effort to send out a message that punishment should be  
6 as little as possible, "punishment where necessary"?

7 A. Yes, it is sort of setting up an exception rather than a  
8 rule.

9 LADY SMITH: Yes, thank you.

10 MR PEOPLES: If we just move on to page 0637 of the  
11 regulations, do we see at rule 19 there's provision in  
12 relation to parents?

13 A. Yes.

14 Q. And that:

15 "Boys and girls shall be allowed to receive letters  
16 and, at such reasonable intervals as the managers will  
17 determine, visits from their parents and guardians."

18 So the general approach seems to be to make  
19 arrangements for communication from parents and indeed  
20 visits by parents or guardians to pupils?

21 A. Yes.

22 Q. If we move on to page 0638, which again are these rules  
23 in relation to approved schools, we see, do we not, at  
24 rule 23, a requirement to keep records?

25 A. Yes. In fact in the previous paragraph I see reference

1 to after care, which may be not such a modern term after  
2 all.

3 Q. Yes. So it does appear in the 1933 regulations as well  
4 as perhaps in more modern legislation. But going back  
5 to rule 23, one of the records that is required to be  
6 kept is a record of punishment and it is to be recorded  
7 in a punishment book.

8 A. Yes, I see that.

9 Q. Indeed, when it comes to inspection, there is provision  
10 at rule 24 for:

11 "... inspection by His Majesty's Inspector of  
12 Schools or indeed of any officer appointed by the  
13 department for the purpose."

14 I think that would be the Scottish Education  
15 Department.

16 A. I think that's what it is a reference to.

17 Q. And that:

18 "All school records are to be available for  
19 examination by the inspector."

20 Then, if we move to page 0641, do we see there that  
21 part C, which is not actually set out in this particular  
22 document, but part C contained rules as to boarding out  
23 of boys and girls committed to the care of education  
24 authorities?

25 A. Yes.



1 Q. There's reference to these rules being revoked by  
2 regulations made in 1947.

3 A. Yes. Those were the regulations which were made under  
4 the 1937 Act, I think.

5 Q. Yes, I think you did say that and --

6 LADY SMITH: Ms Irvine, I noticed from the earlier rules  
7 that we were looking at -- and indeed I think there is  
8 a reference here again -- a reference to the managers.  
9 Am I right in thinking that that was broadly equivalent  
10 to what we might now refer to as the governing body of  
11 the school, a body that would have intermittent contact  
12 with the school only?

13 A. I'm afraid I'm not entirely sure, my Lady. Certainly  
14 the reference to manager would almost suggest it is to  
15 an individual but it seems -- but then it is also in the  
16 plural.

17 LADY SMITH: We seem to find both. We seem to find the  
18 possibility of the manager having transferred to him --  
19 it probably was a him -- parental rights and yet there  
20 are references in the rules to managers in the plural  
21 whose role seems to be distinct from that of, for  
22 example, the head who will be involved with the school  
23 on a daily basis.

24 A. Indeed, the references to both headmasters and managers  
25 in the regulations do suggest that those two are

1 distinct, so it may well be that the most likely analogy  
2 is the governing body.

3 LADY SMITH: Do you recall any provision about the  
4 constitution of the managers or the committees of  
5 managers or any rules about how they were to operate?

6 A. I can't recall it but I wouldn't want to exclude it.  
7 I can certainly look into that, if that would be of  
8 assistance.

9 LADY SMITH: I think it might be useful to know.

10 MR PEOPLES: I can say at this stage, because of the  
11 approach I'm taking, I'm taking you essentially to 1968  
12 for reasons I explained this morning. It may be that  
13 this opportunity is available to you and it may assist  
14 the Inquiry if I was able to do that.

15 A. I will certainly look into that.

16 Q. Perhaps on the same vein, because it is a matter that  
17 occurs to me, that where rules were made, such as the  
18 rules for approved schools, they contained provision on  
19 a range of matters and we looked at the sort of  
20 provision that was made in the 1933 regulations for  
21 approved schools. Perhaps on the next occasion you  
22 could consider whether any of these rules and  
23 regulations, insofar as they were made, and for  
24 particular settings, dealt to any significant extent  
25 with the making of complaints by or on behalf of

1 residents in terms of -- whether there was any provision  
2 to that effect, including any requirement to establish  
3 a complaints procedure. Do you see the point I'm  
4 making?

5 A. I do and I will certainly look into that. From memory  
6 I do not think there was anything as formal as  
7 a complaints procedure being referred to, but there are  
8 instances, albeit I can't point to them, of essentially  
9 requiring the inspector to speak to pupils and ascertain  
10 matters pertaining to their welfare.

11 Q. But that's a slightly different requirement?

12 A. Indeed.

13 Q. But if one wants to make a complaint, one doesn't  
14 necessarily wait until someone speaks to the child with  
15 or without others in attendance.

16 A. Indeed. I will certainly make a note to look into that.

17 Q. I think Professor Norrie may have touched upon  
18 provisions that obliquely afforded the opportunity for  
19 a young person to make a complaint, but I don't think  
20 they were expressed in particularly clear language or  
21 spelt out a procedure to be followed. But maybe you  
22 could perhaps look into that matter for the next  
23 occasion.

24 A. Absolutely. I suspect that the key point is: in  
25 whatever terms they were expressed, were they

1           communicated to the people that would want to make the  
2           complaints?

3       Q.   That is a separate issue and obviously that is the  
4           practice side of things and I appreciate you would not  
5           be in a position to help us with that, but perhaps  
6           others can.

7       A.   I'm very happy to look into the legal position.

8       Q.   I think, if my memory serves me right,  
9           Professor Norrie -- the examples he may have found were  
10          more in the context of settings which dealt with either  
11          young offenders or, rather oddly perhaps, young children  
12          with mental health difficulties that there was a --  
13          there were provisions to allow complaints to be raised.  
14          I think in your report, correct me if I'm wrong, you say  
15          to some extent these rules and regulations very much  
16          echo rules that were formulated for prisoners --

17      A.   Yes.

18      Q.   -- from early times?

19      A.   Yes, that is right.

20      Q.   They were modified, in the case of young offenders, to  
21          reflect any material differences in the situation.

22      A.   Yes, and in one respect, that I can't pinpoint, there is  
23          essentially a default position such that if no provision  
24          is made specific to those institutions it will fall back  
25          to the prison rules.

1 Q. Yes, I think you did make that point in your report that  
2 there was a default position for that setting, which was  
3 in the context of, say, young offenders.

4 A. Yes.

5 Q. Just in case I have not made this clear, if I was  
6 looking at complaints, I was obviously looking at  
7 whether there were complaints, provisions and rules  
8 applying across the board to a range of settings --

9 A. Yes, not simply approved schools.

10 Q. Not simply approved schools, whether it was voluntary  
11 homes, local authority homes, boarding out.

12 A. Every form of regulated --

13 Q. Every form of regulated --

14 A. -- disposal, however one phrases it.

15 Q. -- or areas that could potentially be regulated because  
16 I think, as we discussed this morning, not every area  
17 was regulated using a power that was available for that  
18 purpose.

19 A. Well, I can certainly look into that.

20 Q. Thank you.

21 I don't know whether it is still possible to have  
22 another attempt to get to LEG.001.001.2880.

23 LADY SMITH: I don't think so.

24 MR PEOPLES: Well, can you take it from me that were we to  
25 have that on the screen, we would be able to find within

1           it the --

2       LADY SMITH:  Remind us what was it, Mr Peoples?

3       MR PEOPLES:  It is the 1933 regulations, my Lady, made --

4       LADY SMITH:  Under the 1932 Act?

5       MR PEOPLES:  Under the 1932 Act, and part C applied not to  
6           approved schools but to boarding out but only to  
7           boarding out by education authorities.  So not to  
8           boarding out generally.

9       LADY SMITH:  For example, where the managers of an approved  
10           school have decided that a child at their school shall  
11           be boarded out rather than reside at the school?

12      MR PEOPLES:  I'm not sure it goes that far.  One of the  
13           points I was perhaps going to try to bring out from the  
14           regulations was that part C of the 1933 regulations  
15           appears, on its face, to deal with a very specific form  
16           of boarding out by a particular fit person, namely,  
17           an education authority.  Because, as I think we  
18           discussed earlier -- and this is maybe something that my  
19           Lady will see where we are going -- that boarding out  
20           could happen in a lot of ways:  by a Poor Law authority,  
21           by an education authority, by a local authority under  
22           the 1948 Act having received a child into their care.  
23           What we are looking at are regulations in relation to  
24           boarding out but not universal regulations.  I think  
25           that's the essential point, my Lady, if I could just

1 flag that one up at this stage.

2 LADY SMITH: Thank you.

3 MR PEOPLES: I think you are not able to see these  
4 regulations at the moment, but can I read out the fact  
5 that they are:

6 "Rules for the boarding out of boys and girls  
7 committed to the care of education authorities."

8 And they bear to be made under sections 19(5) and  
9 20(2) of the 1932 Act.

10 A. I will take that from you.

11 Q. If you will take that from me; I'm just reading from it.  
12 I think you probably appreciated the exchange I had with  
13 my Lady about the limits of these rules in the sense  
14 that they --

15 A. Yes.

16 Q. -- weren't universal boarding out rules that applied to  
17 any boarding out situation.

18 A. No, they were concerned with education authorities.

19 Q. Who boarded out and rules applied to that authority  
20 alone it would appear. Perhaps I can move on and I will  
21 deal with this point at a later stage.

22 A. If it is of interest -- and it may not be at this  
23 particular juncture -- I have found reference to  
24 a successor set of rules to the complaints, but I don't  
25 have the provision, I only have what I have written

- 1 about it.
- 2 Q. You might as well give us the reference now so we don't  
3 lose sight of it.
- 4 A. It is the Approved Schools (Scotland) Rules (1961) and  
5 the SI number is 2243.
- 6 Q. I suppose the point might be made is that that's a long  
7 way on from 1933.
- 8 A. Indeed.
- 9 Q. So --
- 10 A. Just to make clear, those replaced the 1933 regulations  
11 insofar as the 1933 regulations related to approved  
12 schools. So they essentially repealed that part of the  
13 1933 regulations.
- 14 Q. Yes, so basically what you are saying is that so far as  
15 approved schools were concerned, whose existence was  
16 from 1933 roughly to the Social Work (Scotland) Act of  
17 1968 or thereabouts, when List D schools replaced them,  
18 there was a set of rules in 1933 for approved schools  
19 which were replaced in 1961 --
- 20 A. Yes.
- 21 Q. -- by another set of rules? The 1933 rules do not,  
22 I think, on their face say anything about complaints?
- 23 A. From memory they don't.
- 24 Q. But you say if we look at the 1961 rules we might see  
25 something on that subject?



1 A. Yes, without the rules in front of me I can't identify  
2 precisely, but certainly from what I have written, which  
3 is for reference at 1.64, so it is SVG001.001.0090,  
4 I make the point that the rules provided for visitors to  
5 take the opportunity to speak with pupils and to discuss  
6 with headmasters any complaints made by the pupil.

7 So it was a visiting manager, not simply visitors.  
8 So it is in paragraph 1.64. I think the page is up on  
9 the screen in front of me.

10 Q. Perhaps I can help you here. Can we perhaps put up  
11 LEG.001.001.2696. Are these the rules that you had in  
12 mind?

13 A. They are. I think the relevant parts begin from rule 2  
14 onwards.

15 Q. Yes. I think the one that you are referring to, rule 2,  
16 about -- rule 2(1) provides that:

17 "The managers or a committee consisting of not less  
18 than four of the managers ..."

19 And these are the people running the school, these  
20 are not the people in charge of the school. The manager  
21 has a statutory status. These are the people that run  
22 the --

23 A. Yes, as indicated by the first rule which provides that  
24 their names have to be furnished to the Secretary of  
25 State.

1 Q. Yes. They are not necessarily in day-to-day charge of  
2 pupils and that would be done by people employed by  
3 them?

4 A. Certainly that was my understanding.

5 Q. Like a headteacher would be in charge of the approved  
6 school in practice and it would have staff?

7 A. Certainly the terms are used in the same rules which  
8 would suggest they have discrete functions.

9 Q. What you are saying is that the 1961 rules are requiring  
10 that the managers of an approved school should normally  
11 meet not less than once a month and that -- this is rule  
12 2(1):

13 "They shall arrange for the school to be visited, by  
14 at least one or more of their number, at least once  
15 a month and more frequently if circumstances appear to  
16 warrant it, to ensure that the conditions of the school  
17 and the welfare, development and rehabilitation of the  
18 pupils under their care are satisfactory."

19 It then goes on that the visiting manager shall sign  
20 the logbook and may enter such observations as he sees  
21 fit.

22 Rule 2(2) provides further that:

23 "A visiting manager shall take opportunity to speak  
24 with individual pupils."

25 Which is just a general provision. Then rule 2(3)

1 states that:

2 "The visiting manager shall visit any pupil who is  
3 segregated ..."

4 That is a special situation, I think, that is  
5 probably a form of punishment at the time.

6 A. Yes, it is separately provided for in those rules.

7 Q. Yes, under rule 33. I think it is a form of sanction  
8 that would be provided for under the rules as they then  
9 were.

10 A. I think so, yes.

11 Q. Don't worry too much. As I say, we can no doubt see it  
12 for ourselves, but I think the one you were particularly  
13 focused on was the rule 2(4):

14 "A manager shall discuss with the headmaster any  
15 complaint made by a pupil."

16 A. Yes that was the provision I was thinking of. Of  
17 course, it presupposes that the headmaster discusses it  
18 with the manager, but certainly ...

19 Q. Yes it presupposes that: (a) a pupil makes a complaint;  
20 that the headmaster becomes aware of the complaint; and  
21 that the headmaster conveys the complaint to the  
22 manager. So there is a series of steps?

23 A. Indeed.

24 Q. What the rule doesn't do is to require, as I think we  
25 were discussing earlier, that the managers set up

1 an established complaints procedure to give effect to  
2 what appears to be the thinking behind this rule.  
3 There's nothing to that effect that requires them to set  
4 up a formal procedure of complaint?

5 A. There isn't, no.

6 Q. And this is in 1961?

7 A. It is.

8 LADY SMITH: And it only allows for complaint by the pupil,  
9 not a complaint intimated by somebody else.

10 A. Such as a parent.

11 LADY SMITH: Such as a parent or a teacher who is concerned  
12 about the conduct of one of their colleagues in relation  
13 to a pupil, for example.

14 MR PEOPLES: Whatever observations one might make about the  
15 lack of provision for a complaints procedure being built  
16 into this process, as a matter of regulation it seems to  
17 go further than the 1933 regulations which didn't even  
18 have provision to this effect.

19 A. It does seem to go further yes.

20 Q. Those regulations were in force between 1933 and 1961?

21 A. They were, yes. There's also -- if one scrolls down to  
22 rule 4 --

23 Q. At page 2697?

24 A. Yes, as I have noted it, that is the first reference to  
25 management being in the interests of the welfare of

1 children.

2 Q. Yes. So, in addition to the matter we have just  
3 discussed, this seems to be the first explicit reference  
4 in rules applying to approved schools to management in  
5 the interests of the welfare, development and  
6 rehabilitation of pupils?

7 A. That's my understanding, yes.

8 Q. We don't find any corresponding requirement in the rules  
9 which applied between 1933 and 1961?

10 A. Not from knowledge. I would want to double check them  
11 but it may be that is the position.

12 Q. Maybe --

13 A. I will do.

14 Q. -- in case you wish to add anything on this point.

15 I'm told that LEG.001.001.2880 is now available, so  
16 can we perhaps put it up in the hope that we can see  
17 what it says.

18 LADY SMITH: Thank you.

19 MR PEOPLES: This, I think, is the original and full version  
20 of the 1933 regulations and includes part A, which we  
21 have looked at already, which is "Rules for the  
22 management and discipline of approved schools", but it  
23 also contains part C, which I think is at page 2884.

24 Yes. I think on that page do we see:

25 "Rules as to boarding out, etc, of boys and girls

1 committed to the care of education authorities."

2 And there is reference to sections 19(5) and 20  
3 subsection (2) of the Act?

4 A. Yes.

5 Q. If one looks at rule 37, the first sentence states that:

6 "Where an education authority are willing to  
7 undertake the care of boys and girls who may under the  
8 Act be committed to their care [which was one of the  
9 disposals I think available to the juvenile court] they  
10 shall make arrangements to ensure that such boys and  
11 girls are boarded out in accordance with the provisions  
12 of the Act and of these rules. Such arrangements shall  
13 be subject to the approval of the department ..."

14 I think that would be the Scottish Education  
15 Department at the time.

16 A. Yes.

17 Q. "... and shall include provision for: (a) keeping a list  
18 of persons, referred to in these rules as foster  
19 parents, who are willing and fitted to undertake the  
20 care of boys and girls; (b) removing a boy or girl from  
21 one foster home to another, if that course should appear  
22 to the education authority or to the department to be  
23 necessary or desirable; and (c) immediately notifying  
24 the parents (or guardians) and the department of the  
25 contraction of serious illness or infectious disease by

1 accident to or death of a boarded-out boy or girl."

2 So there is regulation of boarding out by education  
3 authorities.

4 A. There is.

5 Q. But it does appear to be restricted to boarding out by  
6 that authority, this particular set of regulations.

7 A. It does appear to be, yes.

8 Q. Indeed if we look at these set of rules that apply to  
9 education authorities at least, if we look at rule 40,  
10 do we see that education authorities, which I think we  
11 discussed earlier and your corrections dealt with, they  
12 were local bodies?

13 A. Yes, a sort of local government unit.

14 Q. Yes:

15 "The education authority shall make rules to be  
16 observed by foster parents and shall submit the rules to  
17 the department for approval."

18 Then there is a direction or requirement that:

19 "The foster parents shall be required: (a) to give  
20 the boys and girls the care and attention necessary for  
21 their proper training in habits of punctuality and  
22 thrift, of good manners and language, of cleanliness and  
23 neatness, of cheerful obedience to duty [which I think  
24 is an expression Professor Norrie picked up], of  
25 consideration and respect for others, and of honour and

1 truthfulness in word and act."

2 There was a requirement on foster parents under the  
3 rules to:

4 "Notify the education authority of any material  
5 facts regarding the boys and girls, for example illness  
6 and accident."

7 And a further requirement:

8 "To endeavour, in conjunction with the education  
9 authority, to find employment for the boys and girls  
10 when they leave school."

11 I see in fact, although it does say "boarding out by  
12 education authorities" -- can I just see rule 41 if  
13 I may. That seems to apply to the number of children  
14 who may be boarded out and this seems to extend to  
15 boarding out by a Poor Law authority. Do you see that?

16 "Not more than two boys or girls, including any boy  
17 or girl boarded out by a Poor Law authority shall be  
18 boarded or remain boarded out in any one foster home at  
19 the same time unless they are members of one family whom  
20 it is desirable to keep together."

21 A. Yes, I think separate provision was made under the  
22 Poor Laws. It is discussed at 1.52 of my report, which  
23 is SVG.001.001.0081. Those are the Poor Relief  
24 Regulations (1934).

25 As I understand it, essentially those regulations



1 and the ones we were just looking at were merged to  
2 become the 1947 Boarding Out regulations, which  
3 I imagine you will come onto.

4 Q. Yes, I will come onto that. As you point out at  
5 paragraph 1.52 at page SVG.001.001.0081, there appears  
6 to have been a set of poor relief regulations made in  
7 1934 under different legislation.

8 A. Yes.

9 Q. Indeed, they were made by a different department.

10 A. Yes, by the Department of Health.

11 Q. Which made provision for boarding out by Poor Law  
12 authorities.

13 A. Yes.

14 Q. Perhaps you can help me: did these regulations to some  
15 extent cover the same ground as part C? Is that  
16 something you are able to help us with?

17 A. I would want to have a look at them but from memory they  
18 were reasonably similar.

19 Q. Okay. What you have told us is that the 1933  
20 regulations part C and the 1934 Poor Relief  
21 regulations -- your understanding is that they were  
22 superseded by regulations made in 1947?

23 A. I think so. I would want to double check. Certainly  
24 the Poor Law regulations became the 1947 regulations.

25 Q. I think we saw, did we not, from the document that we

1 looked at earlier that contained part A of 1933, that  
2 part C was revoked by a 1947 order?

3 A. Yes, that would work.

4 Q. So that would confirm what you recall was the position?

5 A. Yes, and the point that I make in the relevant  
6 paragraph, which is 1.63, is that the rules and  
7 regulations were made under two different statutes, so  
8 one was the Poor Law and one was the 1937 Act. So  
9 I think, at that point, the regulations seemed to merge.

10 Q. Yes, and the 1947 regulations were made, you think,  
11 under the 1937 Children and Young Persons (Scotland)  
12 Act?

13 A. Yes and the Poor Law (Scotland) Act (1934).

14 Q. And the Poor Law (Scotland) Act (1934). I suppose the  
15 point I want to at least record is that, therefore, the  
16 1947 regulations were not made under the Children's Act  
17 of 1948 because it wasn't then in force.

18 A. Indeed.

19 Q. And that these regulations that we are looking at -- and  
20 indeed if we turn to the 1947 regulations, they appear  
21 to have been of restricted application in terms of  
22 applying only to boarding out by Poor Law authorities  
23 and education authorities, not to boarding out under any  
24 other circumstances. That seems to be -- at least  
25 that's certainly the situation under the 1933

1 regulations --

2 A. Yes, I would want to have a look at the terms of the  
3 1947 regulations.

4 Q. We can look at that. I think we can perhaps move to  
5 that if I may.

6 Could we put up LEG.001.001.0127. I think that  
7 perhaps -- page 0127 confirms what you have told us  
8 a short time ago, that these rules, boarding out rules,  
9 which were made in 1947, were made -- well, they were  
10 made by the Secretary of State for Scotland and the  
11 enabling powers are recorded at section 10 of the  
12 Poor Law (Scotland) and the 1934 Act, which you referred  
13 to, and section 88.2 of the Children and Young People  
14 Act (1937)?

15 A. Yes.

16 Q. Just to remind ourselves what Professor Norrie said,  
17 I think he made the point that although there was a 1937  
18 Act, essentially it was a consolidation measure to bring  
19 together both the main provisions of the Children Act  
20 (1908) and the Children and Young People (Scotland) Act  
21 of 1932.

22 A. It was.

23 Q. So it didn't innovate in any material respect?

24 A. Not in any material respect.

25 Q. These regulations we see in 1947 were made under the

1           legislation in 1934 and 1937.  If we look at regulation  
2           or rule 2(1), it seems to define a child for the  
3           purposes of the rules and regulations as:

4           "A child being an orphan or deserted by or separated  
5           from his parents, for whose care a public assistance  
6           authority has become responsible under the Poor Law  
7           (Scotland) Acts; or (b) a child or young person  
8           committed to the care of an education authority as a fit  
9           person under the provisions of the Children and Young  
10          Persons (Scotland) Act (1937)."

11          So it applies to two types of children, if you like,  
12          in the sense of it looks at how they got into care,  
13          whether they came through the Poor Law route or through  
14          a committal order made in favour of an education  
15          authority.

16        A.  Yes, and that follows from the definition of local  
17          authority given in that --

18        Q.  I was going to come onto that.

19          Then "local authority" is given a restricted  
20          definition for the purposes of the rules as meaning, in  
21          relation to these children, the education authority or  
22          the public assistance authority.

23        A.  Yes.

24        Q.  So that so far as the 1947 rules are concerned in  
25          relation to the issue of boarding out.  There is

1 regulation made by the Secretary of State but it doesn't  
2 apply universally to children who are boarded out  
3 because it is restricted to boarding out where it occurs  
4 through a committal order in favour of an education  
5 authority or where a child is boarded out by a Poor Law  
6 authority or a public assistance authority.

7 A. Yes.

8 Q. If we could move on to the Children Act (1948), which is  
9 LEG.001.001.0389. I think you deal with this in your  
10 report also.

11 I don't want your report brought up, but can I just  
12 say for the transcript that you deal with this Act at  
13 paragraph 2.2 of part B. I think you deal with it in  
14 some detail because it goes through to paragraph 2.17.  
15 So you have spent a period of time looking at this  
16 legislation.

17 A. I did, yes -- well, I did at the time of drafting it.

18 Q. For present purposes, I think as Professor Norrie told  
19 us when he gave evidence, this Act was a sea change in  
20 child care in the sense that it brought together, within  
21 essentially local authority control, a lot of the child  
22 care responsibilities --

23 A. Yes.

24 Q. -- where they had previously been rather scattered  
25 amongst various bodies and departments and so forth.

- 1 A. Yes, I would agree with that.
- 2 Q. It also imposed a duty to receive children into care  
3 where they were in need of care and protection.
- 4 A. Yes, I think Professor Norrie described that as  
5 a proactive role --
- 6 Q. They had to seek out and discharge -- it is a positive  
7 obligation on the authority rather than a reactive  
8 obligation?
- 9 A. Yes, albeit not at this stage preventative.
- 10 Q. No. I think he said that was introduced in 1963 or so  
11 by later legislation.
- 12 A. Yes, that is right, amending the 1948 Act.
- 13 Q. Yes. So following the passing of the 1948 Act, if I can  
14 put it this way, a child in need of care could end up in  
15 the care of a local authority by reason simply of the  
16 operation of the 1948 Act and section 1 obligations?
- 17 A. Yes.
- 18 Q. That represented a development because before what might  
19 happen is that the child got into the care of the state,  
20 for example, through the Poor Law provisions --
- 21 A. Yes.
- 22 Q. -- or through the court system by way of a committal  
23 order in favour of, for example, an education authority?
- 24 A. Yes.
- 25 Q. I think that so far as regulation of children that were

1 brought into the care of local authorities is concerned,  
2 if we could turn initially to part 2 of the 1948 Act at  
3 page 0401. Do we see that the scope of part II is set  
4 out in section 11 and it says:

5 "This part of this Act relates to the powers and  
6 duties of local authorities in relation to children  
7 received by them into their care under section 1 of this  
8 Act."

9 And:

10 "Children, who by an order of any court, under the  
11 Children and Young Persons [legislation] of 1937 have  
12 been committed ... to their care as a fit person."

13 And there are references in this part 2 to "a child  
14 in the care of a local authority" are references to:

15 "A child for the time being in the care of the  
16 authority under [section 1] or for the time being  
17 committed to the care of the authority as a fit person  
18 under ..."

19 What was the previous legislation, the 1937 Act,  
20 which was still in force.

21 Indeed, in looking at the scope of the duty, at that  
22 stage there was an express requirement on the local  
23 authority in respect of children in its care, as defined  
24 in section 11:

25 "To exercise their powers with respect to him or her

1           so as to further his or her best interests or to afford  
2           opportunity for the proper development of character and  
3           abilities in section 12(1)."

4       A.   It sounds quite familiar.

5       Q.   It is probably more the sort of thing one would see in  
6           modern legislation.

7       A.   Indeed.

8       Q.   Then, when it comes to how the duty to -- how to  
9           discharge their duty towards children in their care, do  
10          we see -- and I think this echoed -- I think  
11          Professor Norrie explained that this section reflected  
12          an approach that seemed to be favoured by the Clyde  
13          committee of favouring boarding out or fostering, rather  
14          than institutional care. I don't know if you picked  
15          that up.

16      A.   I did pick that up from Professor Norrie's evidence.

17      Q.   I think one can see that from the Clyde report and there  
18          are references to how that is perhaps the best solution.

19      A.   It is perhaps not apparent from the terms of the  
20          legislation.

21      Q.   No, but I think he explained that the legislation  
22          followed on from that report and a similar report, the  
23          Curtis report in England, and he saw this as reflecting  
24          what Clyde and Curtis had --

25      A.   Insofar as it is the first of the alternatives.



1 Q. Yes. It didn't do away with or prevent authorities  
2 placing children in institutional care, but it was seen  
3 as the better option and the favoured option was  
4 boarding out.

5 Because if one looks on to section 13(1)(b) -- sorry  
6 before I go to that, it says:

7 "[It] will discharge the duty (a) by boarding out on  
8 such terms as to payment by the authority and otherwise  
9 as the authority may, subject to the provisions of this  
10 Act and regulations thereunder determine."

11 So there is the power to board out and the power to  
12 make regulations in relation to boarding out:

13 "Or (b) ..."

14 And (b) is couched in terms which says:

15 "Where it is not practicable or desirable for the  
16 time being to make arrangements for boarding out, by  
17 maintaining the child in a home provided under this part  
18 of the Act [that's by local authorities] or by placing  
19 him in a voluntary home in which the managers are  
20 willing to receive that child."

21 So, does that not show that the placing in a local  
22 authority home or a voluntary home was very much  
23 a default position where it was not practicable or  
24 desirable for the time being to arrange for boarding  
25 out?

- 1 A. I can see that reading of it, yes.
- 2 Q. It is pretty clear, is it not? They are not given equal  
3 status.
- 4 A. No.
- 5 Q. In relation to children that are boarded out by the  
6 local authority, there is a power to make regulations?
- 7 A. There is.
- 8 Q. And that child could have come to them in a variety of  
9 ways, including by a committal order or similarly by  
10 operation of section 1 and their proactive obligation to  
11 seek out and care for children in need?
- 12 A. Yes.
- 13 Q. When it comes to the matter of regulations, do we see  
14 that section 14 confers on the Secretary of State  
15 a power to make -- by regulations to make provisions for  
16 the welfare of children boarded out by local authorities  
17 under section 13(1)(a). That's the preceding section?
- 18 A. I don't actually have that section on the screen.
- 19 Q. Can we go to page 0403, sorry. It is about two thirds  
20 of the way down, section 14. Do you see?
- 21 A. Yes.
- 22 Q. I think as we discussed earlier this morning, 14(1) is  
23 couched in the general language that might have been  
24 favoured historically. But we do see here an example --  
25 and I think we were talking about this this morning --

1 of where a statute gives some guidance or direction to  
2 the Secretary of State, who has been given the power to  
3 regulate.

4 A. Yes.

5 Q. Although it is not exhaustive, it is without prejudice  
6 to the generality of the power but it does give some  
7 clues to the sort of things that might be regulated.

8 A. Yes.

9 Q. One of the matters that's contained in the more specific  
10 subsection (2) of section 14 is that:

11 "Regulations may provide: (a) for recording by local  
12 authorities of information relating to a person with  
13 whom children are boarded out and the persons who are  
14 willing to have the children so boarded out with them."

15 So that is regulating what must be recorded about  
16 both the child and the foster parents.

17 A. Yes.

18 Q. Also it is possible by regulation to secure that:

19 "Children in the care of the local authority,  
20 however that came about, will not be boarded out unless  
21 the household for the time being approved by such local  
22 authority as may be prescribed by the regulation."

23 So there is some attempt to say that the household  
24 itself can be the subject of some form of regulation,  
25 the type of household that can be used for boarding out.

- 1 A. Yes.
- 2 Q. I think under some of the earlier legislation there was  
3 perhaps more explicit provision about households and  
4 persons, fit persons and unfit persons, including people  
5 who lived in public houses and people who --
- 6 A. Were in receipt of poor relief I think was another one.
- 7 Q. So there was a more explicit exclusion under some of the  
8 earlier legislation.
- 9 A. Yes, I would accept that.
- 10 Q. But it does appear that the regulations could  
11 discriminate in such manner as the Secretary of State  
12 saw fit to do?
- 13 A. As I understand it, the regulations which were made did  
14 provide for assessing the suitability of the parent.
- 15 Q. You say the regulations which were made; are we talking  
16 about the regulations made in 1959?
- 17 A. Yes.
- 18 Q. Which was 11 years after this power was conferred?
- 19 A. That is right, yes.
- 20 Q. Which is quite a long period.
- 21 A. It is 11 years.
- 22 Q. Well, I think you picked up the point, I hope, certainly  
23 Professor Norrie did, that in England and Wales  
24 regulations were passed in 1951.
- 25 A. I think the point -- the reference that I make to prior

1 regulations having been made in England and Wales  
2 relates to the administration of children's homes but it  
3 may well be that there are --

4 Q. No, I think there are also boarding out regulations that  
5 were made in 1951.

6 A. In England and Wales?

7 Q. Yes.

8 A. That may well be right. I'm noting from my report that  
9 I make reference to prior English regulations but it may  
10 well be that there are --

11 Q. We can maybe look at those if need be, but the point at  
12 the moment is, leaving aside what happened in England,  
13 it took 11 years to use this particular power.

14 A. Yes.

15 Q. But this power was available to regulate the various  
16 matters in subsection (2) and it goes on to indicate  
17 that the regulations can also be couched in terms that  
18 secure, where possible, that the person with whom the  
19 child is to be boarded out is either of the same  
20 religious persuasion or gives an undertaking the child  
21 will be brought up in that religious persuasion.

22 A. Yes, I think that was quite a common provision that was  
23 made across various different types of --

24 Q. I was going to say, I think that it is a feature of the  
25 care system that it wasn't non-denominational because it

1 did seem to build in heavily as a factor in where  
2 a child ended up the religious persuasion or faith and  
3 therefore the choice of placement was to a large extent  
4 dictated by whether the establishments or the foster  
5 parents were of the same persuasion as the child.

6 We know there were voluntary homes run by  
7 faith-based organisation; presumably there were also  
8 foster parents who would board children of the same  
9 faith. That seems to be something that the regulations  
10 anticipate and want to give effect to.

11 A. Certainly they anticipate that there are issues of  
12 religious persuasion that will arise.

13 Q. I'm not asking you to enter into the debate on whether  
14 that's a good thing or bad, but it is a feature of the  
15 regulation.

16 A. Yes, absolutely, and it is a feature across the board  
17 in --

18 Q. Yes, and there's nothing new in this in the 1948 Act?

19 A. No, not at all.

20 LADY SMITH: I think when we look at the Adoption (Scotland)  
21 Act, about ten years later, we find similar provision in  
22 the Adoption (Scotland) Act --

23 A. It is a recurring theme.

24 LADY SMITH: -- for a relevant feature being to ask what the  
25 religious persuasion of the birth parents are.

1 A. And it is very much the parent and obviously not the  
2 child.

3 LADY SMITH: Yes.

4 MR PEOPLES: I'm conscious of the time, but perhaps I can  
5 I finish off subsection (2), if I may.

6 One of the other matters that regulations could  
7 provide for is securing that children boarded out and  
8 the premises where they are boarded out will be  
9 supervised and inspected by a local authority and that  
10 the children will be removed from those premises if  
11 their welfare appears to require it. So this was  
12 regulation by way of inspection --

13 A. Yes.

14 Q. -- and supervision? So these were all matters that the  
15 Secretary of State had power to deal with by way of  
16 rules and regulations?

17 A. Yes.

18 Q. What your research has disclosed is that this  
19 regulation-making power was first exercised under this  
20 section in 1959.

21 A. Yes. There is one thing I would probably want to go  
22 away and check -- and the only reason I raise this this  
23 is I mentioned that I found earlier English regulations  
24 in relation to administration and those regulations were  
25 not limited in their territorial extent.

1 Q. Ex facie?

2 A. Yes, I would want to go back and double check that.

3 MR PEOPLES: We can perhaps look at that because I will  
4 refer you to the 1951 regulations which appear to be  
5 made by the Secretary of State's counterpart in England  
6 and Wales.

7 But we can perhaps come back to that in the  
8 afternoon, if we may.

9 LADY SMITH: Certainly.

10 We will break there for the lunch adjournment and if  
11 you could all be back ready to start again at 2 o'clock,  
12 please.

13 We will now adjourn.

14 (1.01 pm)

15 (The luncheon adjournment)

16 (2.00 pm)

17 LADY SMITH: Yes, Mr Peoples.

18 MR PEOPLES: My Lady.

19 Ms Irvine, before lunch we were looking at certain  
20 provisions in relation to the duties of local authority  
21 in relation to children in care under part 2 of the  
22 Children Act (1948).

23 Can I ask you maybe to -- can we put up again  
24 LEG.001.001.0401? I think before lunch I took you to  
25 the provisions of section 13, which is concerned or was



1 concerned with how a local authority discharged its  
2 duties towards children in care, particularly in  
3 relation to accommodation for such children.

4 I think we looked at the ways in which that duty can  
5 be discharged and that one way was boarding out and then  
6 there was an alternative provided for under  
7 section 13(1)(b).

8 If we could just look again at some other provisions  
9 of the Act in the meantime. If we could go to  
10 page 0403. If we could go down, just under halfway, to  
11 section 14. Do we see there that a power is conferred  
12 on the Secretary of State? I think for present  
13 purposes, so far as Scotland is concerned, that would be  
14 the Secretary of State for Scotland; is that right?

15 A. Yes, although as I understand it, one of the advantages  
16 of being a principal Secretary of State is that you can  
17 essentially fulfil the functions of any Secretary of  
18 State where they are mentioned in legislation. But,  
19 yes, I think for practical purposes that would have  
20 been --

21 Q. Really?

22 A. I think that's --

23 LADY SMITH: I'm not doubting you; it is not something  
24 I have had to look at.

25 MR PEOPLES: It may be something that is important

1 ultimately. I suppose what I have in mind is if  
2 an express power is conferred on a particular Secretary  
3 of State to make orders, and that Secretary of State  
4 doesn't make the order, is that a valid order? Say for  
5 example the Secretary of State for Scotland has power to  
6 make orders in Scotland but the Home Secretary in  
7 England makes an order which purports or appears to  
8 apply to Scotland as well as England and Wales, are you  
9 saying that that order would be valid? (Pause).

10 Perhaps I have sprung that one on you. Maybe it is  
11 something that -- if you think there is a provision --

12 A. I can certainly go and look at it. What I'm thinking of  
13 if, I explain the basis by my thinking, is the  
14 definition which is given to the Secretary of State in  
15 the Interpretation Act, which is "one of Her Majesty's  
16 principal secretaries of state". I will go away and  
17 make sure I'm putting the correct position forward but  
18 that's certainly my understanding.

19 Q. Presumably that would be subject to the context and if  
20 the Secretary of State is specifically prescribed to be  
21 a particularly Secretary of State that may --

22 A. Certainly if the statute says, "the Secretary of State  
23 for", then clearly that would be the individual who is  
24 having the power conferred upon them. I will add that  
25 to my list of things to go away and double check but

1           certainly the more recent Interpretation Act, I think,  
2           contains a provision.

3       Q.   I suppose that would be the Interpretation Act of, I'm  
4           told, 1978.

5       A.   And there was one in the 1800s.

6       Q.   I was going to say: if we are looking at the  
7           Children Act, for example, of 1948, then it wouldn't be  
8           the 1978 Act --

9       A.   There was one in the 1800s.  I will go away and --

10      Q.   You might.  It would probably assist to be clear on the  
11           matter.  The point I'm making is, without going back to  
12           it at this stage and without taking too much time,  
13           references to Secretary of State -- there were  
14           substitution provisions, weren't there, which  
15           substituted that general reference -- substituted "the  
16           Secretary of State for Scotland" for that general  
17           reference in relation to provisions and acts relating to  
18           children?

19      A.   Yes, I think the majority of legislation contained in  
20           the extent an application section a provision which  
21           provided that where a certain phrase was used it was to  
22           be read as something else.  I think that was obviously  
23           of particular importance prior to the Secretary of State  
24           for Scotland becoming a principal Secretary of State  
25           because there was no possibility of substitution.  But

1 I will go away and double check that.

2 Q. We can see. You can have a look at that and perhaps we  
3 can deal with it on another day.

4 A. I think the short point is ultimately it says -- it only  
5 says "Secretary of State" because that's all it needs to  
6 say, but I will certainly go away and look at that.

7 Q. In any event, section 14 seems to confer a power in  
8 general terms to make regulations for children that are  
9 boarded out by local authorities, including the boarding  
10 out of children who were received into care under  
11 section 1 of the 1948 Act. We see that -- I think we  
12 looked at it this morning -- there are various specific  
13 matters that can be provided for under the regulations  
14 that could be made --

15 A. Yes.

16 Q. -- under this power.

17 Then, if we pass on to the next page, 0404, do we  
18 see in section 15, which essentially I think relates to  
19 or at least includes provision of local authority homes  
20 under the Act, it gives the power to maintain and  
21 provide local authority homes in order to discharge the  
22 functions, including the section 1 duties?

23 A. Yes.

24 Q. In relation to the discharge of those functions, do we  
25 see at (4) of section 15 that:

1           "The Secretary of State [we can leave aside which  
2           Secretary of State is referred to at the moment] may  
3           make regulations as to the exercise by local authorities  
4           of their functions under the section and the conduct of  
5           homes provided thereunder and for securing the welfare  
6           of children in the homes."

7           So that is a power to regulate local authority  
8           homes?

9           A. Yes.

10          Q. Again, we see, consistent with the earlier section, in  
11          relation to boarding out by local authorities, that the  
12          Secretary of State can -- there is some guidance given  
13          as to the sort of matters that he -- maybe he then  
14          I suppose -- then would have -- could make provision  
15          for. Do we see that?

16          A. Yes.

17          Q. I think obviously some of it is in different terms to  
18          section 14, but they are by way of non-exhaustive  
19          examples.

20          A. Yes.

21          Q. Then if we go forward to another part of the Act.  
22          Because at the moment we are in part 2 of the Act which  
23          was concerned with treatment of children who were in the  
24          care of local authorities in one of the ways described  
25          in part 2. If we go to part 4, do we see that this

1 concerns voluntary homes and voluntary organisations?

2 A. Yes.

3 Q. These are homes which would be run by non-State  
4 organisations and would at least be partly funded by  
5 some form of voluntary contribution or endowment or  
6 something of that nature.

7 A. Yes. I should say I don't think I have the correct page  
8 on the screen.

9 Q. I'm sorry, the page is 0411. I think there is  
10 a tendency just to read through my copy but without  
11 telling you which page is on the screen. I apologise.

12 Part IV starts at section 27. I think that's the  
13 essence of what type of voluntary home is being  
14 considered under these provisions.

15 A. Yes.

16 Q. What we see there, I think for the first time, in  
17 section 29 is that:

18 "From the end of 1948 no voluntary home [as defined]  
19 shall be carried on unless it is registered in  
20 a register kept for the purpose by the Secretary of  
21 State."

22 A. Yes.

23 Q. So that is the introduction of a degree of regulation  
24 for voluntary homes in the form of a requirement to be  
25 registered under a process that involves the Secretary

1 of State or central government.

2 A. Yes.

3 Q. If we move to the next page at 0412. Do we see that  
4 there is a statutory provision that:

5 "Application for registration shall be made in such  
6 manner and accompanied by such particulars as the  
7 Secretary of State by regulations may prescribe"?

8 A. Yes.

9 Q. Do we see in (3) on the same page that where  
10 an application is made, if the home was an existing  
11 voluntary home, it appears that the application has to  
12 be granted --

13 A. Yes, I see that.

14 Q. -- whereas in any other case there's some degree of  
15 discretion, no doubt to be exercised on some criteria --

16 A. Yes.

17 Q. -- which presumably could be laid down in regulations?

18 A. And regulations were made.

19 Q. Regulations were made as to the sort of particulars.

20 A. Indeed.

21 Q. If you could help me, did these regulations in fact deal  
22 with substantive criteria about -- what sort of  
23 particulars were we talking about?

24 A. I would want to have it in front of me.

25 Q. I will just move on --

1 A. I have a feeling that they were fairly basic --

2 Q. That's what I think may be the case.

3 A. -- in terms of the name of the proprietor, the location  
4 of the establishment, that sort of thing.

5 Q. So they were not necessarily seeking a lot of  
6 information about the applicant or the proposed service?

7 A. No, not from memory anyway.

8 Q. Probably in contrast to the sort of approach we would  
9 see nowadays.

10 A. Yes, although I think nowadays the requirement to  
11 provide detail is actually a very recent one.

12 Q. I see. So this wouldn't have been unusual for the time?

13 A. It certainly didn't give me that impression when  
14 I was --

15 Q. No. There is a provision here, do we see, at  
16 subsection (4) on the same page, that:

17 "Where at any time after the end of [1948] it  
18 appears to the Secretary of State that the conduct of  
19 any voluntary home is not in accordance with regulations  
20 made or directions given under section 31 of this Act or  
21 is otherwise unsatisfactory, he may, after giving to the  
22 persons carrying on the home not less than 28 days'  
23 notice in writing of his proposal so to do, remove the  
24 home from the register."

25 So this seems to envisage a process that could



1 result in the removal of a home from the register?

2 A. Yes and the reference there to "conduct not being in  
3 accordance with regulations" rather suggests that the  
4 regulations might make some provision for conduct, but  
5 I would need to look at them to actually see what that  
6 was.

7 Q. It is a fair point. I think the other point I would  
8 make is that it kind of envisages, does it not, that by  
9 the end of 1948 there would be regulations in place,  
10 otherwise why in the primary legislation put in  
11 a stipulation to that effect? Do you see? It does seem  
12 to be suggesting that Secretary of State would make  
13 regulations pretty quickly.

14 A. It does seem to have been drafted on the basis that  
15 regulations would be made.

16 Q. And that these would have some effect and would in fact  
17 create, on their being made, a power of removal?

18 A. Certainly that's what the primary legislation appears to  
19 envisage.

20 Q. Yes. Did that happen --

21 A. In terms of regulations being made under that provision?

22 Q. -- before the end of 1948?

23 A. Not to my knowledge.

24 Q. Did it happen perhaps in 1959 or thereabouts?

25 A. Those are the regulations I can think of as actually

1 making provision.

2 Q. Were these the only ones you could find?

3 A. Yes, if -- on the basis that it is obviously something  
4 that is of interest, I can endeavour to go away and make  
5 sure.

6 Q. I think we would want to know if there was anything  
7 else --

8 A. I'm almost certain that there weren't, but I would want  
9 to have another go before committing myself to that  
10 position.

11 LADY SMITH: I suppose we have to observe that meanwhile the  
12 power was there, the power to remove the home from the  
13 register, simply on a judgement that the home was  
14 otherwise unsatisfactory --

15 A. Indeed.

16 LADY SMITH: -- which wouldn't be dependent on any  
17 regulations being promulgated at all.

18 A. And it is drafted in the broadest possible terms.

19 LADY SMITH: It might beg the question as to what's  
20 satisfactory and not, but there seems to be some  
21 intention to give a power immediately that could meet  
22 a problem.

23 A. Indeed.

24 MR PEOPLES: So the Secretary of State might not be  
25 powerless but he would perhaps have more powers if he

1 exercises the power of regulation because he can perhaps  
2 stipulate conduct that must be observed rather than  
3 conduct which may provide him with grounds for removal.  
4 He can actually stipulate how you run it rather than  
5 whether in a particular situation he feels he can invoke  
6 section 29.

7 A. I wonder if it is not so much that he would have more  
8 power, it is just that it would be more particular.

9 Q. Okay, we can leave it at that. I just observe that  
10 there is a rule-making power and it seems that if one  
11 doesn't comply with regulations, that could have  
12 consequences, including removal from registration,  
13 albeit as her Ladyship says, there might be another  
14 situation where removal could take place.

15 A. Indeed. I mean, on one view, the particularisation of  
16 the power is to the advantage of the person potentially  
17 having it exercised against them rather than the other  
18 way round.

19 Q. They would know where they stood then.

20 A. Indeed.

21 Q. So there would be advantages of all parties in knowing  
22 what conduct was expected of them.

23 A. Generally speaking I would agree that would be the case.

24 Q. Passing on. If we could turn to page 0414. Do we see,  
25 just about two thirds of the way down, section 31(1)

1           that there is a further provision in this case  
2           conferring on the Secretary of State power to make  
3           regulations as to the conduct of voluntary homes and for  
4           securing the welfare of children therein? Again we see  
5           the approach of setting out various matters which these  
6           regulations could cover.

7           A. Yes.

8           Q. Indeed, subsection (2) of section 31(2) does appear to  
9           envisage the possibility of a breach of regulations  
10          being offences, am I reading that correctly, if there is  
11          a failure to comply?

12          A. Yes.

13          LADY SMITH: 32?

14          MR PEOPLES: Sorry 31(2). I hope I'm not misunderstanding  
15          what it is saying, but does it appear to give some kind  
16          of possibility of criminal sanction if the regulations  
17          are not observed.

18          A. Yes.

19          LADY SMITH: That links back to 29(4) where I think the  
20          possibility of breach under 31 was mentioned.

21          MR PEOPLES: Yes.

22          LADY SMITH: Can we just go back to 31(1)(a), the previous  
23          page?

24          MR PEOPLES: Yes. So if we could go back to 31(1)(a) on  
25          page 0414.

1 LADY SMITH: Yes I think that is 413. Can we have 414? It  
2 is just coming.

3 I appreciate you may not know the answer to this,  
4 Ms Irvine, but in case you do, I see 31(1)(a) empowered  
5 the Secretary of State to make regulations imposing  
6 requirements, amongst other things, prohibiting the  
7 provision of clothing of any description specified in  
8 the directions. Now that seems not to be a prohibition  
9 to the provision of clothing but there was some  
10 particular type of clothing that there was a statutory  
11 concern about.

12 A. It does certainly read that way. I'm unable to fill in  
13 the blanks, but it is --

14 MR PEOPLES: Could it possibly apply in a situation where  
15 a form of uniform conveys to the public where the person  
16 has been cared for?

17 A. Quite possibly. I mean --

18 Q. Because I think the practice today is people don't use  
19 descriptions that would necessarily say whether a child  
20 is in care or not. They would not be driven about in  
21 a van saying these are children from a children's home  
22 necessarily. There seems to have been some concern that  
23 there had to be a regulation about the form of clothing.

24 A. It would be interesting to know their thinking and why  
25 that was included --

- 1 Q. Well, it would be, yes.
- 2 A. -- if there's any -- I can certainly ask those  
3 instructing me whether there is anything bearing upon  
4 this.
- 5 Q. It might be helpful because I think it is a matter  
6 that -- it is interesting that the primary legislation  
7 goes to that degree of specification.
- 8 A. It is envisaging a problem of some description and it  
9 would be --
- 10 Q. Yes.
- 11 A. Yes, I will certainly investigate with those instructing  
12 me.
- 13 Q. That would be helpful I think for us.
- 14 Just lastly, at the moment, in looking at the 1948  
15 Act, I will just take you to page 0416. Do we see there  
16 at section 33(1) that there is a provision to the effect  
17 that:
- 18 "The Secretary of State may by regulations control  
19 the making and carrying out by voluntary organisations  
20 of arrangements for the emigration of children"?
- 21 A. Yes.
- 22 Q. These regulations may require the provision of  
23 particular information in relation to that matter and  
24 indeed the organisation itself; is that what  
25 subsection (2) seems to envisage?

1 A. Yes, and this area in terms of regulations in relation  
2 to emigration was one that I did try to bottom out  
3 because it was quite an obvious area in which you might  
4 have expected to find provision being made. I was only  
5 able to find one and it was actually made under English  
6 legislation, but that's referred to in my report.

7 Q. So far as your researches went, and you obviously took  
8 an interest in this particular provision, you weren't  
9 able to find any regulations made under this particular  
10 section of the 1948 Act?

11 A. I wasn't, no.

12 Q. I suspect when you say it was of interest, you will be  
13 aware, I suspect, probably by the time you were carrying  
14 out your brief and perhaps before that, that certainly  
15 prior to World War 2, there was a lot of emigration by  
16 voluntary organisations as a matter of practice to  
17 places such as Canada. I think, in the case of  
18 Quarriers, they sent something in the order of 7,000  
19 children.

20 A. Yes, I was aware of the general idea in my preparation  
21 for the report.

22 Q. There is a history to that whole matter which I don't  
23 think we need to go into today but that was one and  
24 I think, following the end of the Second World War until  
25 perhaps the late 1960s, children were emigrated via, in

1           some instances, voluntary organisations to various  
2           places, including Australia, Canada, I think, and  
3           New Zealand and other places, other countries; is that  
4           your understanding?

5           A.   Yes.  I think Professor Norrie was talking about it in  
6           the context of the Empire.

7           Q.   I think he dealt with that to an extent.  Yes, and there  
8           was -- he offered various views I think on why that  
9           might have been done.

10          A.   Indeed.

11          Q.   Which I don't need to ask you about today.  But the  
12          point is that there was -- the Act envisaged or  
13          conferred a power to make rules in relation to that  
14          matter.

15          A.   It did.

16          Q.   Indeed.  Sorry, if I could just ask you to look at one  
17          more subsection, section 33, the power conferred by  
18          part II of the 1948 Act.  This is at page 0416:

19                 "The power conferred by part II on the Secretary of  
20                 State to make regulations as to the boarding out of  
21                 children by local authorities shall extend also to the  
22                 boarding out of children by voluntary organisations."

23                 Is it fair to say that the Act was seeking to give  
24                 ample powers to the Secretary of State to deal with  
25                 a range of care settings and care situations from local



1 authority homes to voluntary homes, to boarding out,  
2 whether by the local authority itself or by a voluntary  
3 organisation?

4 A. Yes, I would say that would be fair.

5 Q. And indeed to deal with the specific issue of emigration  
6 of children?

7 A. Yes. I just noticed a footnote that talks about the  
8 particulars which were required to be provided by  
9 home-seeking administration --

10 Q. Perhaps you could give me the reference and we could  
11 note that.

12 A. Do you want the SGV references?

13 Q. Yes?

14 A. SGV.001.001.0110. I just put examples in. Basically it  
15 is the name of the home, the persons intending to carry  
16 on the home, the number of children by sex whom it was  
17 intended to accommodate. It was things of that type.  
18 I should say I have all the items of legislation which  
19 are mentioned in the report and are appended, I have  
20 copies of. So if it would assist the Inquiry to avoid  
21 them having to search them out, I'm happy to share that.

22 Q. I think we might have that particular sets of rules.  
23 Indeed I will just check if I can bring them up. Can we  
24 perhaps bring up LEG.001.001.2460. That appears to be,  
25 I think, the Voluntary Homes Registration (Scotland)

1 Regulations (1948), which are made under section 29(2)  
2 of the Children Act (1948), which is one of the sections  
3 we have just been looking at.

4 A. Yes, those are the regulations I was referring to.

5 Q. This is really setting out particulars in relation to  
6 an application for registration under section 29 of the  
7 Act; is that right?

8 A. Yes, that is right. I think there is a form in the  
9 schedule to the regulations which is to be used as the  
10 style.

11 Q. Yes and in the case of a -- we have already looked at  
12 the position for voluntary homes that were already in  
13 existence before this legislation was passed, but in the  
14 case of homes that were to be opened after the Act was  
15 brought in to force, I think do we see in the second  
16 schedule on -- at page 2462, the matters which are  
17 required of an applicant.

18 A. Yes. It is really just the particulars of the people  
19 who are responsible for the home and fairly general  
20 information about the children.

21 Q. And numbers. Well, the information about the children  
22 is pretty limited, it is just number.

23 A. It is not about the children; it is just the number of  
24 them.

25 Q. Rather than the children themselves which may be

1 accommodated. So they are pretty basic, as I think you  
2 said, in fact.

3 A. Yes.

4 Q. So that bears out the observation you made in your  
5 report. But at any rate that at least was an example of  
6 where a power of regulation was exercised by the  
7 Secretary of State.

8 A. Yes.

9 Q. This happened relatively quickly after the passing of  
10 the Act, was it not? I think it came into force -- well  
11 it came into force on 1 December 1948, which was shortly  
12 before the end of 1948.

13 A. Yes.

14 Q. So that was done and done for Scotland by the then  
15 Secretary of State for Scotland, Arthur Woodburn. We  
16 see that on page 2461, if we can bring that up. Do you  
17 see that?

18 A. Yes.

19 Q. So far as the power to make regulations in respect of  
20 boarding out by local authorities or voluntary  
21 organisations, we saw that there was power in the 1948  
22 Act to make such regulations.

23 A. Yes.

24 Q. Can we look at LEG.001.001.0018 which -- the title of  
25 which is the "Boarding Out of Children (Scotland)

1 Regulations (1959)" made on 1st August 1959; do we see  
2 that?

3 A. Yes.

4 Q. Do we see from page 0018 that these regulations bear to  
5 be made under the Children Act (1948), which we have  
6 just been looking at?

7 A. Yes.

8 Q. And that, so far as their scope is concerned, they apply  
9 both to boarding out of a child by a local authority --  
10 that's regulation 1(a) -- and (b):

11 "By a voluntary organisation other than the managers  
12 of an approved school."

13 Which might have been run by a voluntary  
14 organisation in those days?

15 A. Yes, and which had separate provision.

16 Q. Yes, with separate provision. So these are the  
17 regulations and, so far as your researches went, were  
18 these the only boarding out regulations made between  
19 1948 and 1959 in relation to children boarded out in  
20 Scotland?

21 A. Yes, but I will add that to my shopping list.

22 Q. Just in case. Perhaps though to give you a little  
23 assistance on that exercise, can I take you to  
24 regulation 20 on page 0024.

25 You will see that one of the things that the

1 regulations are doing is to revoke expressly the  
2 Children (Boarding Out) (Scotland) rules and regulations  
3 of 1947 --

4 A. Yes.

5 Q. -- which we looked at this morning.

6 A. Which would certainly suggest that there wasn't anything  
7 in the interim.

8 Q. Well, they might yes. They of course were made under  
9 an earlier legislation, not the 1948 Act.

10 A. Indeed.

11 Q. As we saw earlier, they were made in relation to  
12 boarding out only in the context of an education  
13 authority and I think the Poor Law or --

14 A. I think that is right.

15 Q. -- public assistance authorities.

16 So they were revoked and these are more general  
17 regulations applying to boarding out, both by local  
18 authorities and by voluntary organisations.

19 A. Yes.

20 Q. Indeed, although it is not part of the regulations, what  
21 catches my eye at 0024 in the explanatory note is that  
22 the regulations replace the rules revoked by  
23 regulation 20; do you see that?

24 A. I do.

25 Q. The explanation offered is that also that these rules

1 that were revoked applied only to the boarding out of  
2 children by local authorities, whereas the current  
3 regulations, the 1959 regulations, are to apply to  
4 that -- to such boarding out and to boarding out of  
5 children by voluntary organisations, subject to some  
6 exceptions including approved schools.

7 A. Yes.

8 Q. Perhaps it is a little misleading to say that the  
9 earlier rules applied only to boarding out of children  
10 by local authorities as that would be understood then,  
11 because local authorities had a specific meaning in the  
12 1947 regulation, did it not, that meant the Poor Law  
13 authority or a local authority, education authority, who  
14 had had a child committed to it its care?

15 A. Yes I can't remember the precise phraseology --

16 Q. Basically it was not a section 1 child who had been  
17 received under the 1948 Act or a child who was in the  
18 care of the local authority other than through committal  
19 by the court to the education authority or through the  
20 Poor Law authority process. That seems to be the import  
21 of this --

22 A. That seems to have been, yes.

23 Q. So it seems to have taken quite a long time to get to  
24 the regulations, does it not? Again, perhaps if you put  
25 it on the your shopping list, with those who are

1           instructing, as to whether they can offer any assistance  
2           as to why it took so long on the face of it.

3       A. I can certainly ask that of those instructing me.

4       Q. Because it does seem surprising, doesn't it?

5       A. I am not sure my surprise is of much value.

6       Q. Well, okay. Perhaps we will leave that for others to  
7           judge whether it is surprising or not. But anyway  
8           perhaps you can --

9       A. I will certainly ask those instructing me to  
10           investigate.

11      Q. Some assistance can be derived as to why that happened.

12           Am I right in thinking that one consequence of this  
13           apparent delay of 11 years was that voluntary homes for  
14           the first time were subject to registration, provided  
15           they gave the rather brief particulars, which were  
16           required under the regulations made under the Act?  
17           Otherwise regulation seems to have been very light  
18           touch; there wasn't anything by way of regulation under  
19           powers.

20      A. That would follow if no such regulations were made.

21      Q. Unless you can find some that would have applied to  
22           voluntary homes.

23      A. Yes, I can see that.

24      Q. So that other than a requirement to be registered,  
25           voluntary homes until 1959, it seems, were largely

1           unregulated, at least by central government using powers  
2           of regulation conferred by the principal statute?

3       A. Well, I suppose the very fact that they were registered  
4           is of itself a form of regulation. I take your point  
5           but I'm just not sure it is --

6       Q. It is quite limited. When we compare it with the sort  
7           of regulation we see in the case of certified schools in  
8           the 19th century and approved schools in the 20th  
9           century, up to this point in time there is a marked  
10          contrast, is there not, in approach?

11      A. There is undoubtedly a contrast.

12      Q. For whatever reason?

13      A. Exactly.

14      Q. So far as regulation by the Secretary of State using  
15          powers conferred by the 1948 Act is concerned in  
16          relation to local authority homes and voluntary homes,  
17          did you find any regulations between 1948 and 1959 that  
18          seemed to be exercised in accordance with the provisions  
19          we have been looking at under the 1948 Act? Did you see  
20          anything that --

21      A. Essentially a precursor to the 1959 regulations?

22      Q. Yes.

23      A. No, but that's something that's added to the shopping  
24          list already.

25      Q. That's another one where you would at least want to do



1 a bit more homework on in case there might be something  
2 that might explain this?

3 A. Yes. I certainly --

4 Q. It calls for an explanation does it not?

5 A. I have not come across anything and before I express it  
6 in absolute terms I would want to make sure and have  
7 another look --

8 Q. I appreciate it. At the moment you did research this  
9 matter, I can see, fairly thoroughly, so I mean the fact  
10 you weren't able to find anything readily is maybe  
11 telling.

12 A. It is perhaps as telling about the variety of sources  
13 that are required to be considered but --

14 Q. Perhaps, perhaps.

15 Can I take you then, with that introduction, to  
16 LEG.001.001.2719. I hope that's the right reference.

17 These are the Administration of Children's Homes  
18 (Scotland) regulations which came into force on the same  
19 date as the Boarding Out Children's (Scotland)  
20 regulations in 1959, as we see from page 2719. Do you  
21 see that?

22 A. Yes.

23 Q. These were made in an exercise of powers conferred on  
24 the Secretary of State for Scotland by section 15(4) and  
25 section 31 of the Children Act (1948), which I think are

1 the sections we looked at just after lunch --

2 A. Yes.

3 Q. -- which gave powers to regulate. These regulations, if  
4 we turn to page 2728, which may be a useful starting  
5 point, is the explanatory note. Do you see that, 2728?  
6 You see there is some assistance there as to the  
7 background and that the regulations have been made to  
8 deal with the conduct of children's homes provided by  
9 a local authority under section 15 of the Children Act  
10 (1948) and of voluntary homes except homes which are  
11 remand homes or voluntary homes subject to inspection by  
12 a government department otherwise than under part VI of  
13 the Children and Young Persons (Scotland) Act (1937).

14 So this appears to be an attempt to regulate by  
15 formal regulations voluntary homes, subject to the  
16 exceptions that are referred to in the note and also  
17 local authority homes.

18 A. Yes.

19 Q. When we turn back to page 2719, which is the first  
20 regulation, regulation 1, the term "administering  
21 authority" is used and, without having to take you to  
22 other matters, I think that is a reference to either the  
23 local authority who is providing the home or to the  
24 persons who carry on the home, the private organisation  
25 that runs the home?

- 1 A. Yes, that accords with my recollection.
- 2 Q. That is regulation 21. I do not think we need to go to  
3 it.
- 4 I think we see in regulation 1, certainly,  
5 a statement that:
- 6 "The administering authority [and we see which  
7 authority that is] for any home covered by the  
8 regulations shall make arrangements for the home to be  
9 conducted in such a manner and on such principles as  
10 will secure the well-being of the children in the home."
- 11 Do you see that?
- 12 A. I do.
- 13 Q. So there is on the face of these regulations some  
14 express statutory requirement to make arrangements for  
15 the conduct of the home in such a manner and on such  
16 principles as securing the well-being of the children.  
17 So actually that is the principle which should underpin  
18 any of the arrangements which the home puts in place?
- 19 A. Yes.
- 20 Q. That is not a requirement that we have seen before in  
21 the case of voluntary homes, that previously there has  
22 been no regulation setting that requirement out?
- 23 A. No that I'm aware of, no.
- 24 Q. Indeed, we see then in regulation 2 that, in addition to  
25 putting in place such arrangements, the administering

1 authority, ie those running the home, whether it is the  
2 local authority or the organisation that's operating:

3 "... shall arrange for the home to be visited at  
4 least once in every month by an authorised visitor."

5 So there are monthly visits.

6 And the authorised visitor is required to:

7 "Satisfy himself that the home is conducted in  
8 accordance with regulation 1."

9 And presumably the arrangements made under that  
10 regulation.

11 A. Yes.

12 Q. "... and is required to report to the administering  
13 authority in respect of his visit ..."

14 And:

15 "... to enter into the logbook [which is referred to  
16 in the regulations] his name and the date on which he  
17 carried out the visit."

18 Is that --

19 A. Yes.

20 Q. There's also a provision, although it is in fairly  
21 general terms, that:

22 "The administering authority for any home shall  
23 furnish the Secretary of State with any such information  
24 which he may from time to time require both as to the  
25 accommodation itself and the staffing arrangements of

1 the homes."

2 So there is some ability on the part of the State,  
3 or the Secretary of State in this case, to require the  
4 provision of information about the accommodation and the  
5 staffing arrangements at the home --

6 A. Yes.

7 Q. -- although it doesn't tell us under what circumstances  
8 such a requirement might be made?

9 A. No, or what information would be requested.

10 Q. Or what information would be sought. But it is a broad  
11 enabling power to glean information?

12 A. Yes.

13 Q. Again we see perhaps -- and this is a theme we talked  
14 about earlier this morning -- that there is a specific  
15 regulation in relation to religious instruction, which  
16 I think reflects the general nature of these  
17 regulations, that they do build this consideration in.

18 A. Yes.

19 Q. Then we see in regulation 6 that:

20 "The administering authority shall appoint the  
21 medical officer for the home."

22 And it then sets out the duties of that medical  
23 officer and:

24 "The duties of the officer appointed includes  
25 attendance at regular intervals and with sufficient

1 frequency to ensure that he is closely acquainted with  
2 the health of the children."

3 You see that regulation on page 2721. Have you got  
4 that?

5 A. Yes, at the letter (d).

6 Q. At letter (d), regulation 6(2)(d). There is also  
7 provision for regular examination by the medical officer  
8 and a requirement under regulation 6(2)(g) to:

9 "... supervise the compilation of a medical record  
10 for each child in the home containing various  
11 particulars, including medical history before admission,  
12 so far as known, physical and mental condition on  
13 admission, medical history while accommodated in the  
14 home and condition on discharge from the home."

15 There's also, I think, provision as of 1959 that, in  
16 relation to discipline in local authority and voluntary  
17 homes at regulation 10 at page 2722, if we can bring  
18 that up.

19 There is a provision at 10(1) that:

20 "The general discipline of the children accommodated  
21 in a home shall be maintained by the personal influence  
22 of the person in charge of the home."

23 It is quite a difficult provision to --

24 A. It has echoes of one of the provisions we were looking  
25 at this morning.

1 LADY SMITH: The personal influence of the head or  
2 headteachers in the ... 1948 Act? No, it was in  
3 1948/1949, a requirement for the head to bring personal  
4 influence to bear.

5 A. It was in relation to one of the -- whether it was the  
6 approved schools or the precursor. I can't recall.

7 LADY SMITH: Yes.

8 MR PEOPLES: On the face of it, general discipline would  
9 appear to be determined by the particular personal  
10 influence of the particular person in charge of the  
11 particular home, rather than some form of general  
12 principle.

13 A. Yes.

14 Q. Is that a fair point?

15 A. I think it is a fair point and it was a point that we  
16 made this morning under the reference to the other  
17 regulations relating to approved schools or their  
18 predecessors.

19 Q. But it does envisage that the person in charge of the  
20 home, which is not the manager but it is the person  
21 actually in charge of the voluntary home or the  
22 children's home, will exercise a degree of involvement  
23 to ensure that the personal influence that he has to  
24 bring to bear is brought to bear on the home, the staff,  
25 the children and so forth. That's what seems to be

1           underpinning this requirement, that there has to be some  
2           act of or some action on the part of the person in  
3           charge to -- in relation to matters of discipline that  
4           will give effect to what's described as the personal  
5           influence of that person.

6           A. The other way of reading it is that, insofar as there is  
7           discipline, it is to be under the personal influence of  
8           the person in charge. That's maybe a very subtle  
9           distinction.

10          Q. It certainly doesn't say it has to be administered by  
11          the person in charge, does it?

12          A. No, it doesn't.

13          LADY SMITH: I think the rule I had in mind was rule 11 of  
14          the 1933 regulations.

15          A. That sound correct and I have found as another provision  
16          as well -- in that there are some rules from 1933  
17          relating to remand homes which make the same point about  
18          personal influence --

19          MR PEOPLES: Is that the 1933 Care and Training  
20          regulations --

21          LADY SMITH: I think it was.

22          MR PEOPLES: -- applying to approved schools, part A?

23          LADY SMITH: Yes.

24          MR PEOPLES: So we have some kind of record on this matter.

25                 We see these things and this is in 1959, of course,



1 and the regulations we have just been discussing were in  
2 1933.

3 A. Indeed. I don't know if it would be of assistance for  
4 you to have a note of the remand home rules that I have  
5 been referring to. If I gave you the paragraph number  
6 of my report, would that be helpful?

7 Q. Yes, indeed. One of the points I think I was go to  
8 raise with you -- and I can you are already  
9 anticipating -- is probably that there is a great deal  
10 of variety in variation but sometimes consistency  
11 between rules.

12 A. Indeed. This is obviously an example. I will give you  
13 the SGV number, 001.001.0078. It is paragraph 1.47  
14 discussing the remand home rules. That's just another  
15 example of the same phraseology being used.

16 Q. Maybe this is a suitable point just to make this  
17 observation and see whether it accords with your  
18 researches and what you have done under part B. Where  
19 regulations are made, there are significant variations  
20 in content and matters covered, expressions used and so  
21 forth -- I mean depending on the setting and depending  
22 on the type of care being provided. Is that a fair  
23 observation?

24 A. That's fair. It is also, as you have anticipated, there  
25 are obviously similarities across them as well.

1 Q. There are similarities and similar expressions used from  
2 time to time. But if one was looking for -- if we are  
3 talking of children in care generally who are children  
4 under a certain age and under the care of the State and  
5 require care and protection under a State system in the  
6 broadest sense, one might think that one has to have  
7 consistency across the board, unless there's very cogent  
8 justification for treating what appear to be comparable  
9 situations in different ways. Can you see the point I'm  
10 making?

11 A. I do and speaking personally I would --

12 Q. So if you were starting from scratch that is maybe  
13 a principle you would apply?

14 A. The point you would make is one wouldn't necessarily  
15 start from here.

16 Q. No, and if you were discriminating on what appears to be  
17 comparable situations, you would have to have some form  
18 of, as I think the current language is used, is  
19 objective justification which would justify a difference  
20 of treatment in terms of things like, for example -- to  
21 take a example here which is no longer valid, but  
22 corporal punishment for example. If you were setting  
23 down rules for the corporal punishment of children in  
24 the care of the State under a certain age, you might  
25 think that you would have a general position unless you

1 can justify exceptions to that policy; would that be  
2 fair?

3 A. Again, speaking personally, yes, it would. I am just  
4 conscious --

5 Q. The reason I say that is not because I'm trying to  
6 re-write the rules. It does make the point that the  
7 rules themselves that were actually made and don't have  
8 that coherence or consistency and sometimes bear to be  
9 quite irrational in terms of when one compares and  
10 contrasts the various settings and the rules within  
11 those set that is were made under the powers that were  
12 conferred, do you think that is a fair observation.

13 A. I'm not sure I would characterise them as irrational.

14 Q. For example, if you say that in remand homes you can't  
15 discipline girls but in approved schools you can, by way  
16 of corporal punishment, is that rational unless you have  
17 an obvious justification?

18 A. I can't see how that would be rational, no.

19 Q. You would need to have a very good explanation of why  
20 there was a difference?

21 A. Yes, suppose if I could just explain my reticence, it is  
22 not because I think -- I'm not actively trying to  
23 disagree with what you are saying; I'm simply trying to  
24 recognise the limits of the value of the evidence that  
25 I can give.

1 Q. I appreciate that. I'm to some extent asking you to at  
2 least consider how fair these observations are because  
3 you have done an exercise of looking at the primary and  
4 secondary legislation. Today we have gone through  
5 various regulations and we have seen in some areas rules  
6 were not made; yes?

7 A. Yes.

8 Q. In some areas rules were made but were a very light  
9 touch or very basic and that's again -- we have seen  
10 examples today; yes?

11 A. Yes.

12 Q. Then we have seen examples of where rules are very  
13 detailed but only in particular settings?

14 A. Yes, and only in certain respects.

15 Q. Yes, and we have seen examples of where in the same  
16 situation, boarding out, there appears to have been  
17 regulation in some situations where the boarding out was  
18 by a particular person but not in others.

19 A. It does appear that way, yes.

20 Q. That doesn't strike as a particularly consistent  
21 coherent and rational approach to child care by the  
22 State, does it?

23 A. I don't know what the reasons were, which is why I'm  
24 reluctant to --

25 Q. They would call for an explanation.

- 1 A. It may well do.
- 2 Q. It will also need a better explanation than just that we  
3 didn't have joined-up government at the time, wouldn't  
4 it? We have seen that different departments had  
5 different responsibilities.
- 6 A. Yes.
- 7 Q. And they maybe made different rules in different  
8 settings.
- 9 A. From different perspectives.
- 10 Q. And some exercised powers and some didn't. Well, we  
11 have seen the Secretary of State -- I think you give  
12 examples in your report that although there are  
13 provisions for rule-making, no rules seem to have been  
14 made.
- 15 A. Absolutely.
- 16 Q. And that is not an uncommon thing that you found in the  
17 earlier part --
- 18 A. Certainly in the earlier part of the research, the 1904  
19 Act and the 1908 Act -- I was to some degree, personally  
20 speaking, surprised that the rules weren't made but --
- 21 Q. You expected to find rules but you were surprised not to  
22 find them?
- 23 A. I was, yes, but I'm giving you that as my own take on  
24 it.
- 25 Q. I appreciate it. We are simply trying to see what we

1 can take from what's there and from what the framework  
2 was and what we can derive.

3 A. It may be slightly naive, but as a lawyer if I see  
4 a rule-making power, I rather expect rules to have been  
5 promulgated.

6 Q. I am not sure; that is just a modern approach.

7 We see from time to time rules were made. While  
8 rules were not made in 1908 under the Act in relation  
9 to, say, voluntary homes. For example, if there was  
10 a power to regulate at that time or as early as that we  
11 did see that approved schools were being regulated from  
12 1933 and certified schools from 1866.

13 A. I think Professor Norrie made the point that the  
14 approach in relation to voluntary homes was quite  
15 different for quite a considerable period of time. So  
16 following that through, it is entirely logical that the  
17 provision which was made for approved schools would be  
18 more comprehensive.

19 I'm not explaining it I'm just --

20 Q. No, no, I appreciate it. We are just trying to see what  
21 the situation was. But it does appear to disclose  
22 a somewhat fragmented and disjointed approach and  
23 showing some inconsistency at times in terms of the  
24 approach to regulation of children in care.

25 If you take children in care as a broad class of

1 people who come into care in a variety of ways, it does  
2 show, does it not, these various rules as we have seen  
3 have an inconsistency of approach?

4 A. There is an inconsistency there, yes. It is not  
5 a modern approach.

6 Q. For the child that's in that system during that period  
7 of inconsistency, it is a bit of a lottery, isn't it, or  
8 could be, if some settings have detailed rules and other  
9 settings don't?

10 A. I suppose it is not a lottery as to how they end up  
11 there, but I take your point.

12 Q. It might be a lottery because they might go through the  
13 Poor Law and end up in being regulated by the State.  
14 They might go in under section 1 and not find that  
15 there's any rules applying to boarding out.

16 A. That's fair.

17 Q. They might go into a setting where corporal punishment  
18 is expressly prohibited by regulation and if they are  
19 a girl under a certain age and a girl of the same age  
20 might go into a different setting and find she can be  
21 punished using corporal punishment.

22 A. Yes, that's fair. The common factor being the Common  
23 Law but I take the point about the difference between  
24 the regulations.

25 Q. But this wasn't really an area that the State felt

1           should be left to the Common Law to regulate. I mean,  
 2           why else would we have the Children Act of 1908, the  
 3           Children and Young Persons Acts of 1932 and 1937, the  
 4           Children's Act of 1948, the Social Work (Scotland) Act  
 5           (1968), Children Act of 1995? We can go on, can't we?  
 6           You have set all of these pieces of legislation out --

7       A.   Indeed.

8       Q.   -- have you not?

9       A.   I have.

10      LADY SMITH:  Mr Peoples, at some point around now I would  
 11           like to have a five-minute mid-afternoon break; would  
 12           now be convenient?

13      MR PEOPLES:  Yes.  It would give me an opportunity just  
 14           to ...

15      LADY SMITH:  We will adjourn for 5 minutes, please.

16      (3.01 pm)

17    (A short break)

18      (3.07 pm)

19      MR PEOPLES:  My Lady.

20      LADY SMITH:  Yes.

21      MR PEOPLES:  Ms Irvine, I indicated this morning that for  
 22           various reasons I was not going to take you beyond 1968  
 23           and I think you probably know the background to that,  
 24           that Professor Norrie is still to deal with that period.

25           I think, having considered matters, I probably want



1 to stop my questions at this point and we can perhaps  
2 take matters up on another occasion. You have said that  
3 you will consider various matters that have arisen  
4 today, both yourself and those instructing you, and  
5 I would be grateful if you could do that.

6 So far as the evidence today is concerned, I was  
7 asked by Mr Gale to raise one matter with you and  
8 I would quite like to do it. So if you don't know the  
9 answer at this stage, perhaps you could just add it to  
10 the list of matters that we would like to be guided on.

11 It is in relation -- if I could go back to the  
12 Children Act of 1948 and particularly to section 17,  
13 which is LEG.001.001.0405.

14 If we could go down two thirds of the way down to  
15 section 17, which is concerned with the power of local  
16 authorities to arrange for the emigration of children,  
17 and what subsection (1) appears to do is to require  
18 a local authority to obtain the consent of the Secretary  
19 of State in procuring the emigration of any child in  
20 their care. It is a process that seems to involve  
21 a direct role for the Secretary of State in having to  
22 provide consent; do you see that?

23 A. Yes, and I think the position prior to that in the 1904  
24 Act was that it was for the Secretary of State alone.  
25 So I think that --

1 Q. So they could arrange it but they still had to involve  
2 the Secretary of State in any --

3 A. I think the arranging for was for the Secretary of  
4 State. I would need to go back and double check that.

5 Q. That was not quite the point I wanted to leave you with  
6 for another day.

7 Do you see that under subsection (2):

8 "The Secretary of State shall not give consent  
9 unless satisfied on certain matters ..."

10 One being that the emigration would benefit the  
11 child. The second being that suitable arrangements have  
12 been made or will be made for the child's reception,  
13 welfare in the country to which he is going. The third  
14 is that the parents or guardian of the child have been  
15 consulted or that it is not practicable to consult them.  
16 Fourthly, that the child consents to what is being  
17 proposed; do you see that?

18 A. Yes. It has actually gone onto the next page here --

19 Q. I'm sorry. I think it is my -- I may have got --

20 LADY SMITH: This section runs over onto the next page.

21 MR PEOPLES: What I have been asked is -- and I'm not sure  
22 that there is an answer that I have found quickly -- is  
23 whether -- if we pass over to voluntary organisations  
24 who are involved in the emigration of children, can we  
25 go to page 0416? Do we see -- it is at section 33. We

1 looked at this this afternoon, that the power of the  
2 Secretary of State to make regulations to control the  
3 making and carrying out by voluntary organisations of  
4 arrangements for the emigration of children. Do you  
5 remember we looked at that?

6 A. Yes.

7 Q. I think, so far as your researches went, and you were  
8 going to maybe have another look at this one, although  
9 you indicated that you couldn't locate any regulations  
10 made under that particular subsection of section 33; is  
11 that correct?

12 A. That is correct, yes.

13 Q. So I suppose what it comes to is -- well, what is the  
14 position where a voluntary organisation, in the absence  
15 of regulations, wishes to procure or assist in the  
16 procuring of emigration of a child in their care -- not  
17 in the local authority care, in their care -- because  
18 section 17 that we looked at seems to deal with children  
19 in the care of the local authority, not children in the  
20 care of some other organisation?

21 A. On its face, certainly, yes. I would want to just  
22 double check the definition given to "local authority",  
23 but yes.

24 Q. But on the assumption that the local authority doesn't  
25 extend to voluntary organisations, it is not like

1 an administering authority term that we saw in one of  
2 the regulations, would you be able to make enquiries as  
3 to whether there was --

4 A. As in what provision there was --

5 Q. A statutory provision equivalent to section 17.

6 A. Yes of course.

7 Q. And, if not, and if there are no regulations, whether  
8 the matter rested on informal arrangements --

9 A. I will --

10 Q. -- involving the Secretary of State?

11 A. Yes, I mean I will look at the legal position and I will  
12 ask those instructing me to investigate the background.

13 Q. That would be helpful. I would be obliged if you would.

14 I think at that point, after a long day, can I thank  
15 you and that's all the questions I have for now.

16 A. Thank you.

17 Q. Obviously we may meet again to deal with other matters  
18 in part B.

19 A. Thank you.

20 MR PEOPLES: Thank you very much.

21 LADY SMITH: Thank you very much.

22 I'm not aware of any other questions having been put  
23 forward; is that right, Mr Peoples?

24 MR PEOPLES: No.

25 MS O'NEILL: My Lady, I wonder if I might pick up a couple

1 of short points that have arisen in evidence. They are  
2 quite short; one is specific and one is more general.

3 I wonder if it might assist the Inquiry in relation  
4 to the 1918 Act which was discussed this morning just by  
5 giving some document references for that.

6 LADY SMITH: Very well. If I can, just for the transcript,  
7 specify, of course, that Ms O'Neill, you are here for  
8 the Scottish Ministers.

9 MS O'NEILL: Yes, my Lady, I'm obliged.

10 LADY SMITH: Yes, please do help us in that way.

11 Questions by MS O'NEILL

12 MS O'NEILL: There was a discussion about the Education  
13 (Scotland) Act (1918) this morning.

14 It is dealt with at Ms Irvine's report at  
15 paragraph 1.42 and that's document SGV.001.001.0076.

16 LADY SMITH: Thank you.

17 MS O'NEILL: There was a discussion about whether schools  
18 were brought into the State sector voluntarily or not.  
19 The 1918 Act --

20 LADY SMITH: The religious schools?

21 MS O'NEILL: They were actually described, my Lady, in  
22 section 18 of the 1918 Act as "voluntary schools" but  
23 encompassing denominational schools. The legislation is  
24 at LEG.001.001.0926 and section 18 is at 0940.  
25 Your Ladyship and Ms Irvine are correct that it was

1 voluntary transfer into the State sector. However,  
2 subsection 5 provides a two-year window within which, if  
3 schools did not transfer, they would lose their public  
4 funding. So my learned friend Mr Peoples is correct  
5 that there was a degree of compulsion about that system.

6 LADY SMITH: So the nagging memory I have in the back of my  
7 mind that you could still have a school beyond then --  
8 it would be 1920 -- which had decided that it would just  
9 carry on without public funding, doing so but still so  
10 long as that legislation was in force being able to  
11 require the State at some later point to take it over?

12 MS O'NEILL: Yes, my Lady, to opt into the State system is  
13 my understanding of section 18.

14 LADY SMITH: In the meantime they would forfeit the public  
15 funding? Thank you.

16 MS O'NEILL: My Lady, that was a specific point I wanted  
17 just to clarify.

18 On the general point, I'm very conscious that my  
19 learned friend Mr Peoples raised a number of questions  
20 with Ms Irvine about the reasons for legislation or the  
21 reasons for the exercise or non-exercise of executive  
22 functions. I'm very conscious that that's something  
23 that Ms Irvine was not asked to look at and indeed it  
24 may not be entirely appropriate for her to give evidence  
25 to the Inquiry on those matters. What I was going to

1 suggest was that the response team at the Scottish  
2 Government is very happy to liaise with the Inquiry team  
3 as to how that information can be provided most  
4 appropriately.

5 LADY SMITH: I'm very grateful to you for that, Ms O'Neill.  
6 It is something I'm interested in. It is one thing to  
7 look at the individual pieces of legislation, which are,  
8 as we have discussed, somewhat disparate in nature, but  
9 I would really like to do all we can to understand what  
10 drove them and why they were not brought together in any  
11 coherent way. Was it a lack of driver or specific  
12 decision? I think that is a bit of a mystery at the  
13 moment. So anything you can do to help with that,  
14 I would be very grateful for.

15 MS O'NEILL: That's understood, my Lady.

16 MR PEOPLES: My Lady, when I did raise these matters I was  
17 not necessarily implying that Ms Irvine should deal with  
18 it in her own evidence, but I did want the matter  
19 explored in an appropriate manner.

20 I am grateful to Ms O'Neill for explaining how that  
21 can be done and I am happy to deal with it in whatever  
22 way it could be expressed.

23 LADY SMITH: Mr Gale.

24 Questions by MR GALE

25 MR GALE: I apologise for interrupting. I wonder if I could

1           amplify slightly the point that my learned friend  
2           Mr Peoples made with Ms Irvine at the end of her  
3           evidence.

4   LADY SMITH:  So we are back to children who are being  
5           migrated, or emigrated as the legislation says?

6   MR GALE:  My Lady, two particular references within  
7           Ms Irvine's report are at paragraph 2.11 and 2.16.

8           That can also, I think, be read together with  
9           an appendix to Professor Norrie's report which deals  
10          with child migration and it is pages 8 and 9 within that  
11          document.

12          My particular interest, obviously, is in the  
13          post-war period and, as Ms Irvine makes clear in  
14          paragraph 2.16, at 0112 of her researches and in the  
15          footnote, there were two regulations made under  
16          section 33.  The only example of regulations dealing  
17          with the emigration of children from voluntary  
18          organisations appears to be under the specifically  
19          English Act, being the Child Care Act of 1980.  
20          Obviously that did not apply to Scotland and it was in  
21          1982.

22          What I'm particularly interested in -- and if  
23          Ms Irvine would be able to assist, I would be very  
24          grateful -- was whether there was any policy decision  
25          taken that there would be no regulations made in



1 relation to voluntary homes and emigration from  
2 voluntary homes.

3 Thank you, my Lady.

4 LADY SMITH: Thank you very much. I am sure you do not  
5 expect her to answer that, whether herself or through  
6 Ms O'Neill today, but I'm grateful to you.

7 MR GALE: Not today, no, my Lady.

8 LADY SMITH: Thank you.

9 Ms Irvine, thank you very much. Thank you for the  
10 work you have put into your detailed report and for the  
11 assistance that you have given us today. As has been  
12 alluded to, we may see you again.

13 A. Thank you my Lady.

14 LADY SMITH: Thank you.

15 (The witness withdrew)

16 LADY SMITH: Mr Peoples.

17 MR PEOPLES: My Lady, the next witness, who again is  
18 appearing on behalf of the Scottish Government, is  
19 Caroline Beattie.

20 LADY SMITH: Thank you.

21 MS CAROLINE BEATTIE (affirmed)

22 Questions by MR PEOPLES

23 LADY SMITH: Thank you very much. Do sit down when you are  
24 ready.

25 Mr Peoples.

- 1 MR PEOPLES: My Lady.
- 2 Good afternoon, Ms Beattie. I think you are
- 3 Caroline Beattie and you are a lawyer with the Scottish
- 4 Government.
- 5 A. That is correct.
- 6 Q. And you have been with Scottish Government since, I
- 7 understand, 1992?
- 8 A. Yes.
- 9 Q. Since then you have been employed in a variety of legal
- 10 roles within Scottish Government?
- 11 A. All legal roles, yes.
- 12 Q. And you have worked in the Scottish Office Solicitor's
- 13 Office prior to the devolution arrangements?
- 14 A. Yes.
- 15 Q. Following devolution you also worked in the Office of
- 16 the Solicitor to the Scottish Executive, and you
- 17 currently work in the Scottish Government Legal
- 18 Directorate?
- 19 A. Yes.
- 20 Q. As well as dealing with litigation involving in some way
- 21 or other the Scottish Government, you have also,
- 22 I think, experience of working on instructing bills and
- 23 drafting subordinate legislation?
- 24 A. Yes, all aspects are involved in government law.
- 25 Q. That experience, does that extend both to prior to

1 devolution, when the Scottish Office was still  
2 principally responsible for Scottish affairs, and also  
3 to the Scottish Executive and Scottish Government?

4 A. Yes.

5 Q. You are currently, I understand, the Deputy Director for  
6 the Commercial and Business Services Division of  
7 Scottish Government Legal Directorate; is that right?

8 A. That is correct.

9 Q. That division, I think, provides advice on a number of  
10 areas that affect government, including matters  
11 concerning employment, procurement, contracts, planning  
12 and so forth; is that correct?

13 A. Yes, it is a full range.

14 Q. I'm advised, I think, that you have senior management  
15 responsibility for Scottish Government legal department  
16 business division.

17 A. That is correct.

18 Q. Part of the work of that division deals with, I think,  
19 is providing support and advice to the Scottish  
20 Government Response Unit?

21 A. I don't provide support and advice to the unit; I have  
22 overall responsibility for the response unit. So  
23 I don't advise them; they sit under my remit.

24 Q. They sit under your remit. I'm sorry, I misunderstood.  
25 Maybe, just to be clear, the Scottish Government

1 Response Unit, can you just tell us what that is?

2 A. The Response Unit was set up, as the name suggests, in  
3 order to provide the Scottish Government response for  
4 this Inquiry. That included ensuring that there was  
5 an effective records management system in place for when  
6 the Inquiry was going to be asking for information and  
7 also helping to compile reports that were going to be  
8 requested of us by the Inquiry, such as the report  
9 that's in front of us today.

10 Q. Yes. I think that today you appear on behalf of the  
11 government to speak to parts A, C and D of the report  
12 that has been prepared --

13 A. That is correct.

14 Q. -- in response to the request from the Inquiry.

15 A. That is correct.

16 Q. I think we have already had evidence from Ms Irwin, as  
17 you will know, on relation to certainly parts of part B,  
18 which is to do with legal responsibilities.

19 A. Yes.

20 Q. So far as the parts that you are concerned with, can  
21 I perhaps at least give you the good news that I will  
22 probably not want to ask too much about parts C and D.  
23 I would like to touch upon some general matters  
24 concerning them, but I appreciate that there is a lot of  
25 information in there in terms of providing the sort of

1 material that the Inquiry may find of assistance or may  
2 be relevant to its work.

3 A. Yes. I think it became clear that there was a huge  
4 volume of material that was going to be relevant and  
5 obviously the report is trying to encapsulate that as  
6 best as possible.

7 Q. So in essence that's giving us a flavour of the sort of  
8 things that we may be able to find relevant and are  
9 available to have access to should we think it  
10 necessary?

11 A. Yes.

12 Q. I might come back to that.

13 I suppose my main focus -- and perhaps where I will  
14 start today -- is to look at part A of the Scottish  
15 Government report that you had some involvement with.  
16 The report itself is SGV.001.001.0001 and it is dated  
17 5 May 2017.

18 I think there is a copy of the report there for your  
19 use if you find it easier to use the hard copy than the  
20 screen, but feel free to use whatever is easier for you.

21 Can I say, just to be clear, it has already been  
22 announced by the Inquiry to the public that this is the  
23 first of two reports that the Inquiry has asked for and  
24 this one is more concerned on what's described as a high  
25 level to get some flavour for, I suppose, a general

1 understanding of how government works, if you like --  
2 and in particular, central government -- during the  
3 period that we are concerned with.

4 A. That was my understanding and that part A was really  
5 looking at how the government structures and rules and  
6 responsibilities had changed over the decades.

7 Q. Because I think, as you will be aware, that we are  
8 asking and will be given, as I understand it, in due  
9 course another report which perhaps -- concerns more the  
10 state of awareness of central government during the  
11 relevant time frame of issues of abuse of children in  
12 care and the response of central government in light of  
13 that knowledge.

14 A. That is correct. The response team are working on that  
15 just now.

16 Q. So far as parts A, C and D are concerned, can I take it  
17 that these were put together as a team effort?

18 A. Very much a team effort, yes. The response team, at the  
19 time that the report was being completed, comprised of  
20 six full-time members of staff and we had two temporary  
21 legal research assistants as well. So in compiling the  
22 report there was a lot of people involved at different  
23 stages of it.

24 Q. If I can take you to the preface to the report at 0002.  
25 We have already looked at this and it is just to say we

1 have considered its terms with Ms Irvine. I appreciate  
2 she indicated she didn't prepare it but it was simply to  
3 indicate the limitations and parameters of the report  
4 that was sought at this stage. That was the purpose of  
5 this part of it?

6 A. Yes.

7 Q. As we have already discussed, it was really to obtain,  
8 at this stage of the Inquiry's proceedings, a high level  
9 report on -- I'm reading from 1.3:

10 "The legal and administrative responsibility of the  
11 Scottish Central Government from the 1930s to the  
12 present time."

13 And that was intended to include both the present  
14 government and predecessor governments including the  
15 former -- what was then the Scottish Office and before  
16 devolution.

17 A. I think it became clear with just the sheer volume of  
18 material that the team were actually looking at that it  
19 was going to have to be high level because the  
20 information that was coming forward was -- obviously  
21 covered very large period of time and a lot of detail.

22 Q. I think that the areas of responsibility that you were  
23 certainly looking at, as you say, or as the report says  
24 at 1.3, you were looking at a whole range of areas of  
25 responsibility of central government, including

1 education, health, justice and social care in  
2 particular. I think that is a point made at 1.3 on  
3 page 0002. Do you have that?

4 A. I do have it.

5 Q. So far as part A is concerned, which I wish to  
6 concentrate on with your evidence, the purpose of part A  
7 is to narrate what's described as:

8 "The policy-making responsibilities of central  
9 government, what is central government, including  
10 ministerial and civil service departmental  
11 responsibilities and reporting structures."

12 That's quite a mouthful but we can perhaps try and  
13 deal with it as best we can in what's a detailed report  
14 that we can perhaps all read.

15 So far as the report is concerned, I think it is  
16 clear at paragraph 1.5 that it is intended to provide  
17 information and therefore for it to be factual in nature  
18 and it is not really -- you are not here, today at  
19 least, to express any views on perhaps the structures  
20 and whether they were good structures or bad structures  
21 or whether the reporting lines were good or bad and  
22 things of that nature; is that correct?

23 A. That is correct.

24 Q. Can I take you to part A and just to page 0004, if  
25 I may. Do we see that what was asked for, in the notice



1 served by the Inquiry, essentially were three main  
2 matters expressed at a high level. The first being:

3 "Areas within the Inquiry's terms of reference in  
4 which Scottish Central Government had policy making  
5 responsibility."

6 That's on page 4. Do we see that?

7 A. Yes.

8 Q. The second one was:

9 "Some explanation of the role of ministers in  
10 Scotland."

11 And the third area was:

12 "An explanation of relevant departmental  
13 responsibilities."

14 And there were some examples given of the sort of  
15 information that would be helpful to the Inquiry and  
16 there was also sought, so far as the departmental  
17 structures were concerned, some explanation of the  
18 structure of the department and how it operated and  
19 I think you have sought to provide that in part A. Is  
20 that correct?

21 A. That is correct, although in relation to the branch  
22 structures historically that appeared quite difficult  
23 because the information simply wasn't there. I think  
24 the Civil Service Year Book started to drill down into  
25 branch structures from the mid-1970s onwards.

1 Q. Can you help me, just before we go on, I think there is  
2 some mention from time to time in this report about the  
3 Civil Service Year Book. Can you help us with that is  
4 actually and what its status is?

5 A. The Civil Service Year Book is a yearly publication  
6 which contains the details of all civil servant  
7 departments and their overall structures and it is  
8 published yearly and it can be kept within national  
9 libraries.

10 Q. So that is publicly available information?

11 A. Yes.

12 Q. And is that information about government in general or  
13 the Civil Service in particular?

14 A. It is a bit of both because it has to be both. So in  
15 order to describe the Civil Service it has to describe  
16 who they are actually reporting to in terms of the  
17 government structure.

18 Q. So far as the detail in the chapters, you have prepared  
19 a report and you have broken it into -- after  
20 an introduction, you have broken it into various time  
21 periods and these are dealt with in six chapters of  
22 part A; is that correct?

23 A. Yes.

24 Q. Chapter 1 is concerned with the period from 1930 to  
25 1948; is that correct?

- 1 A. Yes.
- 2 Q. I will just -- so we get a brief idea of the structure  
3 of part A of your report. The second chapter is  
4 concerned with the period from 1948 to 1968. You can  
5 take it --
- 6 A. Yes, yes.
- 7 Q. I do not think I'm going to get this bit wrong, but if  
8 you feel the need to look at it ... The third chapter  
9 is concerned with the period from 1968 to 1994. And the  
10 fourth chapter, 1995 to 2007 -- I suppose the  
11 significance of that period is it covers both  
12 pre-devolution and post-devolution government.
- 13 A. Yes.
- 14 Q. I think you deal with that in chapter 4 and explain what  
15 was happening before and after devolution took effect.
- 16 A. Yes.
- 17 Q. Then in the fifth chapter is concerned with the period  
18 2007 to 2014. I think 2007 represented a change of  
19 administration, did it?
- 20 A. Yes.
- 21 Q. A parliamentary election and a change of government?
- 22 A. Yes, a change of government when it became the Scottish  
23 Government.
- 24 Q. It also became the Scottish Government and I think the  
25 name was formally changed by the Scotland Act of 2012.

1 A. That is correct.

2 Q. The fifth and sixth chapters are dealing with from 2014,  
3 which was when the announcement of the Inquiry took  
4 place -- and indeed it is a date referred to in the  
5 terms of reference -- until the present time?

6 A. Yes.

7 Q. Can I take you to chapter 1, which begins at page 0005.

8 The way I would wish to deal with this -- but feel  
9 free to refer to the report -- is to try to extract from  
10 each chapter the sort of essence of what is being said.  
11 If I'm wrong about that, I would be grateful if you  
12 would tell me and point out if there's anything else  
13 that I should know.

14 I don't want to take the Inquiry here today through  
15 all the details. There is a lot of detail. It is there  
16 to read. It has all been published but I would like to  
17 get an understanding of the main aspects of each period  
18 that may assist our understanding of how central  
19 government was operating.

20 Can I take it in that way if you are comfortable if  
21 I do it that way?

22 A. Yes.

23 Q. Feel free to tell me if there's any difficulties with  
24 what I'm doing.

25 If I take the first period from 1930 to 1948.

1 Various spreadsheets have been prepared -- which I think  
2 are in annexes A and B -- to assist us as to how the  
3 structure looked in the form of a diagram.

4 But the approach you have adopted, I think in each  
5 chapter, is a similar one that you are giving us some  
6 indication of the ministerial designations and  
7 portfolios and the support that ministers received to  
8 carry out their functions.

9 Then you also, under a separate head, give us some  
10 information about how the Civil Service that supports  
11 the government -- the full-time Civil Service was  
12 structured and what particular areas of responsibility  
13 were allocated to different departments or component  
14 parts of departments.

15 A. Yes, it provides a narrative of what's contained in the  
16 spreadsheets.

17 Q. I will do my best, somewhat tentatively, to see if I can  
18 work my way through this without getting bogged down.  
19 But if we take the first period, chapter 1, 1930 to  
20 1948, what we had was a Secretary of State, the  
21 Secretary of State for Scotland who was responsible to  
22 the UK Government for the discharge of the functions of  
23 the Scottish Office. Is that essentially the point that  
24 you seek to make?

25 A. Yes.

1 Q. Basically the Scottish Office, at least from this time  
2 onwards, whatever the historical position may be -- it  
3 is a little bit more confusing I think or complicated  
4 rather -- the Scottish Office had a wide-ranging  
5 responsibility for basically ... it was basically in  
6 charge of all Scottish affairs, is that in broad  
7 terms ...

8 A. Yes.

9 Q. There would be some matters that other departments would  
10 deal with.

11 A. Probably some matters other departments would deal with  
12 but, yes, generally what would be considered to be  
13 primarily Scottish functions such as education,  
14 agriculture, things --

15 Q. Health?

16 A. Health, yes.

17 Q. Justice?

18 A. Yes.

19 Q. Education?

20 A. Yes.

21 Q. What about mental health? That would also be included  
22 under health?

23 A. Yes.

24 Q. Child welfare?

25 A. Yes.

- 1 Q. That would cover quite a broad range of areas of  
2 responsibility?
- 3 A. Probably. I wouldn't be able to speak to whether some  
4 of those functions -- but, yes, broadly --
- 5 Q. Don't worry too much. I think you make point, if  
6 I understand it, in the report that among the  
7 responsibilities of the Scottish Office would be  
8 children in care, if I could put it in the broadest  
9 sense.
- 10 A. Yes.
- 11 Q. The children that our Inquiry is dealing with as defined  
12 by our terms.
- 13 A. That would be dealt with by the Scottish Office, yes.
- 14 Q. This would include children in Poor Law institutions in  
15 the early days before that system disappeared in 1948, I  
16 think, and it would also include children who, as it was  
17 formerly called, were boarded out but we would  
18 understand more in terms of a fostering arrangement?
- 19 A. Yes.
- 20 Q. It would deal with education, including special  
21 provision in the form of, for example, approved schools  
22 and List D schools --
- 23 A. Yes.
- 24 Q. -- and secure accommodation which had some educational  
25 component in it?

1 A. Yes.

2 Q. Can I just ask you maybe on one matter, emigration. We  
3 have seen some legislation that deals with the  
4 emigration of children either through arrangements made  
5 by local authorities during this period or perhaps by  
6 voluntary organisations who sent children abroad under  
7 emigration schemes or in some other way.

8 Was that a Scottish Office function during the  
9 period that we are considering, 1930 to 1948, and indeed  
10 beyond 1948 until the schemes and the arrangements  
11 disappeared?

12 A. I don't think I know the answer to that question,  
13 whether it is a Scottish Office function. If the  
14 function was given to the local authorities, it might  
15 have been given to them directly by statute and that  
16 would have been a UK statute.

17 Q. We have seen I think -- we actually saw this afternoon  
18 I think we just -- with the last witness -- that under  
19 the Children Act -- and perhaps I can just give you that  
20 reference, which is at LEG.001.001.0405, just to assist  
21 you.

22 If we go down two thirds of the way to section 17.  
23 This is in the Children Act (1948), which I appreciate  
24 is towards the end of the period covered by chapter 1,  
25 but it would spill over into some of the later chapters



1           you deal with. Under the Children Act it provides:

2           "A local authority may, with the consent of the  
3           Secretary of State, procure or assist in the procuring  
4           of the emigration of any child in their care."

5           There is provision in that section of the Secretary  
6           of State under section (2):

7           "... shall not give consent unless satisfied [with  
8           certain matters]."

9           I will not read them all because we have seen them  
10          earlier on but there are various matters in which the  
11          Secretary of State has to be satisfied.

12          That is an example, I think, of where the Secretary  
13          of State is involved in the emigration of children in  
14          an operational sense or a direct sense, I think.

15          A. Certainly a Secretary of State; whether it is the  
16          Secretary of State for Scotland, I am not sure.

17          Q. You are not sure. We would need to maybe get  
18          clarification because it might -- because it was  
19          involving children abroad, the Home Office might have  
20          had an involvement?

21          A. That would be my guess, yes.

22          Q. So we can't assume it would be the Secretary of State of  
23          for Scotland in all cases that would have been involved  
24          in the giving of consent or satisfying himself as to the  
25          various requirements?

1 A. Not unless the statute, I think, indicated that the  
2 Secretary of State for the purposes of children in  
3 Scotland would be the Secretary of State for Scotland.

4 Q. I presume that's a matter that no doubt --

5 A. Could be easy enough to --

6 Q. -- investigated --

7 A. Yes.

8 Q. -- and we can get an answer to, just to know whether  
9 that was a Scottish Office function --

10 A. Yes.

11 Q. -- or a, for example, Home Office function --

12 A. I will --

13 Q. -- or a Commonwealth or Foreign Office function. It  
14 could be any of them, I suppose, for one reason or  
15 another. And perhaps how that did operate --

16 A. Yes.

17 Q. -- it may be something we would be interested in knowing  
18 because I think the legislation at least that we have  
19 looked at doesn't maybe assist us as much as we would  
20 like at this stage.

21 So if I can leave that one. At least the  
22 Scottish Office had a broad range of responsibilities in  
23 this period, 1930 to 1948.

24 Basically, as I understand it from chapter 1, if we  
25 take the position from September 1939, which I think was

1 a bit of milestone that, as I think I said to Ms Irvine,  
2 I am not sure she was quite sure about all of this, but  
3 I think that is a significant date in that the  
4 Scottish Office, to a large extent, moved to Edinburgh  
5 from London. In broad terms, I think that was around  
6 that time, just at the start or around the start of  
7 World War 2.

8 A. I would accept that would probably be the case, yes.

9 Q. Don't worry, I'm not suggesting you are old enough to  
10 remember. Nor am I!

11 LADY SMITH: I'm just trying to remember. Is that about the  
12 time when Old St Andrew's House was completed, the  
13 building of it?

14 MR PEOPLES: I might be able to help with you that.

15 LADY SMITH: It is a 1930s building, isn't it?

16 MR PEOPLES: I have something to tell me that what was  
17 called a new-style Scottish Office, New Edinburgh  
18 Headquarters at Drumsheugh Gardens was opened in 1939.  
19 I think it did move or maybe expanded from that  
20 beginning. I don't want to be giving evidence.

21 LADY SMITH: I was just curious because the style of the  
22 building would fit that era.

23 MR PEOPLES: I'm told that or I read that the  
24 Scottish Office acquired offices at Edinburgh at  
25 Drumsheugh Gardens at St Andrew's House, Regent Road,

1 and I think at that time or around that time what we  
2 call the departmental structures that you talk about  
3 underwent some changes. Again, I'm not asking you to  
4 comment too much on that because I appreciate it is  
5 before the time you were asked to report on, but it was  
6 quite a significant period of change.

7 A. I would accept that, yes.

8 Q. If I could move on, what I think you do say -- or at  
9 least is said in the report that you are here to  
10 discuss -- at part A is that at the outbreak of war or  
11 around that time the Secretary of State for Scotland was  
12 being supported by four principal administrative  
13 departments. I think "department" was the terminology  
14 that was in use then and indeed was in use for quite  
15 a long part of the period we were looking at.

16 A. Yes, I think it only changed into the directorate  
17 structure post-devolution.

18 Q. So departments were the big departments within which sat  
19 components like divisions and branches and so forth that  
20 would be subdivisions of the department?

21 A. Yes.

22 Q. The four big departments, as I understand it, were the  
23 Scottish Education Department, the Department of Health  
24 for Scotland, or DHS, and there was a newly formed  
25 Scottish Home Department; is that right?

1 A. Yes.

2 Q. There was also -- and we don't need to concern ourselves  
3 too much, but for completeness -- the Department of  
4 Agriculture for Scotland?

5 A. Yes.

6 Q. So far as responsibilities were concerned, one matter  
7 I noticed -- and perhaps you can confirm that I'm  
8 correct in this -- was that the newly formed Scottish  
9 Home Department, at least at some stage after its  
10 formation, had responsibility for what was described as  
11 juvenile delinquency or child youth offenders and so  
12 forth; would that be correct? Did I pick that up  
13 correctly from your report? I thought I picked that up  
14 somewhere which may be under -- if I can just ...  
15 (Pause).

16 A. Yes, I think you are correct.

17 Q. I have paragraph 128, I am told, which is at page 0014.  
18 I can maybe check that and come back to you tomorrow.  
19 I think it is correct to say.

20 The other matter I was going to perhaps pick up with  
21 you is that, as I understand it from your report, in  
22 1947, I think shortly after the end of World War 2, the  
23 Scottish Home Department assumed responsibility for  
24 homeless children from the Department of Health for  
25 Scotland and the Scottish Education Department; is that

1 correct?

2 A. Yes.

3 Q. You may not be able to help us, but I think  
4 Professor Norrie thought that because the Clyde report  
5 was published around that time -- and the title did deal  
6 with homeless children -- I think Professor Norrie, in  
7 giving evidence to us, believed that that term was used  
8 quite broadly to cover what we might regard as children  
9 in need of care. I don't know if you can help us with  
10 that.

11 A. I'm afraid I can't.

12 Q. At any rate, there was a responsibility for children  
13 that would fall within our terms of reference who might,  
14 because of their situation, be in need of care and  
15 protection and end up in the care of the State?

16 A. Yes.

17 Q. And if they did, there was, at least at central  
18 government, a responsibility for such children and their  
19 care and that, as of 1947, the Scottish Home Department  
20 had some responsibility for these children?

21 A. That seems to be the case, yes.

22 Q. If we turn away from the ministerial responsibility  
23 level to the Civil Service level that supported the  
24 ministers, can I take it -- we can get rather bogged  
25 down with terminology, but there's reference in this

1 period to an individual called or a post called the  
2 Permanent Undersecretary of State. Effectively was that  
3 the head of the Civil Service in Scotland?

4 A. Yes, in Scotland.

5 Q. Then, insofar as the big departments were concerned, the  
6 person in charge was called "the secretary"; was that  
7 a senior civil servant or head of the department?

8 A. It would be a senior civil servant.

9 Q. Someone senior.

10 A. Yes.

11 Q. And within the department -- and I think one of the  
12 examples given was the Scottish Home Department -- there  
13 would be various individuals at the top, top down, going  
14 from Secretary to Deputy Secretary to Undersecretary.  
15 It is all a bit of a mouthful, but I think we get the  
16 idea.

17 Within a department, at that stage, there were  
18 a number of administrative divisions, which I think is  
19 another term we have to get our head round, is it?

20 A. Yes.

21 Q. They were each under what was termed then an Assistant  
22 Secretary. But I take it that an Assistant Secretary  
23 would be a fairly senior civil servant?

24 A. I think an assistant secretary in today's terms would be  
25 a deputy director.

- 1 Q. So it would be quite a high-ranking official?
- 2 A. Yes, it would be a senior civil servant.
- 3 Q. I think we might see that from what is -- if I could
- 4 broadly describe the process by which -- policy
- 5 formulation and implementation I think is the way the
- 6 expression is used in the report. An assistant
- 7 secretary, who would be heading up a division of
- 8 a department, would have -- I think the report indicates
- 9 at that time -- primary responsibility for policy
- 10 formulation in the areas that the department and the
- 11 division were concerned with; is that right?
- 12 A. That is right, yes.
- 13 Q. And indeed responsibility for implementation of matters
- 14 so far as they were -- this sounds like almost
- 15 Sir Humphrey -- so far as the responsibility of the
- 16 particular division?
- 17 A. Yes.
- 18 Q. So it was -- the cake was cut a bit and if your division
- 19 had responsibility for a particular matter, like child
- 20 care, then you would be involved in policy formulation
- 21 and implementation at central government level and you
- 22 would be reporting within the division to the assistant
- 23 secretary?
- 24 A. Yes.
- 25 Q. I think the point is made that the assistant



1 secretary -- and this maybe bears out what you have just  
2 said about the rank or grade -- I don't think there were  
3 grades then perhaps, but the rank could access ministers  
4 directly if the assistant secretary thought it necessary  
5 to do so. So there was a contact directly to ministers?

6 A. There was a clear line of communication to ministers,  
7 yes.

8 Q. To some extent -- to understand the process by which  
9 these matters get dealt with, I think you or the chapter  
10 does say that in this period, at least generally  
11 speaking -- and I appreciate this is a high-level  
12 report -- that if there was some matter of importance,  
13 that a paper for ministers to consider would be first  
14 drafted within one of these divisions that we have been  
15 talking about, usually by someone who was the head of  
16 a branch within the division; yes?

17 A. Yes.

18 Q. And that was again a fairly high-ranking person. That  
19 paper would then be reviewed up the chain by the various  
20 individuals from assistant secretary to Deputy Secretary  
21 to the Secretary and then it would be submitted to  
22 ministers. But if it did have -- as I think it is put,  
23 if it touched on the interests of other departments, if  
24 say it was a matter that would concern the Scottish Home  
25 Department and the Scottish Health Department, the

1 Department of Health, then there would be consultation  
2 with the other department before the matter was put up  
3 to the minister for consideration.

4 A. Yes.

5 Q. Is that the way it worked?

6 A. That is the way it worked. It could take some time for  
7 decisions to be made.

8 Q. It is probably not too different to the way it works  
9 today, is it? Maybe not, maybe I'm assuming too much.

10 A. The structure is broadly similar, but it doesn't work in  
11 quite as formalised a way.

12 Q. We will maybe come to that.

13 I'm conscious of the time and maybe we will not get  
14 to that today, but I don't know how --

15 LADY SMITH: Is that a convenient point?

16 MR PEOPLES: It is probably as convenient as any. I have  
17 a little bit to go, even on chapter 1, which is  
18 fascinating as it is.

19 LADY SMITH: As I think you always appreciated, Ms Beattie,  
20 we will probably need you back tomorrow, so if I could  
21 ask you to be back please in time to resume your  
22 evidence at 10 o'clock tomorrow morning, that would be  
23 very helpful.

24 Otherwise we will adjourn the hearing now until  
25 tomorrow morning. Thank you.

1 (4.00 pm)  
2 (The Inquiry adjourned until 10.00 am  
3 on Wednesday, 7th June 2017)  
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