

1 Friday, 16 November 2018

2 (10.00 am)

3 LADY SMITH: Good morning. Mr Peoples.

4 MR PEOPLES: Good morning, my Lady. The next witness is
5 a witness from Police Scotland, Detective Inspector
6 Des McKenna, who will be making a presentation and then
7 after, if I have any questions based on the report he
8 has provided, I would propose to ask them. But it's
9 just to indicate at this stage the proposed format for
10 that.

11 LADY SMITH: Thank you very much.

12 DI DESMOND MCKENNA (sworn)

13 LADY SMITH: Please sit down and make yourself comfortable.

14 I suspect I don't need to explain to you how
15 important it is to get into the right position for the
16 microphone.

17 A. No problem.

18 LADY SMITH: You're probably an expert at that.

19 Mr Peoples, over to you.

20 Questions from MR PEOPLES

21 MR PEOPLES: Good morning, Detective Inspector McKenna.

22 A. Good morning, Mr Peoples.

23 Q. I have already explained to her Ladyship the plan today
24 is for you to make a presentation in relation to certain
25 information that the inquiry requested of

1 Police Scotland. But before I do that, can I just do
2 some preliminaries and ask you, first of all, to confirm
3 that your current rank is detective inspector --

4 A. That's correct.

5 Q. -- with Police Scotland? And how many years' service
6 do you have?

7 A. 20 years' service.

8 Q. I think that you're currently attached to the specialist
9 crime division of Police Scotland?

10 A. That's correct.

11 Q. In order to provide the presentation today and to assist
12 the inquiry, I think you've been involved in the
13 preparation of what is termed an overview report for the
14 inquiry in relation to investigations into allegations
15 of abuse at establishments run by Quarriers. Is that
16 correct?

17 A. Yes, that's correct.

18 Q. While you're, I think, going to give us the presentation
19 first -- and I'll perhaps leave you to do that without
20 interruption, if I can -- can I say at this stage, for
21 the benefit of the transcript, that there is also what's
22 called an overview report that has been prepared. Can
23 I just give the number of that report at this stage,
24 which is PSS.001.003.0016. I think that some of the
25 material that you'll be including in your presentation

1 is contained in that report. But the purpose is to
2 perhaps highlight --

3 A. It is indeed, yes.

4 Q. -- what is in the report itself. I may at the end ask
5 you some questions, but it will really depend very much
6 on whether it's necessary to do so.

7 If I could basically hand over to you at this stage.

8 A. As you can see, the presentation is going to cover
9 police investigations into the abuse of children within
10 establishments operated by Quarriers. So that's
11 Quarrier's Village at Bridge of Weir, Overbridge in
12 Glasgow, the Seafield School at Ardrossan, and both the
13 Southannan and Merton House facilities at Largs.

14 Hopefully the presentation will provide with you
15 a narrative about the police investigations. I'm going
16 to highlight some key facts and figures for which
17 a series of those specific questions were provided by
18 yourselves at the Scottish Child Abuse Inquiry and I'll
19 try and provide some details of a HOLMES system, and
20 I'll explain that further for you.

21 In April 2016, Police Scotland established a search,
22 locate and a back record conversion unit -- we've got
23 acronyms for everything, so that's SLBRC -- and that's
24 where I'm currently based now. That was to ensure that
25 as an organisation we met the statutory obligation under

1 the Inquiries Act 2005. So we're responsible for the
2 identification, retrieval, assessment and cataloguing of
3 all hard copy public protection records which meet the
4 terms of reference for the Scottish Child Abuse Inquiry.

5 So in response to the request from yourselves,
6 Police Scotland had identified relevant material from
7 the following. So there's 45 standalone hard copy
8 investigations that were recovered. The statistical
9 information contained within this presentation will
10 relate to all the police investigations conducted prior
11 to April 2016. So the 45 investigations relate to
12 17 reports received dating from 1997 for Seafield,
13 Merton House and Southannan, and 28 hard copy reports
14 related to Quarriers, Bridge of Weir, and Overbridge,
15 and that dates from the first one from 1994 that we've
16 recovered.

17 You'll see I'm going to speak about the electronic
18 system, which was Operation Orbona, which is a HOLMES
19 account. I'll explain that just a little bit further
20 during the presentation also.

21 The investigations that led up to the creation of
22 Orbona were -- in spring 1998, officers from Strathclyde
23 Police Female and Child Unit at Greenock became aware of
24 complaints in relation to non-recent physical and sexual
25 abuse by a former house parent at Quarrier's Village,

1 Bridge of Weir.

2 An investigation ensued, which resulted in five
3 former female residents making complaints of being
4 abused by a male house parent between 1961 and 1968.

5 As a result of those enquiries, the house parent was
6 reported to the procurator fiscal and he was charged
7 with a number of sexual offences against those
8 residents.

9 In 1999, a former male resident of Quarriers
10 disclosed that he had been the subject of sexual abuse,
11 also by his former house parent, and that had occurred
12 between 1969 to 1977 at Quarrier's Village.

13 Again, enquiries were undertaken and that was at
14 Greenock Female and Child Unit officers. Several
15 witnesses were interviewed in regard to that and as
16 a result of those enquiries he was reported to the
17 procurator fiscal and charged with a number of sexual
18 offences against the ex-residents.

19 In that same year, in 1999, there were additional
20 reports received by Strathclyde Police and further
21 investigations carried out -- and again it was another
22 former house parent of sexually abusing children in his
23 care that was between 1966 and 1974.

24 During the investigation, a number of other further
25 reports of sexual and physical abuse involving other

1 members of staff and other children at
2 Quarrier's Village were uncovered by the police, and the
3 subsequent enquiries unearthed a number of additional
4 potential victims, together with multiple accused.

5 So in January 2002, Strathclyde Police,
6 acknowledging the potential scale and the complexity of
7 the reports, decided that a major investigation should
8 be established and it would be managed using the
9 Home Office Large Major Enquiries System, which is the
10 HOLMES system.

11 LADY SMITH: You have mentioned Greenock a few times, but do
12 I take it from your summary that it wasn't always
13 Greenock that was getting the reports from members of
14 the public?

15 A. That's correct, my Lady. I'm trying to explain the
16 lead-up to why the decision was made to put it on the
17 Home Office Large Major Enquiries System. But you have
18 to remember that if a report is made of abuse, it would
19 tend to go to the area with the sheriffdom jurisdiction
20 to carry out the investigation. So, yes, I'm
21 concentrating on the Quarrier's Village Bridge of Weir
22 for the HOLMES part, element of it.

23 LADY SMITH: Thank you.

24 A. No problem.

25 So in 18 February 2002, the HOLMES incident room was

1 established and that was established at Greenock Police
2 Office and allocated the unique operation name of
3 Operation Orbona. The investigation commenced in
4 February 2002 and that concluded in August 2004.

5 As you will appreciate, there are further reports
6 received after the conclusion of Operation Orbona
7 regarding all the institutions run by Quarriers and, as
8 the inquiry will be aware, there was the "Time to be
9 Heard" report in 2009 and that prompted further
10 reporting of abuse to the police.

11 But if I move on, I'll provide some further
12 information in relation to the HOLMES account during the
13 presentation. I think, [REDACTED] could I go back one on
14 your slide, please?

15 HOLMES is the Home Office Large Major Enquiries
16 System. It's an investigation management system --

17 LADY SMITH: Could you hang on one minute while we wait for
18 the slide to come up.

19 MR PEOPLES: While it's coming up, you're going to tell us
20 about HOLMES, but can I just -- I don't think it's
21 mentioned in your report. It was created in 1985. Was
22 that in response to certain concerns about the way in
23 which the case of Peter Sutcliffe had been investigated
24 and the need for perhaps a more coordinated system of
25 enquiries?

1 A. That is the background to the Home Office system, yes.

2 As you can see the Home Office Large Major Enquiries
3 System is an investigation management system and that's
4 created to assist law enforcement organisations,
5 including the police, obviously, in the management of
6 large scale and complex investigations into serious
7 crime.

8 You'll see it provides a senior investigating
9 officer with an accurate and searchable record of all
10 the information relating to that investigation. The
11 senior investigating officer is a term of the police,
12 SIO, it's the leader of the team, he provides the
13 investigative focus, coordinates and motivates the team
14 and manages a whole host of specialist to maximum
15 effect. Its primary purpose is to provide and
16 facilitate information retrieval. I am not an expert on
17 HOLMES, I'm not HOLMES trained. I know enough to
18 navigate myself around the system because of a six-week
19 training course, but hopefully within the presentation
20 I'll be able to give you a basic idea of its functions
21 and some terminology within it that might be useful for
22 yourselves.

23 LADY SMITH: I suppose that the high level point you're
24 trying to make to me is that you realised you'd got to
25 the stage that it was a major investigation and you

1 needed to use the HOLMES system to move forward with
2 your investigations, it being a system having been
3 established by the Home Office in the wake of the
4 Peter Sutcliffe case and wondering how things could be
5 done better in the future?

6 A. That's correct.

7 MR PEOPLES: Perhaps before you go on, just on that, would
8 I be right in thinking that, so far as your knowledge in
9 this matter goes, would this have been the first time
10 that the HOLMES system had been used to deal with
11 allegations of abuse, whether in a care setting or any
12 other setting?

13 A. It was the first time in Strathclyde Police history,
14 yes.

15 If we look at the HOLMES terminology, you'll hear me
16 speak about nominals and basically that's a person who
17 comes to notice during an enquiry, that includes all
18 your complainers, witnesses, police officers -- in this
19 case it will be staff members, residents -- and those
20 nominals can get broken down to either be "identified"
21 where we know either the surname, the last or family
22 name; or we'll classify them as "unknowns", where we'll
23 only know their forename, and that could be a personal
24 forename or it could be their nickname; and there will
25 be "unidentified", but it's only a description, however

1 vague that description would be, they'd be classed as an
2 unidentified.

3 You'll also hear me speak about actions. And
4 actions within the HOLMES system is basically a written
5 instruction to carry out a task in connection with
6 a particular line of enquiry and they are managed within
7 the major incident room using a series of cues.

8 Those cues come into filed actions which basically
9 have been investigated to the satisfaction of the senior
10 investigating officer. They can be referred actions
11 where an agreement has been reached that they are not
12 going to be pursued in accordance with SIO policy, and
13 they get allocated actions, and that's actions that are
14 outwith -- that officers can make further enquiries on.

15 I will also speak about some documents and a wide
16 range of documents within a major incident room. There
17 will be a statement -- that's obviously taken from any
18 person who has information relevant to the
19 investigation. There will be messages that will come
20 in, and that will be information that comes in or goes
21 out of the incident room either by telephone, verbal
22 report or officer's information. All that will be
23 recorded as a message.

24 Electronic transmission, that includes incoming and
25 outgoing -- I've put facsimiles in there and I know we

1 don't really use them very often now, but that is what
2 it is therefore, and email messages. And there will be
3 "other documents" there which relates to any other
4 document that doesn't fit those categories -- and we'll
5 speak about a log of events, press releases, et cetera.

6 As you can see, this is the following summary of
7 information that's been held on the Operation Orbona
8 HOLMES account.

9 So there was 1,336 nominals created, 1,005 actions,
10 805 documents -- that's broken down into statements,
11 other documents, transmissions and messages -- and 283
12 productions used during the investigation.

13 I'll look at the actions first of all --

14 MR PEOPLES: In terms of the productions and the numbers you
15 mentioned, would these include documents such as
16 organisational records, including children's files?
17 They might in this type of case be one of the largest
18 type of production that would be obtained?

19 A. That's correct, yes.

20 LADY SMITH: So we're talking about documents that are
21 likely to find their way into the list of productions
22 ultimately attached to an indictment?

23 A. Yes, that's correct, my Lady.

24 MR PEOPLES: I might just stand at this point in case I have
25 any other interruptions because it may make sense to

1 interrupt occasionally, if that's not a problem for your
2 presentation, rather than coming back to these points at
3 the end.

4 A. No problem.

5 If I speak about the actions first of all. We can
6 see there's a total of 1,005 actions that have been
7 raised during Operation Orbona and we have broken them
8 down into the following categories -- again, apologies
9 for the acronyms.

10 A TST is a "trace and obtain a statement" and there
11 were 671 of those within the enquiry. An OBT, that's an
12 "obtain", so that could be medical records, the staff
13 employment history, lists of residents within
14 a particular cottage, a resident's Quarriers files, so
15 there was 179 actions of that manner.

16 Miscellaneous actions, there were 64. And the
17 miscellaneous actions can be along the lines of the
18 instructions to the police as well, so to submit a crime
19 report, liaise with the Criminal Injuries Compensation
20 Authority, or lodge certain detention forms.

21 There 57 RIs, which is classed as a re-interview.
22 That would be to clarify certain aspects of someone's
23 previous statements, or if there was new information
24 came in after a person had given a statement, they would
25 ask the officers to go back out and speak to them.

1 And TIE is "trace interview and eliminate" and there
2 are 34 of those --

3 LADY SMITH: I have one request: I'm seeing a running
4 transcript coming up and I think it might be helpful if
5 you could possibly slow down a little.

6 A. Not a problem, my Lady.

7 MR PEOPLES: Yes, take your time. It's quite hard probably
8 to digest all of this in a short space of time.
9 If we pause there, just help me with this. What's the
10 difference between a TST and a TIE? Because it looks as
11 if, does one simply -- they both seem to involve an
12 interview and that suggests they would both result in
13 a statement of some sort. So what's the difference
14 between the two categories?

15 A. TIEs are not necessarily suspects, they may in fact be
16 witnesses, in the same way as the TSTs. It'll all
17 depend of what stage of an enquiry the SIO would select
18 that someone is a person of interest who would move from
19 that witness to a suspect person.

20 Q. I suppose TST would be something that would simply apply
21 to taking a statement from anyone who might have
22 relevant information, it could be a complainer who's
23 initially contacted the police or someone that the
24 police have been given the name of that may have
25 relevant knowledge.

1 A. Yes.

2 Q. It could be someone that the police want to assist with
3 their enquiries, who may later become a suspect or an
4 accused, depending on the result of those enquiries --

5 A. That's correct.

6 Q. -- so there's a range of people that would be covered by
7 the TST instruction.

8 But when it comes to trace, interview and eliminate,
9 is there an implication, that based on the information
10 then available, it may be that they can be eliminated
11 fairly quickly from the enquiry because of the
12 information that's already held?

13 A. Yes.

14 Q. Is that a possibility?

15 A. Yes, that's fair, yes.

16 Q. The only other matter I would ask about at this stage is
17 the fact that there's an action to trace, obtain
18 a statement and there are 671 of these. It doesn't
19 follow that there would be 671 statements because,
20 of course, as you will tell us in due course, there were
21 less statements than 671 at the end of the day.

22 A. That's correct, yes.

23 Q. Okay.

24 A. You'll see there I have put up the final result of those
25 actions. Those 1,005 actions that we spoke about, 723

1 of those are classed as filed, and a filed action is
2 investigated to the satisfaction of the SIO.

3 There are 272 referred actions. That's referred
4 actions where there has been an agreement that has been
5 reached that they are not to be pursued any further in
6 accordance with SIO policy.

7 Allocated, the final result being 10, those
8 allocated actions, that tends to be regarding officers'
9 submissions with regard to the police statement to the
10 clarify their involvement in the enquiry.

11 So that is the final status within the HOLMES
12 account with regard to the actions.

13 Q. Can I ask you as well, while you're on this: this is all
14 on the system and you also say that, of course, there
15 were paper records and investigations before HOLMES was
16 set up.

17 A. That's correct.

18 Q. And to some extent, HOLMES was a continuation of an
19 investigation that may have really started in 1998 --

20 A. That's correct.

21 Q. -- the first report that you've mentioned earlier.

22 Insofar as action and enquiries were taken between 1998
23 and the establishment of the HOLMES incident room in
24 February 2002, would all of that material be transferred
25 on to the HOLMES account or not?

- 1 A. Not necessarily.
- 2 Q. Why not?
- 3 A. Some of it would be back record converted, so some of
4 the statements that they'd actually went and took, but
5 they wouldn't retrospectively raise an action to say,
6 "Go and take a statement from that person". The
7 material content, actually the statements, et cetera,
8 would have been typed on to the actual HOLMES system.
9 So you will probably find in the material we've already
10 provided to yourselves is hard copy written statements
11 and a duplicate type statement from the HOLMES because
12 it has been back record converted.
- 13 Q. So the substance of the enquiries in the form of
14 statements by nominals would have been transferred to
15 HOLMES?
- 16 A. The vast majority would have been, yes.
- 17 Q. So therefore, within the figure of 1,336 of the nominals
18 that you told us about earlier, would that include
19 nominals in the period from 1998 to 2002?
- 20 A. The investigations that I spoke about, yes, they are
21 included on the HOLMES system.
- 22 Q. I follow.
- 23 A. As you can see, I have broken down referred actions.
24 There's 125 there, actions that have been referred, and
25 that's following consultation with the

1 procurator fiscal. There are various different reasons
2 there --

3 LADY SMITH: For those who aren't familiar with the system,
4 that's referral by Police Scotland to the
5 procurator fiscal, is it?

6 A. No. Remember I said the referred action, my Lady.
7 A referred action is where an agreement has been reached
8 that there's not going to be pursued in accordance with
9 the SIO's policy, and that's in liaison with the
10 procurator fiscal in this case.

11 LADY SMITH: I'm with you.

12 MR PEOPLES: Is the more general expression that's used --
13 and it's maybe not one that we're very familiar with in
14 order parlance, as it were, but it's used as part of the
15 system, a referred action, it would follow some kind of
16 discussion, but it might be with the SIO or it might be
17 with the fiscal, it might be with both?

18 A. Yes, that's correct.

19 Q. And then some decision is taken and it's logged and
20 you're about to tell us that there can be a variety of
21 reasons why it's referred.

22 A. Yes.

23 Q. And I think you give us some general examples based on
24 indeed this very investigation; is that right?

25 A. I do, yes. If you remember I said an action can be

1 filed, referred or allocated. So this is the referred
2 actions, the ones I'm going to speak about, and that is
3 where an agreement has been reached.

4 So you have got obviously -- I have put up some
5 bullet points there with an instruction not to make any
6 further enquiries into complaints where the suspects --
7 where there's a sufficiency of evidence or where a case
8 has already been submitted.

9 There's a directive given by the Crown regarding
10 physical assault.

11 There's a non-engaging witness or we're unable to
12 trace that person.

13 There might be an insufficiency of evidence, so
14 we would submit what we call a subject report or advice
15 and direction report.

16 You may find some of the witnesses and/or the
17 suspects are found to be either dead or suffering from
18 ill health.

19 The miscellaneous ones is where we go and obtain
20 records and those records are no longer required, so
21 that's why that action would be referred.

22 Q. On the examples you gave, because I suppose we'll hear
23 about the number of cases that were reported or were the
24 subject of some sort of report to the Crown in your
25 presentation, but we were obviously dealing, and you'll

1 deal with this I think more specifically later in your
2 presentation, deal with a situation where this is
3 non-recent abuse in many cases going back many decades
4 in some cases --

5 A. Indeed.

6 Q. -- and perhaps involving a person who was then a young
7 child who is making allegations against a much older
8 person.

9 A. That's correct.

10 Q. And I take it from that that certainly a number of the
11 individuals who would have been mentioned in the reports
12 would no longer have been alive at the date the report
13 was made.

14 A. That's correct. I'll sort of break that down a bit
15 further when we get to that part, yes.

16 Further referred actions. Again, this is where it's
17 not been required on the instruction of the senior
18 investigating officer. So there were 147. Again, some
19 of the reasons behind that was there were no further
20 lines of investigation, the insufficiency of evidence
21 in the cases submitted.

22 Insufficiency of evidence. So the subject report
23 being submitted again. Very much similar, a witness or
24 a suspect being either dead or ill health. Some of the
25 complainers wished no further contact with the police.

1 A cottage number was no longer considered part of
2 the SIO's investigative strategy because there wasn't
3 any reports of abuse coming out of that particular
4 cottage.

5 Again, a lot we were unable to trace people.

6 And again, miscellaneous, where there was no
7 complaints or we didn't need to go and obtain medical
8 histories --

9 LADY SMITH: Just before you leave that category, could you
10 just spell out for anyone who doesn't know what
11 insufficiency of evidence means.

12 A. Yes. I'll sort of cover this later on as well, my Lady,
13 but a reporting mechanism that we have to the Crown
14 Office and Procurator Fiscal Service, we put in what we
15 call a standard police report. That's where the police
16 felt there was a sufficiency of evidence to charge
17 someone and we place a report to the Crown
18 Office/procurator fiscal to make a decision to proceed
19 with that.

20 If we feel we've got an insufficiency of evidence,
21 so we've not got any corroboration.

22 LADY SMITH: That is what I'd invite you to explain.

23 I could give a lecture on corroboration --

24 A. Please do!

25 LADY SMITH: -- but I don't think it is for me to do it.

1 Just from the police perspective so people do
2 understand.

3 A. Obviously when investigating crimes, if I have only got
4 one witness or one person saying that something has
5 happened, I need to corroborate, I need another source
6 of evidence, and for me to have sufficiency to present
7 an SPR.

8 If I don't have that, I would normally still report
9 the circumstances by manner of an advice and direction
10 or a subject report to a Crown Office and
11 Procurator Fiscal Service, explaining what we've done so
12 far.

13 MR PEOPLES: Because if you simply have a single source at
14 that stage, you might still seek advice and direction
15 because there may be other lines of enquiry that the
16 Crown would want you to pursue to consider whether there
17 might be corroboration --

18 A. That's correct.

19 Q. -- to support what has been reported; is that right?

20 A. Indeed, sir, yes.

21 Q. And maybe again, at this stage, before I get into the
22 SPR, I can ask you this: we all think about crimes and
23 these days there's all these sophisticated techniques,
24 forensic techniques, and therefore they can often be the
25 source of corroboration of a complainer's or a person

1 reporting a crime, but in the case of historical or
2 non-recent abuse, I think it's fair to say, is it not,
3 that generally speaking, what you're faced with is
4 simply one person telling you that something happened
5 and, in the case of sexual abuse, something that may
6 have happened when only the alleged abuser was present,
7 and therefore, you have to then look to see if there's
8 some way of finding corroboration for that report.

9 Is that what your task might be?

10 A. Yes, that is correct.

11 Q. And there's a special rule that is used in cases of that
12 kind called Moorov corroboration, which means that you
13 don't have necessarily a witness, another witness or
14 other source to that particular report, but you have
15 a similar report about the same accused making similar
16 allegations around the same time and the same place or
17 under the same sort of circumstances. And the law does
18 allow these two sources to be put together, if you like,
19 if they're accepted by a jury, to corroborate each
20 other --

21 A. That's correct.

22 Q. -- without trying to --

23 A. Yes.

24 LADY SMITH: Well done.

25 MR PEOPLES: I hope I have done it without trying to

1 overcomplicate it. That's really, in a lot of these
2 cases, the only way in which you'd find corroboration,
3 particularly of sexual abuse, if it happens in private.

4 A. Yes.

5 Q. It might be different in the case of physical abuse
6 where, if it was done in the presence of other children
7 or other adults, you might be able to get people who
8 remember the occasion because of the nature of what has
9 been alleged, but in the case of sexual abuse that does
10 present its own difficulties, particularly if it was
11 something that happened many years before.

12 A. Indeed it does, and you'll see the Moorov doctrine was
13 applied.

14 LADY SMITH: Moorov dates back to a case where a man whose
15 surname was Moorov in Glasgow was sexually assaulting
16 young women, one by one, alone, in the back of his
17 draper's shop.

18 MR PEOPLES: Sorry, I had one other question before we went
19 on, if I may, detective inspector. You've got
20 a category there of a witness who wishes no further
21 contact with the police or doesn't respond to contact.
22 Am I right in thinking that in the course of this
23 investigation, as may happen in any other investigation,
24 people will sometimes give information to the police
25 which may disclose what, on the face of it, is

- 1 a criminal offence, but they may not wish to make
2 a formal complaint?
- 3 A. Yes.
- 4 Q. And if they don't, and don't want to effectively
5 participate in a criminal investigation that may lead to
6 criminal prosecution, really that presents its own
7 difficulty because they're unwilling to make it a police
8 matter or a criminal matter?
- 9 A. That's correct, yes.
- 10 Q. And that something happens?
- 11 A. Indeed.
- 12 Q. And I think it happened in the case of some people in
13 this investigation; is that right?
- 14 A. It did, yes.
- 15 Q. They would tell you things but say, "I don't want to
16 turn this into a complaint, I don't want to be a witness
17 to anything, I don't want to be the Moorov
18 corroboration", you weren't involved, but you have seen
19 examples of that; is that correct?
- 20 A. Yes, you've got also other witnesses who said they
21 observed someone else being abused and when we speak to
22 that person, they say, "No, it didn't happen to me", a
23 third party report.
- 24 Q. Okay. Sorry, I rather interrupted the next part of your
25 report.

1 A. We've broken down the statements that are contained and
2 I have put all the statements, it's not just the ones
3 within the HOLMES account, it's all the paper
4 statements. So from left to right you'll see that,
5 statements are in blue and the individuals are in red.
6 So there is 522 statements from 415 individuals.

7 From the Operation Orbona account, there were
8 375 statements obtained from 270 people.
9 Quarrier's Village and Overbridge, the paper
10 statements -- that's not the HOLMES account -- there are
11 95 statements from 95 people. And Seafield, Merton and
12 Southannan, we've had to group them together, there's
13 52 statements from 50 individuals.

14 Q. Just on that, one of the places you have mentioned
15 in the report is not one that I think we've actually
16 mentioned directly in the course of this inquiry so far,
17 Merton. Can you tell us what exactly Merton was?

18 A. Merton House in Largs, I believe, was a Quarriers
19 institution -- I don't have exactly what it is.

20 LADY SMITH: I think you mentioned it earlier in the list
21 alongside Seafield and Southannan.

22 MR PEOPLES: Can I just be clear, it's not part of
23 Southannan and Seafield because they had certain units
24 which were perhaps designed for independent living, but
25 were attached to the units. But I just want to

- 1 establish: Merton is a different establishment?
- 2 A. It's a Quarriers establishment. Oh yes, I've grouped
3 them together purely -- what we found was a lot of the
4 reporting from these institutions, there was
5 cross-referrals, as in they had been in different
6 locations, and likewise you will find this with
7 Quarrier's Village and Overbridge, when I go on to break
8 down the statements a bit further for you. They had
9 lots of -- somebody came forward and gave a statement
10 saying they were abused within Quarrier's Village Bridge
11 of Weir, but they also went to Quarriers Overbridge, and
12 I can't really count that as two statements from one
13 person.
- 14 Q. I think we know in fact that at one stage in its history
15 Overbridge may have been used as a stepping stone to
16 leaving care, so older children would move from
17 Quarrier's Village to Overbridge in Drumbreck Road in
18 Glasgow, and then into the wider world.
- 19 A. Yes.
- 20 Q. No doubt some of the individuals that gave statements
21 may have been in that situation.
- 22 But we also know, I think, in the course of its
23 history Quarriers established a hostel within
24 Quarrier's Village, maybe around the time of its
25 centenary.

1 A. Yes.

2 Q. That served a similar purpose where older children,
3 maybe around 14, 15, 16, would go to the hostel in
4 preparation for leaving Quarriers' care.

5 A. Yes.

6 Q. Is that in accordance with your understanding?

7 A. That's certainly the information I've read.

8 Q. And the other thing that we've been told is that
9 Southannan was established around 1978 or 1979 as
10 a special residential school and it was replaced by
11 Seafield in about 1996, when effectively the school
12 moved to a new location in Ayrshire. One had been in
13 Ardrossan and one had been in Fairlie. They were both
14 in Ayrshire and I think you have told us that Merton was
15 in Largs.

16 A. Yes.

17 Q. So from that, we can deduce that there were three
18 different locations.

19 A. They are certainly three different locations but I've
20 grouped them together on this, but I break them down a
21 bit further when we speak about the actual complaint.

22 I know this graph might look rather confusing, but
23 to try and break it down for you. If we work from the
24 bottom to the top, the bottoms ones -- so the
25 individuals are in red and the statements are in blue.

1 So there very first one we see is Operation Orbona.
2 So on the HOLMES account, there were 375 statements from
3 270 people. That breaks down to 196 statements from
4 153 residents. There were 61 police statements provided
5 by 32 officers. Moving up, it was 72 statements
6 provided by 42 members of staff. And 46 statements
7 provided by 43 other persons. So that was including
8 social workers, medical personnel and persons not
9 employed in Quarriers. So that's the first group of
10 graphs for Operation Orbona.

11 Q. If I just stop you there, just so I'm absolutely clear:
12 on the HOLMES system, there are 375 statements relating
13 to Quarrier's Village and Overbridge, but these were
14 statements that were provided by 270 individuals?

15 A. Yes.

16 Q. Some of whom therefore provided more than one statement?

17 A. That's correct.

18 Q. And of the 375 statements, the majority, which would be
19 about 268, were taken from former residents or were
20 statements by former residents and statements by either
21 former or current staff of Quarriers; is that right?

22 A. That's correct.

23 Q. I think the individuals that provided those 268
24 statements would total 195 --

25 A. Your arithmetic is spot on, Mr Peoples.

1 Q. -- of whom 153 were former residents and 42 either
2 former or current staff. Am I right in thinking that
3 the bulk of the staff statements, if you like, would be
4 from former staff --

5 A. Yes.

6 Q. -- although there were some current staff for obvious
7 reasons --

8 A. Records.

9 Q. -- who would provided statements, such as people who
10 held records or provided records to the police for
11 possible evidential purposes?

12 A. That's correct.

13 So if I move into the middle graph. That is the
14 Quarrier's Village and Overbridge. You'll see there
15 95 statements from 95 people. So 32 resident
16 statements -- and this is good because they match up
17 numbers. So there are 32 resident statements, 27 police
18 statements, 13 statements from staff members, and again
19 23 statements provided by other persons, similar to last
20 time, that's your social workers or medical
21 professionals.

22 Q. I did ask you earlier whether statements taken prior to
23 the setting up of the incident room in February 2002,
24 whether statements were transferred into the Orbona
25 system.

1 A. Bear in mind, Mr Peoples, these are ones that are not on
2 the HOLMES account I'm speaking about.

3 Q. So these are separate statements?

4 A. Yes. So anything that came in after 2004, once the
5 Operation Orbona concluded, would not go on to that
6 computer system, that HOLMES system would be closed. So
7 these are statements of other investigations that have
8 been carried out, remember the 45 investigations
9 I explained at the start -- 28 of them for Quarriers,
10 Overbridge, Quarriers Bridge of Weir and Overbridge. So
11 these are the paperwork for those investigations, either
12 that pre-dated it, that was not placed on to
13 Operation Orbona.

14 Q. Or post-dated it?

15 A. Or post-dated it, yes.

16 Q. But the individuals who provided those statements, the
17 95 people, including the 32 former residents and the
18 13 staff who were either former or current staff, would
19 they be the same or different persons to the 270?

20 A. I have only counted anybody once.

21 Q. So they are other individuals?

22 A. Yes.

23 Q. So we can take it that in relation to Quarrier's Village
24 and Overbridge that there were 365 individuals or
25 thereabouts who provided statements?

1 A. I'll break that down on the next page for you when I get
2 to my complainers. There's 196 individuals in total.

3 Q. Okay. I'll let you proceed.

4 A. On the very top graph there if we look at Seafield,
5 Merton House and Southannan. 52 statements from
6 50 individuals. So that's 19 resident statements from
7 18 residents. Two police officers each provided an
8 individual statement. Eight members of staff each
9 provided an individual statement. And there's
10 22 statements provided by 22 other people.

11 Q. I suppose, looking at these figures for statements, and
12 looking at the persons who provided them, leaving aside
13 police witnesses who were involved in the inquiry, and
14 some professionals perhaps who were asked to provide
15 statements, the bulk of the statements come from former
16 residents or former staff?

17 A. Yes.

18 Q. And I suppose it's basically old-fashioned policing
19 because you don't have the forensic evidence to examine
20 and all the modern techniques to use because there isn't
21 the forensic evidence available to provide support for
22 accounts. So you have to go and speak to people and say
23 to them, "We have a report, we understand you may have
24 a connection with the individuals who have reported
25 this"?

- 1 A. Yes.
- 2 Q. "You may have stayed in the same place as they did when
3 this matter has allegedly occurred", and you will speak
4 to them and find out their state of knowledge?
- 5 A. That's correct.
- 6 Q. And you might even ask them, "Did anything happen to
7 you"?
- 8 A. Bear in mind all of all the statements the police have
9 taken, not every one of those residents will be an
10 complainer. They will maybe provide evidence to
11 corroborate someone else's complaint, maybe, as we said,
12 they do not wish to make a complaint, but I have
13 recorded if they've given a disclosure of any kind that
14 that would be a complaint, irrespective of whether they
15 wanted to pursue that complaint.
- 16 Q. I suppose the other thing you're interested in -- and
17 we'll no doubt find out about this in due course -- is
18 the state of knowledge of those that were caring for the
19 children and what they can help -- what knowledge they
20 can impart, whether they can shed any light whether they
21 were aware either directly or in some other way about
22 abuse that might have taken place --
- 23 A. Yes.
- 24 Q. -- that was relevant to your enquiry?
- 25 A. Yes, I'll cover that a bit later on for you.

1 So this is the complainers. Across all the
2 institutions, all the Quarriers institutions, we've
3 identified that there were 196 people who we considered
4 to make a complaint across the Quarriers institutions,
5 and I have broken them down into each of the individual
6 ones.

7 So for Quarrier's Village, Bridge of Weir, there are
8 164 complainers identified. The age of complainers
9 at the time of the abuse committed was age 2 to 17, and
10 that was for both sexual and physical abuse.

11 At Overbridge, there were 14 complainers identified
12 and the age range for the complainers at that time for
13 physical abuse was 5 to 17 years of age and for sexual
14 abuse was 4 to 15 years of age.

15 For Seafield, there were 13 complainers identified,
16 and the complainers' age ranged from 7 to 17 at the time
17 of the abuse and that was for both sexual abuse and
18 physical abuse.

19 Merton House, three complainers identified. The age
20 range of the complainers at the time of the sexual abuse
21 there was 11 to 12 years of age.

22 In Southannan, two complainers identified, and the
23 age of the complainers ranged from 8 to 13, and that was
24 at the time of the abuse and that was for both sexual
25 abuse and physical abuse.

1 Q. From those figures, there are 196 complainers in all,
2 but the vast majority, 164, are complaining about sexual
3 abuse, physical abuse, or both, at Quarrier's Village?

4 A. That's correct.

5 Q. And I think you will tell us later on what periods of
6 time those complaints related to, and we'll come to
7 that.

8 A. I do indeed. So we've broken down the complainers --

9 Q. Sorry, before you go on, there was another question
10 I wanted to ask you at this stage.

11 I think it's correct to say that while there wasn't
12 an exact equivalence, the complainers were both male and
13 female in the 196 and I think that maybe there were
14 slightly more female complainers -- I reckon there's
15 just over 100 of them -- and around about 90 of the
16 complainers were male. I'm not sure that my figures are
17 precise.

18 A. I will show you, I've got a slide --

19 Q. That's fine, but it was just to show that there's not
20 a preponderance of one sex rather than the other. There
21 are female complainers and male complainers in that
22 group?

23 A. There were, yes.

24 Q. And indeed, for every decade --

25 A. Yes.

1 Q. -- that you are going to --

2 A. Indeed there were.

3 So we've broken them down to complainers by decade.
4 It relates to the decade that the offending commenced,
5 so it may span more than one decade, so we've calculated
6 this from when the abuse commenced. So working from
7 left to right, it starts off at the 1930s, all the way
8 up to 2010s.

9 And you can see for the 1930s there was one, for the
10 1940s, 13 complaints. 1950s, 20. 1960s, 77. 1970s,
11 63. 1980s, seven. 1990s, three. 2000s, 11 complaints.
12 And 2010s, one. That's your 196 complainers.

13 Q. So we know that Quarrier's Village in its traditional
14 way was being wound down in the 1980s. And indeed, by,
15 I think, 1985 there were very few cottages still
16 operational and I think we had evidence that there were
17 about 20 children in the mid-80s and indeed, by 1992,
18 there were only eight children in residence in two
19 cottages.

20 But the bar chart that you're showing shows that the
21 vast majority of the complainers that were complaining
22 about abuse taking place in the 1960s and 1970s, with
23 a substantial number in the 1950s also, and maybe less
24 so for other decades?

25 A. Yes, that's correct.

1 Q. There's quite a large group in the 1960s and 1970s.
2 I think that's 140 in total for the 1960s and 1970s, and
3 they were complaining of a variety of forms of abuse,
4 sexual, physical or indeed both.

5 A. Yes, in the next slide I have broken it down further.

6 The physical abuse is identified in yellow, the
7 sexual abuse in red and the physical and sexual abuse is
8 the blue colour.

9 Again, in the 1930s, we had one male complaining of
10 physical abuse. If you look at the male victims in the
11 1940s, one of physical, three of sexual, one for
12 physical and sexual abuse. And eight females
13 complaining of physical abuse in the 1940s.

14 In the 1950s, there are four males complaining of
15 sexual abuse, three of physical and sexual. With
16 females, eight females complaining of physical abuse
17 only, two for sexual abuse, and three for physical and
18 sexual abuse.

19 1960s. Male complainers, 10 for physical abuse,
20 18 for sexual abuse and four for physical and sexual.
21 And females, 15 complaining of physical abuse, 19
22 complaining of sexual abuse, and 11 of physical and
23 sexual abuse.

24 1970s. Males complaining of physical abuse, there
25 were 13. Eight complaining of sexual abuse and five of

1 physical and sexual abuse. Females complaining in the
2 1970s, three for sexual abuse, 20 complaints of sexual
3 abuse, and 14 for physical and sexual abuse.

4 In the 1980s, there are four male complaints of
5 sexual abuse and one for physical and sexual. And two
6 females for sexual abuse.

7 In the 1990s, males, two complaints of sexual abuse
8 and one female complained of sexual abuse.

9 In the 2000s, there were five males complaining of
10 physical abuse, four for sexual, and two females for
11 sexual abuse.

12 For the 2010s onwards, this decade, was one male
13 complaining of physical abuse.

14 Q. I think just on that last statistic, the period you're
15 dealing with is from 1 January 2010 to 1 April 2016,
16 which is, I think as you told us, your cut-off point --

17 A. Yes.

18 Q. -- for operational reasons, if I could put it that way?

19 A. That's correct.

20 Q. I don't want to refer to the report, but just for the
21 benefit of those who have the report that we've
22 mentioned, this information is on the bar chart, which
23 is an appendix to the report, and it's on your slide.
24 But this information that you've just recounted can be
25 found in response to an answer to question 7 in the

1 report, which breaks down by decade the complainers and
2 the type of abuse they're complaining of from the 1930s
3 right through to 2016.

4 I will just give the reference -- I don't want it to
5 be brought up but just for the benefit at this stage --
6 this information can be found in the report at
7 PSS.001.003.0032 through to 0034.

8 So what you have just read out and taken from the
9 bar chart is also recorded in answer to question 17
10 in the report, the overview report that we referred to
11 this morning; is that correct?

12 A. It is, sir, yes.

13 So we move forward and speak about individuals
14 accused of abuse. To date, the assessment has
15 identified 183 nominals who have been accused of abuse.
16 Within Quarrier's Village, that's 159. I have broken
17 that down a bit further as well, that 159. So for 97 of
18 those, we had a full name for them. For 37, there was
19 a surname only. 11 of them had a forename. 3 had
20 a nickname. Two were unknown residents. Six unknown
21 members of staff and three were unknown externals.

22 Overbridge, Southannan and Seafield, all of the
23 nominals located at those locations were identified.
24 There were six at Overbridge, four at Southannan, and 14
25 at Seafield School and Merton House.

1 Q. Again, which would perhaps be expected because of the
2 number of complainers that were complaining about
3 Quarrier's Village, the vast majority of nominals,
4 in the sense of those who were accused of some form of
5 abuse, the vast majority would be persons who abused
6 children at Quarrier's Village according to the reports
7 that were being received, 159 out of 183 identifiable
8 alleged abusers, identifiable in the sense of having
9 some form of identification.

10 A. Yes.

11 Q. I appreciate you've said that in some cases, you could
12 get a full name, but in other cases you could only get
13 some partial identification.

14 A. That's correct.

15 Q. If we stick with Quarrier's Village, the 159 that were
16 identifiable in some way or other, 107 were male, 52
17 were female. Of the males, the 107 males, 52 were staff
18 and 28 were external persons; is that correct?

19 A. That's correct. That's my next slide.

20 Q. Sorry. Am I running ahead? Maybe I'll just finish off
21 and you can confirm it. The 52 females was 46 staff and
22 two external females; is that correct or am I wrong?

23 A. Very good memory, Mr Peoples. I've had to look that up
24 on my pages. Yes.

25 Q. You tell us what I've just said is pictorially

1 represented on the bar chart that you're just about to
2 tell us about, that has the heading "Suspect gender".

3 A. So from left to right there are the totals there. So
4 the 183 nominals are broken down, males highlighted in
5 blue and the females in red. So there are 127 males and
6 56 females in total. For Quarrier's Village Bridge of
7 Weir, there were 107 males and 52 females. For Seafield
8 and Merton, grouped together, 13 males and one female.
9 For Southannan, three males and one female. And at
10 Overbridge there were four males and two females.

11 I break that down into members of staff for Bridge
12 of Weir. Of those 107 males, there were 52 members of
13 staff, 27 residents, 28 considered external. For
14 females at Bridge of Weir, there were 46 members of
15 staff, four residents and two external females.

16 Remember. Externals have also included children of
17 staff members who were brought up in the homes along
18 with the residents as well as visitors, church members,
19 people attending at Quarriers. Those are all included
20 in the externals.

21 Q. In terms of the category of externals, just to assist,
22 were they principally adults?

23 A. Yes.

24 Q. I know there's one notable exception to that, there was
25 a son of a house parent who was eventually convicted of

1 certain offences.

2 A. That's correct, but the vast majority are adults.

3 Q. The vast majority are adults who had some connection
4 with Quarriers and you have given examples of how that
5 connection would be. For example, befrienders, and
6 we've heard evidence that there were befriender schemes,
7 and they might be also people that were involved in
8 activities that were carried on at Quarriers, such as
9 the Boys' Brigade, for example.

10 A. That's correct.

11 Q. So outside persons with BB connections, for example,
12 might fall into that category; would that be correct?

13 A. Indeed, indeed they do.

14 On the next slide, I break down Overbridge. The
15 four males are broken down into two members of staff and
16 two residents and the females were two members of staff
17 at Overbridge.

18 The four from Southannan are all residents, three
19 male residents and one female resident.

20 For Seafield and Merton, the 13 males are eight male
21 members of staff, four male residents and one external
22 male as well as the one female member of staff.

23 Q. The headline figure, I suppose, is 196 complainers, 164
24 at Quarrier's Village complaining of abuse there, and
25 183 identifiable accused persons or persons accused of

1 abuse, of which 159 were the subject of an accusation of
2 abuse that occurred at Quarrier's Village?

3 A. That's correct.

4 Q. Indeed, you have said these complainers spanned -- well,
5 in the heyday of Quarriers, before it shut down as
6 a traditional model, that's spanning something like six
7 decades, the 1930s through to the 1980s?

8 A. Yes.

9 Q. So they were coming from a number of decades, albeit the
10 preponderance were in the 1960s and 1970s?

11 A. Indeed?

12 Q. I suppose that in the 1930s -- those that did come
13 forward from the 1930s and 1940s would be quite elderly?

14 A. I'd assume so, yes.

15 So if we look at those reported to Crown, the
16 accused. So I have broken them down there, as we spoke
17 about the standard prosecution report. It's a national
18 format, it ensures -- it's a uniform system of report
19 writing throughout Scotland. That's to present
20 pertinent information in a logical and accurate manner
21 for consideration by the appropriate procurator fiscal.

22 There were 27 of those who went to the Crown Office
23 and Procurator Fiscal Service. And the ones that we
24 spoke about earlier on, advice and directions or subject
25 reports, there were 17 of those, and again that's to

1 facilitate the reporting of circumstances where the
2 investigation is looking for -- the police are looking
3 for advice or direction relative to further
4 investigative efforts that were submitted to the Crown.

5 Q. Just help me again, if I just use Quarrier's Village for
6 the moment, or is it Quarrier's Village and Overbridge?
7 I think in this particular statistic you're including
8 both, is it? There were 44 reports in all, either SPR
9 reports, 27, or advice and direction -- or subject
10 reports, as they are sometimes termed, I think you
11 said -- 17 of those, which makes up the 44.

12 In the case of Quarrier's Village and Overbridge,
13 I think that there was a total of SPRs and advice and
14 direction reports of 34, of which 24 were SPRs? Have
15 I got that right?

16 A. I'm not 100%, I have not got that figure in front of me.

17 Q. Don't worry. I think I tried to work out from your
18 information in your report, that of the reports, the
19 majority again concerned Quarrier's Village or
20 Overbridge, and I worked that out as perhaps between
21 standard prosecution reports and advice and direction,
22 there maybe 34 out of the 44 were related to
23 Quarrier's Village and Overbridge.

24 A. It says it on the next two slides, yes, it is.

25 Q. Is that right?

- 1 A. Yes.
- 2 Q. Of which 24 were standard prosecution reports; is that
3 right?
- 4 A. 24 for the abuse at Quarrier's Village and Overbridge,
5 yes.
- 6 Q. And of the 34 reports in all, 16 of them related to
7 staff or former staff at Quarriers; is that right?
8 Don't worry if it's not --
- 9 A. I'll show you that, it's two slides up. The version
10 I've got here is a black and white one so the colours
11 aren't jumping out at me and I can't immediately see
12 it --
- 13 Q. For the benefit of the transcript, perhaps I'll say at
14 the moment that my calculations are that of the
15 44 reports to the Crown, whichever category they fell
16 into, 16 related to former staff, 11 related to
17 residents, former residents, and seven related to the
18 category you call external, which makes up 34, I think.
19 I'll just put that into the transcript at the moment
20 and maybe at some point you can tell me if you think
21 that's right.
- 22 LADY SMITH: That would be 34, not 44. I think you may have
23 said 44 at the outset.
- 24 MR PEOPLES: No, no: 44 reports, but 34 related to Quarriers
25 and Overbridge.

1 LADY SMITH: I think that is what was missing from the
2 question. The arithmetic is right to take you to 34.

3 MR PEOPLES: Yes, in relation to Quarrier's Village and
4 Overbridge; the other 10 presumably related to other
5 places.

6 A. Yes, and I have broken them down in two slides, I think.

7 Q. That's fine.

8 A. So when we look through the HOLMES account, and we look
9 wide, it's only 44 reports, as we explained. Some of
10 that is because the suspects are dead, we've got
11 non-engagement of witnesses, who did not want to make
12 complaints. There was insufficiencies of evidence,
13 unable to trace people. SIO instructing no further
14 action, not liaising with Crown, a direction between
15 them. And I do break that down further, the figures
16 that Mr Peoples was speaking about.

17 So from bottom to top, that's the 27 standard police
18 reports there. So yes, Quarriers/Overbridge, and the
19 males are identified in blue, females in red. There
20 were 18 males and six females reported for abuse at
21 Quarrier's Village and Overbridge, and two males and one
22 female reported at Seafield.

23 Of the 17 advice and direction reports, there is 10
24 males reported for Quarriers and Overbridge, three for
25 Seafield, and three males and one female at Southannan.

1 That's where we break down -- the staff are in
2 yellow, the residents are in red, and the externals are
3 in blue.

4 Q. So if I go back to my statistic, or my figure of 24,
5 there were 24 SPRs relating to Quarrier's Village and
6 Overbridge out of 34 reports relating to those
7 establishments. And of these, 11 of the SPRs related to
8 staff, 10 related to residents or former residents --
9 former staff and former residents, and three related to
10 what are described as external persons. That makes up
11 the 24 of the SPRs?

12 A. Of the SPRs.

13 Q. The other reports, of course, would be advice and
14 direction reports, the other 10?

15 A. That's correct.

16 Q. And they would relate, five to staff, one to
17 a resident -- five to former staff, one to a former
18 resident and four to external persons; is that what your
19 bar chart is showing?

20 A. It is indeed.

21 Q. Okay. You give a similar breakdown for the other
22 establishments.

23 A. Yes, that's the Seafield, Southannan -- that's the ones
24 where they reported from.

25 So if we move on, "Communication between police and

1 Crown". As you highlighted, yes, it was the first time
2 that HOLMES was every utilised within Strathclyde Police
3 to assist with the complex historical abuse
4 investigations.

5 There was close liaison and regular engagement and
6 dialogue between Crown and police, regular meetings,
7 telephone calls and resultant instruction over that
8 throughout that two-year period for Operation Orbona.

9 The investigation did lead to a sharing of good
10 practice and organisational learning with presentations
11 delivered to all detective officers throughout Scotland
12 with regards to historical investigations and it was
13 considered as a gold standard investigation of its time.

14 When we speak to complainers informing police that
15 they had told staff about abuse, there were 42
16 complainers who told police that they had told staff
17 about abuse whilst they were in care at
18 Quarrier's Village. This is purely an operation of the
19 HOLMES Orbona account. Of those people, 42 of them said
20 they had actually told staff that they were being abused
21 whilst they were in care within Quarriers, and that
22 information is contained via message formats or actual
23 statements on the accounts. So when you compare that to
24 the total number of complainers identified for
25 Quarrier's Village, which was 164, that equates to 25.6%

1 who said they told staff they were being abused at the
2 time.

3 Q. So of 164 complainers, in relation to complaints of
4 abuse at -- this is simply at Quarrier's Village?

5 A. Quarrier's Village.

6 Q. 42 of them told or informed police that they had told
7 staff about the abuse whilst they were still in the care
8 of Quarriers --

9 A. That's correct.

10 Q. -- at Quarrier's Village? So one in four, or
11 thereabouts, were saying that they had said something
12 about what was happening to them at the time?

13 A. Yes.

14 Q. And I think if you look at the other side of the coin
15 about how many members of staff who were asked about
16 these matters were able to tell you about awareness of
17 abuse --

18 A. Yes.

19 Q. -- including reporting of abuse. What were they telling
20 you or how many were telling you they had an awareness?

21 A. The next slide covers that with regards to staff
22 interviewed. There were 93 statements obtained from 63
23 members of staff, former members of staff, during the
24 various enquiries. 16 members of staff or former
25 members of staff had been interviewed as suspects

1 regarding reports of the physical or sexual abuse. Of
2 all the staff, only eight members of staff recall ever
3 being made aware of abuse by children, therefore you can
4 see the majority of staff appeared to have no knowledge
5 of the physical or sexual abuse having taken place.

6 Q. That's what they told the police?

7 A. Yes.

8 Q. And when you say that, you are not trying to reach a
9 conclusion, you're just saying that's what they were
10 telling you?

11 A. Yes. Of those eight members of staff, five of them
12 specifically recall a specific investigation that the
13 police carried out prior to Operation Orbona. So they
14 all remembered that the police were called.

15 Q. So five of the eight were really recalling simply one
16 particular matter, an investigation?

17 A. That's correct.

18 Q. And that was a single incident that was the subject of
19 some form of investigation and that was an incident that
20 allegedly occurred in 1982 --

21 A. Indeed.

22 Q. -- and involved a former house parent who was
23 subsequently convicted of offences, but not in relation
24 to that particular allegation? I think that's correct,
25 but don't worry, you don't need to worry, we can maybe

1 clarify that with other witnesses. There were three
2 complainers in the case of the person I'm thinking of.

3 A. Okay.

4 Q. One of whom was the person that made the complaint in
5 1982, and there were two other male complainers making
6 similar sorts of allegations of sexual abuse. And
7 in relation to the other two male complainers, the
8 charges were found proved.

9 We'll maybe hear about that later on. Don't you
10 worry. I think, indeed it was said in the report, that
11 these are matters that perhaps other witnesses are
12 better qualified to -- because once you report things,
13 is the position that you don't necessarily get feedback
14 about precisely what happens, or you didn't at the time?

15 A. Some investigations you won't find out what happens once
16 it is reported to the Crown. It is just the sheer
17 busyness -- don't get me wrong, there are some
18 investigations where you will get feedback and you do
19 a lot of continuing work with the Crown and take an
20 interest in it, but some of them you just don't find out
21 what the ultimate conviction is, if there is one.

22 LADY SMITH: If there is a prosecution --

23 A. Indeed.

24 LADY SMITH: -- but, of course, for anyone who doesn't
25 appreciate this, it is not for the police to decide

1 whether a prosecution is to go ahead; that is a matter
2 for the Crown.

3 A. Indeed not.

4 MR PEOPLES: What you are saying in effect is that while you
5 may find out informally there was no standing procedure
6 or protocol that said that, in the case of SPRs, that
7 the Crown would feed back some information about what
8 decision had been taken and indeed why it might have
9 been taken?

10 A. That's correct.

11 Q. You might learn of that but not necessarily because
12 there was some arrangement in place which allowed that
13 to happen routinely?

14 A. Yes. That's correct, and bear in mind we're speaking
15 about the members of staff there regarding interviews,
16 et cetera. That's -- at Quarriers, Bridge of Weir, we
17 established there were 98 staff members, bearing in mind
18 the amount of them who are dead at the time of the
19 report, the ones they didn't trace or the third party
20 report and the complainer's not willing to make
21 a complaint. So there is a vast amount of them that was
22 unable to be traced and you'll have seen the attempts
23 made within the material in the paperwork provided in
24 regard to checks carried out by Quarriers, pension
25 funds, the DWP, and the DVLA, all those kinds of

1 records, to try and locate them.

2 Q. There were considerable efforts made to trace
3 individuals who were named as persons of interest for
4 one reason or another, but that wasn't always possible
5 despite the best efforts?

6 A. No.

7 Q. Just in terms of the system, as it were. The police
8 then investigate, they determine whether there's at
9 least a sufficiency to generate an SPR on a view they
10 take.

11 A. Yes.

12 Q. And indeed, based on the evidence, they may well simply
13 interview someone and at the end of that process may
14 charge them. And they then may report the matter to the
15 Crown -- and when I say the Crown, it's normally, is it,
16 the procurator fiscal of the locality, that receives
17 a report, an SPR, from the police set out in their
18 report the basis or the background to the submission of
19 the report? And then it's for the procurator fiscal to
20 make a decision and sometimes, in some cases, that
21 decision is taken after consultation with the
22 Crown Office?

23 A. That's correct.

24 Q. And in particular, the system is such that the
25 Lord Advocate has individuals who are known as advocates

1 depute, or were known as advocates depute -- they may
2 have different titles now, who are known as Crown
3 counsel. Crown counsel will look at papers and reports
4 and will issue what are called Crown counsel reports to
5 the fiscal, and they may say that either there will be
6 a prosecution or there will not be a prosecution, or
7 they may take a different view to the police on
8 a sufficiency issue or whatever.

9 A. Indeed they do, yes.

10 Q. That's the system in outline. I don't want to get into
11 the detail, but that's the way it works. So the fiscal
12 is not necessarily the last word on whether there's
13 a prosecution?

14 A. No.

15 Q. And indeed, it may be that Crown counsel, albeit with
16 some recommendations from the fiscal, would determine
17 how the case, if it's to be prosecuted, would be
18 prosecuted by saying that it should be prosecuted before
19 a sheriff and a jury, for example --

20 A. Yes.

21 Q. -- which is what we call indictment --

22 A. Yes.

23 Q. -- a trial on indictment, or prosecuted in the
24 High Court before a jury, which again is a trial on
25 indictment, but is in a higher court which has,

1 generally speaking, larger sentencing powers?

2 A. Yes.

3 Q. So I hope that potted version, without trying to go into
4 too much detail, assists people when we're talking about
5 Crown counsel instructions or reports to the fiscal or
6 the fiscal taking decisions or Crown counsel taking
7 decisions on whether there are proceedings or sometimes
8 no proceedings, or "no pro", which is a term that's
9 often used; is that right?

10 A. Indeed.

11 We looked during Operation Orbona at Quarriers'
12 records. There was a specific question regarding how
13 many records from seized. There were 220 children's
14 records seized and examined during Operation Orbona.
15 The 1982 incident that we were speaking about at
16 Quarriers, information within those records indicates
17 that Quarriers were aware of a complaint against the
18 house parent and there was a document outlining the
19 review meeting that was held in 1982 and that's
20 a straight lift from the document -- we still have that
21 in our possession.

22 LADY SMITH: You're talking about a document you recovered
23 from Quarriers?

24 A. The police recovered during the 2002-2004 investigation,
25 yes.

1 MR PEOPLES: So is the quote that you have on the slide
2 a direct quote from the Quarriers record --

3 A. It is indeed.

4 Q. -- in relation to this particular allegation that
5 surfaced in 1982?

6 A. Yes.

7 Q. This is the internal record that was located about that
8 matter?

9 A. Yes.

10 LADY SMITH: Can you read it out?

11 A. The records state:

12 "No evidence was found to support these allegations
13 and it was noteworthy that the allegations were made
14 after the resident had apparently stolen money from the
15 member of staff against whom he had made the
16 allegations."

17 The records then discuss the resident's behaviour
18 and also remark:

19 "Resident is putting the allegations that he made
20 against the member of staff behind him but there is
21 always a possibility that he could revive such
22 allegations against any other caring staff, for example,
23 if he is under pressure."

24 MR PEOPLES: So that's the Quarriers record of this matter.

25 The individual concerned -- and I don't want their

- 1 name -- at the time of the Operation Orbona
2 investigation, or around that time, I think gave
3 a statement to police?
- 4 A. He did indeed, yes.
- 5 Q. And gave an account of that matter?
- 6 A. He did.
- 7 Q. And indicated that the police were involved at the time
8 and that certain things were done by way of
9 investigation?
- 10 A. Yes.
- 11 Q. I think he had a memory of them taking away
12 a mattress --
- 13 A. Yes.
- 14 Q. -- and a memory of having some form of medical
15 examination?
- 16 A. Indeed.
- 17 Q. Is that correct?
- 18 A. That's correct.
- 19 Q. I think that, as part of the investigation, when this
20 came to light as part of the Operation Orbona
21 investigation, if you like, attempts were made to obtain
22 further information from any officer that may have been
23 involved in the investigation of the 1982 incident
24 at the time it was reported?
- 25 A. Yes.

- 1 Q. And I think there was some success, the officer or an
2 officer was located who had some knowledge.
- 3 A. Yes. During Operation Orbona, when they were made aware
4 of this 1982 report having been made previously,
5 Operation Orbona staff managed to locate the officer who
6 was involved in the original 1982 investigation, who
7 confirmed that there was a police investigation at the
8 time.
- 9 Q. But that didn't go anywhere, if you like?
- 10 A. No.
- 11 Q. In the sense that it didn't lead to any form of
12 reporting to the Crown?
- 13 A. No.
- 14 Q. And beyond the information that you received from the
15 person, the resident, and beyond the information from
16 the officer, did you get any further in terms of what
17 had been done?
- 18 A. They never located any material at all in relation to
19 that.
- 20 Q. No, because I take it you'd have sought or at least the
21 officers concerned in Orbona would have sought to see if
22 there were any existing records from that time in the
23 possession of the police --
- 24 A. Indeed, they did.
- 25 Q. -- that might assist in illuminating what had been done

1 about the particular allegation so far as the police
2 were concerned?

3 A. That's correct.

4 Q. But enquiries in relation to that matter didn't bear any
5 fruit?

6 A. No, and you've got to remember in 1982 there was not an
7 electronic crime based system that the police had, so
8 it would have been paper records.

9 Q. And indeed, in 1982, there wasn't, as there is now,
10 a single police force, there were different forces in
11 different areas; is that right?

12 A. Indeed there were.

13 Q. And they would each have their own practices and their
14 own ways of keeping records, storing them, whatever?

15 A. That's correct.

16 Q. But the upshot was you weren't able, or at least those
17 involved in Orbona -- I keep saying "you" and I don'
18 mean that -- those involved in the investigation weren't
19 able to find any records that would assist in obtaining
20 further information about the nature and extent of the
21 investigation carried out by the police in 1982?

22 A. Yes, that's correct.

23 So during Operation Orbona, there were
24 six disclosures made by complainers indicating that they
25 had previously reported matters to the police.

1 Our activities, certainly to date, we have been
2 unable to uncover any information relating to those
3 prior investigations or any subsequent criminal justice
4 outcomes --

5 LADY SMITH: Were these individuals telling the police that
6 they had made reports in adulthood after having left
7 Quarriers or was it while they were still at Quarriers?

8 A. The one complaint that we spoke about in 1982, I think
9 the resident was still at Quarriers. We had one
10 complaint, the girl in 1968, between 1968 to 1970, when
11 she was around about 12, that she had made a complaint
12 regarding sexual abuse and she had been taken to Orkney
13 Street Police Office in Glasgow. She was subsequently
14 medically examined and we could find no trace of those
15 records from 1968.

16 MR PEOPLES: Did you find anything in the -- you obviously
17 found, for the 1982 matter records, in Quarriers about
18 the matter. In relation to the girl's recollection of
19 going to Orkney Street, was there anything in the
20 Quarriers records to support whether she had or hadn't
21 gone and what had happened?

22 A. No. The only thing was obviously Operation Orbona staff
23 spoke to her sister as well, who corroborated that she
24 did make those disclosures at the time, but we could not
25 find her.

1 Q. So there was corroboration by her sibling that she had
2 reported and there had been some form of police
3 involvement, and that's in the period around 1968 to
4 1970?

5 A. Yes.

6 Q. And was that in the context of an allegation of sexual
7 abuse?

8 A. It was.

9 Q. Because I think the 1982 one was as well, just in case
10 I didn't bring that out.

11 A. You're correct.

12 Q. So that's two of the disclosures out of the six, is it,
13 that you've --

14 A. Certainly that disclosure which the female had made was
15 incorporated into the report against that male that was
16 made, the report that went to the procurator fiscal in
17 2000.

18 Q. Were you able to shed any light on the other four
19 disclosures that were said to have involved police being
20 made aware of allegations, or did they not -- because
21 I think her Ladyship was saying if these other four, if
22 we can just confine it to those ... Did they go to the
23 police as adults before 2000 or 2004 or did they say
24 they went as children when they were in care, or was it
25 possible to establish that?

- 1 A. Two are reporting as adults outwith the care home. The
2 other one said that there was a police investigation
3 in that someone was convicted with regards to it, but
4 we have not found any records of it, she was unable to
5 give us the suspect's name who was convicted.
- 6 Q. But had a belief that the individual that she couldn't
7 identify her name had been convicted?
- 8 A. That's correct.
- 9 Q. Of some form of abuse?
- 10 A. Yes.
- 11 Q. While she was at Quarriers. Did she say what status
12 this individual had?
- 13 A. He was sentenced to two years' imprisonment.
- 14 Q. Was it a member of staff?
- 15 A. Sorry, I beg your pardon. He was a gardener or
16 a handyman employed by Quarriers.
- 17 Q. So she thought this individual, who was a gardener, was
18 in fact convicted and received a sentence?
- 19 A. Yes.
- 20 Q. But you haven't been able to locate any evidence?
- 21 A. No. She said it happened in 1964 and she only had the
22 first name, so we couldn't confirm any -- find any trace
23 of any convictions or any police enquiries from that
24 era.
- 25 Q. Are you able to tell us what the name was, the first

1 name?

2 A. David, the gardener.

3 Q. Okay. There are two reports as adults. There's also
4 this indication that there had been an investigation.
5 Was this individual -- did she say this investigation
6 and conviction -- or she reported this when she was an
7 adult then?

8 A. No, no, she reported this when -- she said this happened
9 when she was aged 14 in Quarriers, so that was 1964.

10 Q. So it was a contemporary report?

11 A. Yes.

12 Q. And she thinks there's a conviction that followed?

13 A. But we can't find any trace of it at all and
14 Operation Orbona staff couldn't find any trace.

15 Q. So that's three out of four, I think, two adult reports
16 and the one from the girl aged 14 who thought there was
17 a conviction?

18 A. Yes.

19 Q. What about the fourth one? Were you able to glean any
20 information from your search of the records?

21 A. I think that's about it.

22 So to conclude, obviously we had a number of
23 investigations since the 1990s into abuse of children
24 within the residential establishments operated by
25 Quarriers. Hopefully I've been able to identify and

1 provide you with information of those reports submitted
2 regarding the sexual and physical abuse perpetrated
3 against the child residents and obviously the -- most
4 hopefully, Operation Orbona, I have hopefully given you
5 an overview of the material contained within it with
6 regards to the investigation carried out.

7 Q. I have maybe got a couple of questions. I think I've
8 asked most of the questions about your report, and
9 I think your report in essence is reflected in the
10 presentation and I don't want to take you back to that
11 as we can read it for ourselves.

12 Just on the theme of external adults, there are two
13 individuals I wanted to ask you about. Both are
14 deceased, but I think both, just before I mention each
15 one, were the subject, as I understand it, of multiple
16 complaints by different individuals of -- I think in
17 both cases, was it sexual abuse? Is that right?
18 I think you know the ones I'm about to say. If I start
19 with [REDACTED] QGU

20 A. Yes.

21 Q. [REDACTED] QGU as I understand it, had a connection
22 with the Boys' Brigade and for a time he lived in
23 Scotland in the [REDACTED] area, I believe, but he was from
24 Northern Ireland, and at the time of your
25 Operation Orbona enquiries was living there?

- 1 A. He was, yes.
- 2 Q. And I think in the course of these investigations, his
3 name featured and came up, and a number of people --
4 males was it --
- 5 A. Yes, that's correct.
- 6 Q. -- made allegations that he had sexually abused them --
- 7 A. He did.
- 8 Q. -- in the context, I think, largely of BB activities or
9 trips --
- 10 A. Yes.
- 11 Q. -- by boys in Quarriers to various places --
- 12 A. Yes.
- 13 Q. -- camps, Northern Ireland?
- 14 A. Both here and Ireland, Scotland and Ireland.
- 15 Q. That matter was the subject of investigation, was it
16 not?
- 17 A. Yes, it was.
- 18 Q. And was that individual the subject of an SPR?
- 19 A. He was actually advice and direction, a subject report.
- 20 Q. But notwithstanding that he was in that category, by the
21 stage that he was reported, there had been a number of
22 people making not dissimilar reports about him sexually
23 abusing them?
- 24 A. That's correct, yes.
- 25 Q. So on the face of it, it might seem that he was

1 a candidate for an SPR?

2 A. Oh indeed, yes.

3 Q. So can you tell us just -- he wasn't prosecuted?

4 A. No.

5 Q. Can you tell us -- he was alive at the date of

6 submission of the SPR?

7 A. Indeed.

8 Q. What can you tell us --

9 A. As you rightly say, he didn't work at Quarriers, he was

10 a regular visitor. A number of boys in Quarriers

11 attended the local Boys' Brigade. So there were five

12 male residents reporting sexual abuse by him between

13 1978 and 1992.

14 Q. How many boys did you say?

15 A. Five.

16 Q. 1978 to?

17 A. 1992.

18 Q. So there were five complainers effectively? Sorry,

19 maybe that's putting it slightly highly. There were

20 five individuals that reported he had done things to

21 them?

22 A. Yes. The reason he was not subject to an SPR --

23 obviously we spoke about the close liaison during

24 Operation Orbona with the police and Crown. His ill

25 health -- they obviously got assistance from the Police

1 Service of Northern Ireland. His health was such that
2 he was not suitable to be interviewed. I think -- when
3 I say a short time later, I mean within months of us
4 having sufficiency of evidence to arrest and charge,
5 he had died.

6 Q. So in his case there was a sufficiency, but you've
7 explained some of the background to why there was no
8 attempt to prosecute, and indeed he died quite shortly
9 after the report had been submitted --

10 A. Yes.

11 Q. -- on him?

12 There was another individual, as I said, that
13 I wanted to find out something about, another external
14 visitor to Quarriers, perhaps someone that might fall
15 into the category of a befriender.

16 A. Yes, it certainly looks like that.

17 Q. I think this befriender was known as [REDACTED] QGL

18 A. He was, yes.

19 Q. But his full name was established to be [REDACTED] QGL is
20 that right?

21 A. That's right.

22 Q. And he lived at some address in the Paisley area?

23 A. Yes.

24 Q. He would visit a particular cottage, I think, was it?

25 A. Yes, he did.

- 1 Q. Were there reports made that on these visits certain
2 things happened and indeed happened at his own home as
3 well?
- 4 A. I'm not sure about the locations of the abuse.
- 5 Q. But there were reports that he was sexually abusing --
- 6 A. And in a vehicle. It was within the vehicle I think
7 you're maybe talking about.
- 8 Q. I think there were various places this may have
9 happened.
- 10 A. Yes.
- 11 Q. One might have been a vehicle en route to somewhere from
12 Quarriers or en route to Quarriers, but there was also,
13 I think, some -- was there not some reporting that when
14 he visited a particular cottage, whilst he was there, he
15 would engage in some degree of inappropriate sexual
16 activity with children and residents; is that right?
- 17 A. Yes. With the statements that Operation Orbona
18 obtained, yes, QGL would attend and it was an
19 accepted practice within Quarriers where the befrienders
20 would volunteer and attend and help out staff.
21 Certainly two residents -- one male, one female --
22 reported that he had sexually abused them between 1961
23 and 1963.
- 24 Q. So again, on the face of it, there was a sufficiency of
25 evidence against this individual; is that right?

- 1 A. There was.
- 2 Q. But was he the subject of an SPR, and if not, why not?
- 3 A. He was again an advice and direction because at the
4 stage they had reached to arrest, he had died in
5 October 2003.
- 6 Q. At the date of submission of the report, the advice and
7 direction, was he still alive?
- 8 A. Off the top of my head, I can't recall. I've got in my
9 memory that it was around about the same time as the
10 complaints had been received that he died, they carried
11 out investigations and established that he was dead.
- 12 Q. I suppose that in his case, as in Mr [REDACTED] QGU had
13 there been any decision that proceedings should be
14 pursued, ultimately it appears he would have died in any
15 event and therefore the proceedings would not have been
16 able to take place --
- 17 A. That's correct.
- 18 Q. -- for that reason and that reason alone?
- 19 A. Yes.
- 20 MR PEOPLES: I think these are all the questions that I have
21 for this witness.
- 22 LADY SMITH: Thank you.
- 23 Are there any outstanding applications for questions
24 of this witness?
- 25 Detective Inspector McKenna, it just remains for me

1 to thank you very much for all the work you have done in
2 presenting so clearly the detailed slides that are of
3 enormous assistance to us. I'm now able to let you go.
4 Thank you.

5 Just before I rise for the morning break, two names
6 were mentioned latterly, one of [REDACTED] QGU the
7 other of [REDACTED] QGL both of whom, as you've heard, are
8 deceased. Their names are covered by my general
9 restriction order, but those of you who are well-versed
10 in it may well have spotted that.

11 (11.36 am)

12 (A short break)

13 (11.52 am)

14 LADY SMITH: Mr Peoples.

15 MR PEOPLES: My Lady, the next witness is Kenneth Donnelly.

16 KENNETH DONNELLY (sworn)

17 LADY SMITH: Please sit down and make yourself comfortable.

18 No doubt Mr Peoples will want you to go to
19 a different page from the one you've opened up. Anyway,
20 I'll hand over to him to start questioning.

21 Questions from MR PEOPLES

22 MR PEOPLES: Good morning, Mr Donnelly.

23 A. Good morning, Mr Peoples.

24 Q. By way of background, the inquiry did ask for the
25 assistance of the Police Scotland and the Crown Office

1 or Crown Office and Procurator Fiscal Service, to give
2 its full title these days, assistance in the form of
3 certain information by way of reports on matters which
4 concerned prosecutions and convictions of certain people
5 in connection with allegations of abuse at
6 Quarriers Homes.

7 A. That's correct.

8 Q. This morning, as you're aware, I think, we've had
9 a presentation and a report from Police Scotland, which
10 has provided some of the information we were looking
11 for, but as their report discloses, some of the
12 information they felt was better provided by the
13 Crown Office -- I'll call it the Crown Office; it's
14 a bit of a mouthful to say Crown Office and
15 Procurator Fiscal Service.

16 A. I've been called worse!

17 Q. Before I ask any questions, you're here to speak to two
18 reports that have been prepared by the Crown Office to
19 assist the inquiry, and I'll just give the reference for
20 both reports for the purposes of the transcript. The
21 first report is CFS.001.005.5626. There is also
22 a supplementary report, which is CFS.001.005.5632.

23 It's these reports that you're here to tell us
24 about.

25 A. That's right. It might be helpful just to point out

1 that, in my preparation for giving evidence today, one
2 or two anomalies have come to light, so we'll perhaps
3 deal with those as we go through, but it might assist --
4 if you wish, I can get my team to prepare an updated
5 version.

6 Q. There are a couple of matters that maybe we would pick
7 up on. There are a couple of corrections that maybe
8 need to be made?

9 A. Yes.

10 Q. I think that would be very helpful indeed. We'll work
11 off the reports that we have for the moment and you can
12 tell us if there are parts that you'd want to correct as
13 we go along.

14 Just before I start asking you some questions, can
15 I just confirm that you currently are a procurator
16 fiscal in the High Court Unit; is that right?

17 A. Yes. I'm a -- "procurator fiscal High Court" is the job
18 title, so it's responsibility for the investigation,
19 preparation of prosecution in the cases of the High
20 Court of Judiciary.

21 Q. But you have a long experience and attachment to the
22 Crown Office in various roles; is that correct?

23 A. Yes, 26 years in a variety of roles.

24 Q. I may tap into that knowledge at some point for some of
25 the matters we are dealing with today, but I think there

1 are a couple of things that are perhaps useful for the
2 public to know about a couple of the charges with which
3 these cases were concerned. I might get you to give us
4 a little assistance on that if possible.

5 A. I'll try to do that.

6 Q. So far as the first report is concerned that the Crown
7 Office has prepared, if I could ask you maybe just to
8 look at that in the beginning. What it's doing is
9 responding to a number of questions that the inquiry
10 wanted answers to in relation to, essentially,
11 prosecutions and convictions in relation to allegations
12 of abuse at Quarriers over the years.

13 The first matter we sought to confirm was that the
14 number of people who were reported to Crown Office by
15 way of a standard prosecution report -- and we know what
16 that is, you can take it we've heard this morning -- how
17 many were then prosecuted following the submission of
18 those reports by the police.

19 I think at page 5629 of the report, the first
20 report, do you tell us that there were 27 persons who
21 were reported to Crown Office by the police by way of
22 SPRs, standard prosecution reports, and that
23 16 individuals were prosecuted; is that correct?

24 A. That is correct. However, as I said, the introduction
25 to the report highlights our database is such that we

1 are relying in a large part on information provided to
2 us from the police.

3 Q. Right.

4 A. The 27 that I was aware of included a report for
5 ██████████ QGU ██████████ which I had understood the police
6 position to be, until a short time ago, to be a standard
7 prosecution report and not an advice and direction
8 report. There probably are still 27, but at the moment
9 I've only got details of 26, so I'd probably have to
10 clarify what the 27th one is.

11 Q. I see. That's very helpful.

12 A. That just arose in this morning's evidence.

13 So certainly on the information of 27, 16 were
14 prosecuted.

15 Q. Because in other circumstances, it might have been 27.

16 I think we've heard one of the reasons why
17 ██████████ QGU ██████████ ultimately wasn't prosecuted.

18 A. Yes.

19 Q. We'll take the figure of, is it 26 then, would that be
20 a better figure to take?

21 A. I think it's 26 or 27, depending on the clarification.

22 Q. I suppose the key figure is, having received reports,
23 whether standard prosecution reports or advice and
24 direction reports, the fact of the matter, as you tell
25 us, is that 16 individuals were prosecuted?

1 A. Yes.

2 Q. Just before I go on, can I just clarify what we mean
3 here by prosecution? For those that are unfamiliar,
4 there are steps in the criminal justice process,
5 preliminary steps if you like, where a person charged
6 and the subject of a report will formally appear in the
7 court processes, in the criminal process, by --
8 for example, it's normally by way of a petition.

9 A. Yes.

10 Q. And that's a preliminary process and that's a fairly
11 standard process?

12 A. Yes.

13 Q. Can you tell us about that, so that we have the
14 introduction?

15 A. Certainly. Funnily enough, that throws up one of the
16 anomalies to follow, so it's as well to deal with it now
17 as later. When a person is reported to the
18 procurator fiscal, an assessment has to be made on
19 whether or not proceedings are to be taken.

20 The first assessment is obviously whether there's
21 a crime known to a law Scotland within the report. And,
22 secondly, whether there's sufficient evidence in law --
23 DI McKenna's already touched on that to an extent --
24 sufficient evidence, corroborated evidence, both of the
25 crime committed and of the identification of the person

1 who's said to commit the crime.

2 Those assessments are the first stage in the
3 process. The second stage in the process, having
4 crossed that hurdle is: is it in the public interest to
5 take proceedings? A number and range of different
6 factors are taken into account in considering what may
7 or may not be in the public interest, but examples would
8 be the circumstances of the offender, the circumstances
9 of complainers, victims, witnesses, any particular
10 mitigating circumstances and so on.

11 So there's a range of factors which are taken into
12 account at that assessment. Once a decision is taken to
13 proceed, then there are two separate processes which the
14 criminal case can follow. More serious cases proceed --

15 LADY SMITH: Mr Donnelly, this is meat and drink to you on
16 a daily basis, can I just ask you to slow down a little
17 for those to whom this is news? Thank you.

18 MR PEOPLES: Maybe I'll just pause there and ask a couple of
19 questions before you tell us about what happens once the
20 assessment is made. If we take it, for example, the
21 police will make enquiries --

22 A. Yes.

23 Q. -- and they may in the course of those enquiries
24 interview a suspect --

25 A. Yes.

1 Q. -- and they will have other evidence that they've
2 ingathered and they may take a decision, having done all
3 these things, that they are going to charge that person
4 and they will perhaps detain them and then charge them
5 and they may arrest them and take them into custody or
6 sometimes they release them on an undertaking. That's
7 all at the stage of the police and they will prepare
8 a report if they believe there's sufficiency to consider
9 of prosecution, and the general report is the SPR that
10 has been spoken about today.

11 A. Yes.

12 Q. And they submit that to the Crown. Normally speaking,
13 that report would initially go to -- is it the local
14 procurator fiscal's office?

15 A. At that time. We have changed our processes in recent
16 years to centralise that.

17 Q. Maybe at this stage so we understand what was going on
18 then.

19 A. Yes.

20 Q. I fully appreciate there have been quite a lot of
21 changes over the years in the process and indeed in the
22 treatment of witnesses and so forth.

23 But at that time then, there would be a report going
24 to the -- from the police to the local fiscal that was
25 responsible for the particular case. They would have

1 knowledge there was an investigation and there may be
2 a degree of liaison and discussion?

3 A. Yes.

4 Q. The report goes to that fiscal. At that stage, is there
5 an assessment by the fiscal separate from the police
6 assessment as to whether there is a sufficiency, whether
7 the fiscal believes that there are grounds to prosecute,
8 whether there are other considerations that are in play?

9 A. That's correct. The decision can be made -- there's
10 a range of decisions which can be made at that time.
11 You can decide that there's insufficient evidence, and
12 the case can be discontinued at that point. You can
13 take proceedings if you think that the evidential hurdle
14 has been crossed and the public interest test is met.

15 There's obviously a middle ground where you feel
16 that you need further information to allow you to make
17 that decision, at which point you can instruct the
18 police or seek information from other sources to allow
19 you to inform the decision, I should say, as to whether
20 or not proceedings should be taken.

21 Q. So again, we hypothetically, so that we understand what
22 the process was -- if a report is received from the
23 police, an SPR, the fiscal will make this assessment,
24 the person that's allocated the case, and if, for
25 example, disagreeing with the police, if you like, on

1 the issue of sufficiency, it would be open to the fiscal
2 at that point to say "no proceedings"?

3 A. Yes.

4 Q. Or possibly to issue further instructions or guidance or
5 direction to say, "Can you carry out further enquiries
6 before I take a final decision?"; is that one
7 possibility?

8 A. Correct.

9 Q. If the fiscal takes the view, in agreement with the
10 police, that there is a sufficiency and that there is
11 a public interest in considering prosecution at that
12 stage, then there are other decisions that have to be
13 made. Can you explain the circumstances in which there
14 is further involvement by Crown counsel or the Crown
15 Office? Because some decisions, I take it, at that
16 time, would be taken by the procurator fiscal? They
17 might just say: there's sufficient evidence on this
18 police report, I'm going to bring proceedings in the
19 sheriff court or the local court?

20 A. Yes.

21 Q. And they would do that with what are I think are
22 sometimes called -- well, they were called summary
23 offences for complaints that are heard by a judge
24 sitting alone, a sheriff sitting alone. They would
25 often just take that decision locally at that time?

1 A. Yes. And at that time almost all of those initial
2 decisions would be taken locally.

3 Q. But if they were of the view that the case was serious
4 enough to be tried on what's termed indictment -- and
5 we've heard the expression -- which is essentially
6 a trial before a judge, either in the sheriff court or
7 the High Court, and a jury of 15 people, if they took
8 the view that that was the level of seriousness of the
9 matter reported, at that point do they make a decision
10 on whether it's a sheriff court case or a High Court
11 case, or do they ask for guidance on that?

12 A. Yes, that's at a later stage in the process. So at the
13 initial marking stage on receipt of the case in deciding
14 whether or not to commence criminal proceedings, the
15 decision would have been made locally.

16 The decision at that point is -- as I said, there
17 are two criminal processes: summary procedure, as you've
18 mentioned, and solemn procedure. Summary procedure is
19 on a summary complaint. That goes straight to the court
20 and immediately the process begins where the accused is
21 called upon to plead guilty or not guilty. And if they
22 plead not guilty, a trial will immediately be fixed.

23 Q. In that situation -- and I don't want obviously to have
24 too much of it, but so we understand, in that situation
25 the process begins and, normally speaking, a person

1 prosecuted on a summary complaint basis would not be in
2 custody, they would be generally speaking -- am I --

3 A. Generally, yes, but there are some occasions.

4 LADY SMITH: It depends on their whole circumstances, if I
5 can put it that way.

6 MR PEOPLES: There may be factors in relation to the
7 individual, but a considerable number of people are
8 prosecuted in that way would not be held in custody
9 pending a trial?

10 A. Correct.

11 Q. But if the view is taken that it should be prosecuted
12 before a jury, which is an indictment, as you say, there
13 is a process and, the local fiscal having made that
14 decision, perhaps, will bring the matter before the
15 court by way of a petition?

16 A. That's correct.

17 Q. Is that right?

18 A. Yes. The petition appearance -- I hesitate to describe
19 it in this way, but it's almost an administrative
20 process, the petition. It's a process by which we bring
21 the accused before the court, it affords the accused the
22 protection of the court, but it also allows and gives
23 the accused notice of the charges as known to the Crown
24 at that time. It allows the Crown to ask the court to
25 consider whether or not the person should be remanded in

1 custody subject to the severity of the offending and the
2 personal circumstances of the accused, or to admit the
3 accused to bail, subject to the standard conditions of
4 bail, and any additional conditions which the court or
5 the Crown may think are necessary for the protection of
6 the public and for the victims and witnesses in
7 particular.

8 Q. So the petition effectively puts the matter into the
9 hands of the court at that stage?

10 A. Correct.

11 Q. And it will contain essentially a description of the
12 type of charge that the Crown is looking to prosecute?

13 A. Yes.

14 Q. Although you'll tell us this, no doubt, that what is
15 in the petition is not necessarily what appears in the
16 document called the indictment, which is the document
17 that goes into the trial and sets out the charges
18 against the accused that are going to the trial itself.
19 That can be a different document with different charges,
20 or a variation on what was in the petition, or
21 additional charges depending on what has transpired
22 since the petition was put into court; is that right?

23 A. That's correct. The petition, as well as everything
24 else, starts the legal time bars, the statutory time
25 bars, whether its a custody case or a bail case,

1 different time limits that apply to the Crown.

2 The Crown at that stage embark on their own
3 investigation of the case, looking to see what the
4 evidence is, the strengths, the weaknesses of the
5 evidence and obviously looking to see whether there were
6 any additional charges which should be libelled against
7 the accused.

8 When that process is complete, it's often referred
9 to as the precognition process. When that process is
10 complete, the Crown will then -- the procurator fiscal
11 at that stage will report the case to Crown counsel and
12 Crown counsel will determine whether or not the case
13 proceeds on indictment or not and whether, if it is on
14 indictment, whether that's in the High Court or the
15 sheriff and jury court.

16 Q. After the petition goes in, there is this preparation of
17 what you've called the precognition of the case against
18 the individual --

19 A. Yes.

20 Q. -- which will be assembled and that precognition is
21 submitted in due course to the Crown Office to be
22 considered by Crown counsel, one of the Lord Advocate's
23 deputes?

24 A. Yes.

25 Q. That individual will look at the papers and make

1 decisions on the matter, including, as you have said,
2 whether it goes to the High Court or whether it should
3 be tried before a sheriff and jury.

4 A. Yes. And in looking at that, the decision -- and the
5 procurator fiscal will make a recommendation, but you're
6 looking at the nature of the offending and the whole
7 circumstances of the offending and also looking at the
8 likely outcome and the sentencing powers of the various
9 courts.

10 Again, in my 26 years or so in this job, those
11 powers have changed. So again, decisions that were made
12 at different times have to be looked at in the context
13 of what the sentencing powers of the different forums
14 were at that time --

15 Q. Yes. Because I think, and without trying to go into the
16 history of all this, perhaps the powers of the sheriff
17 court historically were less in terms of the periods of
18 imprisonment they could impose, whereas now they have
19 wider powers and can impose longer sentences --

20 A. Yes.

21 Q. -- than historically.

22 A. That's correct. I hope you're not going to ask me the
23 dates!

24 Q. No, I'm not going to ask you the dates, I don't need
25 them. It's just so that people understand that the

1 process changed and indeed sheriffs can impose what
2 might historically have seemed a much longer sentence
3 than they used to do.

4 A. That's correct. Yes, when I started the maximum
5 sentence that could come out of a sheriff on a summary
6 complaint was six months and on indictment, two years.
7 The summary power increased to 12 months, and the
8 sheriff and jury indictment power increased initially to
9 three years, and now to five years.

10 Q. So it has moved considerably. But at this time, we were
11 probably looking at two years?

12 A. I think we may have been on three years.

13 Q. It doesn't matter. You've explained the process.

14 So we've got that as the process. Is there anything
15 else you want to add? We've covered the assessment and
16 decision-making process.

17 A. I think so. Subject to any other questions you or the
18 chair may want, I think that covers it.

19 Q. So if I go back to the question, question 7, where you
20 were giving the information that 16 individuals
21 following a report by the police, probably a standard
22 prosecution report, 16 people were prosecuted. Do
23 I take it from that, you mean went to trial?

24 A. Unfortunately, no. That's where I think there's been
25 some discrepancy, because the questions given -- and

1 this is where there's a discrepancy with a subsequent
2 question, which is I think question 13.

3 So in this 16, one of those was a female offender
4 who appeared on petition, but for whom an indictment was
5 not served. I think the confusion -- the question says
6 "subject of criminal proceedings".

7 Q. Yes.

8 A. Those proceedings did not result in trial and I think
9 that's been picked up in this question but not at the
10 subsequent question.

11 Q. It's a fair point and maybe I have to take
12 responsibility for that. What you're telling us is,
13 yes, 16 people were involved in some form of criminal
14 proceeding?

15 A. Correct.

16 Q. But, of the 16, one at least simply got to the petition
17 stage --

18 A. That's correct.

19 Q. -- and thereafter a decision was taken -- I think by
20 Crown counsel --

21 A. That's correct.

22 Q. -- that that person should not face a trial or indeed
23 have an indictment served against them --

24 A. That's correct.

25 Q. -- prior to the trial?

1 But the other 15, am I right in thinking then went
2 to trial or at least -- that's not strictly true. They
3 could have gone to trial or they could have had an
4 indictment served and decided to plead to certain
5 charges -- or all of them for that matter.

6 A. That's correct: it was either a trial or a plea of
7 guilty for the other 15.

8 Q. Right. So far as those who were prosecuted -- and
9 I think in this case the information in question 9 is
10 probably still valid?

11 A. Yes.

12 Q. Because you were being asked:

13 "Of the people who were reported, how many were
14 former staff members of Quarriers?"

15 And I think you tell us that 11 --

16 A. That's correct.

17 Q. -- were former staff members and were prosecuted and,
18 indeed in this context, either pled or went to trial?

19 A. That's correct.

20 Q. I think we know that there at least was one example of
21 a person who pled --

22 A. Yes.

23 Q. -- and we'll come to that maybe in due course.

24 In question 10, what the inquiry was seeking to
25 establish was how many -- and the description "external

1 adults" was used. I think you tell us that no external
2 adult was prosecuted, although I think you'll tell us
3 that an external person was prosecuted in the sense of
4 a son of a house parent, who wasn't technically --
5 he wasn't a child in care and he wasn't a member of
6 staff --

7 A. Yes.

8 Q. -- and he wasn't an external adult, but he was an
9 external person.

10 A. Well, that is where the, again, this is the other
11 anomaly. We've struck there, there is one person who
12 was the son of a member of staff, and I think my team
13 have got a bit confused or got themselves in knots
14 between whether that's external, resident or there was
15 a specific question about children of members of staff.

16 Q. Don't worry.

17 So while external adults -- and I use the term
18 advisedly -- were not prosecuted, there was one person
19 who was not a child in care and not a former member of
20 staff who was prosecuted, and you're telling us that was
21 a person who was an adult at the time of the
22 prosecution --

23 A. Yes.

24 Q. -- but had been the son of a house parent who worked for
25 Quarriers?

- 1 A. That's correct.
- 2 Q. And worked at a particular place called Overbridge;
3 is that right?
- 4 A. That's my understanding, yes.
- 5 Q. And indeed, that, I think, is really what you tell us in
6 question 12; is that right? You name the individual --
7 I don't need the name just now.
- 8 A. Yes, that's correct. I think the issue is that we've
9 included that individual as one of the five that's
10 referred to in the answer to question 11, when in fact
11 that probably should be four then if he is not the
12 resident.
- 13 Q. Yes, that's fine. Maybe we can have that tidied up.
14 But forgive me, it probably was us that created that
15 confusion.
- 16 Moving over the page to question 13, if I may. At
17 page 5630 of the first report, the Crown Office was
18 asked how many individuals were prosecuted for some form
19 of sexual offence -- "sexual abuse" it was described
20 generally -- in the sense of offences committed against
21 children or young persons who were under 18 and in the
22 care of Quarriers.
- 23 I think you tell us there that 13 persons or
24 individuals were prosecuted for sexual offences
25 against --

1 A. That's correct. However, the person that we referred to
2 earlier who appeared only on petition is not included
3 in that 13. So if that one is to be included, that
4 should be 14. Some of the methodology has not been
5 consistent and I apologise for that.

6 Q. That's fine. As long as we know that that doesn't
7 include a person who didn't get either to a trial or
8 a plea.

9 A. Yes.

10 Q. That 13 isn't including that person, and we know who
11 that person is, so that's fine.

12 You tell us in question -- well, question 14 was
13 asking how many of those who were prosecuted were former
14 residents. There might be some explanation required
15 here because, if I put it this way, there were four
16 former residents who appeared on petition.

17 A. That's correct.

18 Q. Three males and one female?

19 A. Correct.

20 Q. Three of whom were from the same family, one female and
21 two of the males?

22 A. That's correct.

23 Q. Two of these individuals, the female and one of the
24 males, who was not related to the female, were put on
25 petition but on Crown counsel's instruction did not go

1 to trial. Is that right, there was a petition where
2 three male residents appeared on petition?

3 A. Yes.

4 Q. But subsequently, on Crown counsel's instructions, as
5 I understand it, one of those individuals -- there were
6 no further proceedings taken. If you don't know that,
7 don't worry. I think I can find that out from another
8 source.

9 A. I would need to confirm that. I don't have that
10 information to hand.

11 Q. I think that's our understanding.

12 A. I can certainly confirm it in relation to the female --

13 Q. That's fine. Certainly in the case of at least two of
14 the male former residents, they both appeared on
15 petition and were tried?

16 A. That's correct.

17 Q. But were ultimately acquitted of the charges they were
18 tried on -- or did the trial proceed at all, do you
19 know?

20 A. I can check that.

21 Q. If you've got it there to hand, it would be helpful.

22 (Pause)

23 Is it in your second report, perhaps?

24 A. I think it is.

25 Q. I'll just check if you've dealt with it. I may be able

1 to help you.

2 A. In fact, they won't feature if they weren't convicted.

3 So that probably answers the question.

4 Q. Whether they faced trial or not, they weren't convicted?

5 A. That's correct.

6 Q. I think some of them may have faced a trial process.

7 A. I think that's right, yes.

8 Q. We can check that. It's just to get the general
9 picture.

10 The inquiry wanted to know:

11 "How many individuals were prosecuted for abuse
12 other than sexual abuse?"

13 I think you tell us there that you were able to --
14 the Crown Office was able to identify two individuals
15 that fell into that category, that the offences with
16 which they were charged did not include any sexual
17 offences?

18 A. That's correct.

19 Q. We'll perhaps look at this shortly in relation to the
20 second report, but there's always a range of offences
21 in relation to abuse of children --

22 A. Yes.

23 Q. -- and when you're talking of what is colloquially known
24 as physical abuse, some of the charges you're looking at
25 might be assault?

1 A. Yes.

2 Q. It generally would be assault, I suppose, of some kind
3 or another, including assault or injury. If you're
4 looking at certain types of conduct committed by people
5 who cared for children, you might be looking at
6 something that would be called wilful ill-treatment or
7 neglect?

8 A. Yes.

9 Q. If you're looking at some form of sexual activity with
10 a child, whatever category of activity we're talking
11 about, you're looking at a range of possible sexual
12 offences from common law offences such as rape or
13 unlawful carnal connection --

14 A. Yes.

15 Q. -- or what is known by the rather torturous phrase,
16 "lewd, indecent and libidinous practices and behaviour"?

17 A. Correct, and obviously there have been various statutory
18 variations of those through the years, which we may deal
19 with at some point.

20 Q. We can come to that.

21 Basically, the lewd and libidinous practices and
22 behaviour is both a common law offence, depending on the
23 age of the child, and if the child was aged between 12
24 and 16, it was a statutory offence, but it was
25 essentially the same type of offence?

- 1 A. Yes.
- 2 Q. And it was just the age that determined whether it was
3 prosecuted as a common law offence or a statutory
4 offence, but the same conduct could be charged?
- 5 A. That's correct.
- 6 Q. If a child suffered abuse, sexual abuse, when they were
7 between the ages of 10 and 16, there would be two
8 charges: one would be the common law, lewd and
9 libidinous practices and behaviour from 10 to just under
10 12, and then for the rest of the period it would be
11 a statutory charge?
- 12 A. Yes.
- 13 Q. Is that right? It's quite a minefield, this, I think.
- 14 A. It is. I don't want to go into too much detail, but the
15 different statutes which have come in at different times
16 have resulted in real challenges for prosecutors in
17 drafting charges, and often what you've described as
18 being two charges can in fact be three and sometimes
19 more.
- 20 LADY SMITH: Yes. It does make for complicated, lengthy
21 indictments --
- 22 A. It does.
- 23 LADY SMITH: -- and they are a real challenge to juries in
24 trying to understand what questions they're really being
25 asked to answer.

1 A. Forgive me for focusing on the challenges to the
2 prosecutor there. A challenge to everyone, my Lady.

3 LADY SMITH: Yes.

4 A. It makes life difficult, and obviously the legislator
5 brought in the legislation for the best of intentions,
6 but the consequence of it is that prosecutions are far
7 more complicated for all concerned.

8 LADY SMITH: And we have not yet touched on common law rape
9 in the old days --

10 A. Yes.

11 LADY SMITH: -- and now the statutory rape charges that
12 arise.

13 A. Yes.

14 MR PEOPLES: So it is not an easy business to decide how to
15 frame an indictment --

16 A. That's correct.

17 Q. -- particularly with young children who may have
18 suffered certain conduct, criminal conduct, at certain
19 ages, and that's why you see these somewhat complicated
20 documents with a series of charges -- perhaps to the
21 layperson they say why are you differentiating because
22 you're saying the same thing in this charge as you are
23 in another, it's just that the age is different.

24 A. It's difficult to explain the legal requirements, but
25 they're there and we have to abide by them.

1 LADY SMITH: For completeness, we should also touch in
2 passing on what used to be called shameless indecency.

3 A quick word about that?

4 MR PEOPLES: I think we were going to come to that with
5 a particular example.

6 LADY SMITH: That no longer exists, but at one time that was
7 another way of charging sexual behaviour.

8 A. That's right, my Lady. We do have now public indecency,
9 but it's a different thing altogether.

10 MR PEOPLES: I will come to that, my Lady. I think we have
11 a practical example and maybe we can use that as an
12 opportunity to tell us a little bit because we've
13 already had a little bit of evidence on that issue
14 already.

15 Question 19 was asking about some information about
16 convictions. Just to be clear, in giving the
17 information there, you tell us that there were
18 10 individuals that were convicted by a jury of at least
19 one charge and, in some cases, a lot more than one
20 charge.

21 A. Yes.

22 Q. But in the case of one of those individuals, because
23 they were only convicted of one charge, it wasn't
24 a legally valid conviction --

25 A. That's correct.

1 Q. -- and so it didn't count as a true conviction in law?

2 A. Yes. This comes back to the discussion this morning
3 about the doctrine of mutual corroboration, or the
4 Moorov doctrine, as it's more familiarly known.

5 In an instance where the Crown are relying on the
6 doctrine of mutual corroboration, then generally
7 speaking it is impossible for the jury to return
8 a verdict of one charge only because you require their
9 conviction on more than one charge to provide the
10 supporting corroborative evidence.

11 So in this instance, the jury having been so
12 directed, they nevertheless returned with a conviction
13 for one charge for which there was only one source of
14 evidence. The sheriff didn't deal with that and the
15 matter then went to the Appeal Court, who properly
16 quashed the convictions.

17 Q. Because, as we were told this morning through the police
18 evidence, at least in the case of these non-recent
19 cases, there is a heavy dependence normally in finding
20 corroboration by what we've colloquially termed the
21 Moorov doctrine of corroboration, which provides mutual
22 corroboration of charges of a similar nature against the
23 same individual.

24 A. It's a doctrine that we use across the range of sexual
25 offences and offences of abuse, historical and recent.

- 1 Q. Yes.
- 2 A. The nature of the offending is such that often
3 there isn't an independent or secondary account of the
4 evidence which allows us to independently corroborate.
5 LADY SMITH: It may also be used in housebreaking.
- 6 A. Absolutely. I was only using those examples in the
7 context of the inquiry; it can be used for any crime
8 type.
- 9 LADY SMITH: Indeed.
- 10 MR PEOPLES: The underlying theory is that they're not truly
11 independent, these activities, because they form
12 effectively what in law is seen as a course of
13 conduct --
- 14 A. That's correct.
- 15 Q. -- and a pattern of events of similar nature that can be
16 treated effectively as a course of conduct.
- 17 A. Yes.
- 18 Q. And if you're satisfied that at least two of these
19 activities of a similar nature have occurred, then they
20 can each corroborate the other.
- 21 A. Yes. The doctrine is a complex area. It's something
22 which has evolved over the years. Again, in terms of
23 its application, the court has to be satisfied that the
24 evidence which is led of the individual offences
25 provides a course of conduct and that there are

1 sufficient similarities in time, in circumstance and in
2 place to allow the court to -- to allow a jury or the
3 court to find that the charges corroborate one another.

4 The law has evolved and again, thinking back to this
5 time and what time periods, for example, the court would
6 have allowed, there were authorities round about this
7 time which suggested that relatively short periods of
8 four years --

9 LADY SMITH: I was going to ask you about that: am I right
10 in thinking, if I remember, that this was the period
11 that we were always very anxious about looking at tables
12 that had been made up of time periods that the Appeal
13 Court had said were not too far apart --

14 A. Yes.

15 LADY SMITH: -- so far as individual charges were concerned
16 and we tried to divine from that what would be too much
17 by way of a time lapse between individual charges? It
18 got a bit technical.

19 A. Yes. I know that the inquiry intends to have a criminal
20 justice phase and it may be worthwhile that the Crown
21 provides a history of that as part of that phase because
22 it is difficult. I know myself from experience, having
23 dealt with cases where we considered the time difference
24 to be too long based on our understanding of the law as
25 it was stated at that time. And about that time I'm

1 sure there was a case which essentially ruled four years
2 being the period beyond which we could not go.

3 LADY SMITH: I think you're right.

4 A. We've now got cases where there's far greater times than
5 that with fairly specific similarities and the court,
6 I think, has opened it up somewhat. But the difficulty
7 with that is when you look back at decision-making from
8 some time ago, it makes it very difficult to understand
9 perhaps some of the rationale unless you bear in mind
10 what the court's stated position of law was at that
11 time.

12 MR PEOPLES: Yes, it's moved on a bit as a result of certain
13 decisions and therefore what might have been a decision
14 taken historically might be a very different decision
15 today, both from the point of view of prosecution and
16 indeed the point of view of putting a matter to a jury.
17 If there were certain charges left standing that had
18 a certain time interval, you might today get these cases
19 to the jury, whereas historically you might not have
20 done if the time difference was too long.

21 A. Yes. And even if you got them to the jury, if the
22 conviction wasn't for all of the offences, the
23 Appeal Court often would interfere if the period between
24 those charges which was left was greater than the period
25 which was thought to be the time. So there's a whole

1 range of hurdles to get over with these cases.

2 Q. Just to explain some of the other difficulties -- and
3 I don't want to get bogged down on this -- when one's
4 looking at the circumstances as well, that's another
5 issue because sexual conduct can take a variety of forms
6 and I think again that could present at least some
7 difficulties as to whether two particular incidents
8 described by two individuals were sufficiently similar
9 in terms of the circumstances, the type of conduct that
10 was being engaged in, to be allowed to corroborate each
11 other.

12 A. Yes. Again, this is an area where the law has evolved.
13 I think when Mr Moorov was up to no good, the
14 similarities in that case were very striking in that
15 they were all within the shop and all very similar in
16 their conduct. I think at that time that was what the
17 court had in mind, was that it would have to be that
18 almost, if I can put it, fingerprint crime, if you like,
19 or something which was unique to the individual.

20 That's evolved over the years again and continues to
21 evolve and the case law sets out different circumstances
22 where similar types of behaviour, not identical types of
23 behaviour, can be relied upon to corroborate. There has
24 again been -- evolution of that over the years has
25 involved looking at penetrative sexual activity and

1 non-penetrative sexual activity and whether or not the
2 lesser can be used to corroborate the greater and
3 vice versa.

4 All of that is a minefield and it moves on each time
5 the Appeal Court looks at the issue and it's something
6 I'm happy to bring back to the inquiry for more detailed
7 analysis.

8 Q. It might be helpful because I think the public might
9 find it difficult sometimes to think, well, why are
10 these apparent distinctions made, and clearly when we're
11 in the -- like an offence such as lewd and libidinous
12 practices, there's a lot of conduct that could be
13 described within the four walls of that description and
14 it could be different between individual complainers,
15 but the layperson might think, yes, it's different in
16 one sense, but it's very much the same in another.

17 A. Yes. The court is approaching this in almost a way
18 where you have to look at each of the individual
19 factors. So where the time gap between the two offences
20 is greater, the court are looking for far greater
21 similarities in the conduct. Where there time gap is
22 shorter then more general similarities will be
23 acceptable to the court. It's almost like a cocktail of
24 the three elements which the court has to look at to
25 determine whether or not the corroborative effect can be

1 put in place.

2 Q. In the report, the first report, the inquiry sought some
3 information on what individuals were convicted of.

4 I think I'll leave that until the supplementary report
5 because you deal with it in more depth there. Save to
6 say I think you will want to make a correction in the
7 first report to question 20, because I think at least in
8 one instance, perhaps, the description of the conviction
9 in the case of Alexander Wilson would have to be
10 altered, I think.

11 A. I think so and I think I'd probably also have to seek an
12 amendment in respect of the first named person --

13 Q. Yes.

14 A. -- because again, there was some conviction ...

15 Q. We'll look at that when we look at the supplementary
16 report.

17 Maybe it's as good a time as any to say, because
18 we've been discussing procedure, that we've got this
19 petition and, as you said, a petition doesn't have to --
20 an indictment doesn't have to look the same as
21 a petition, it can be very different and it can have
22 additional charges or different charges, depending on
23 what has progressed between the two documents being
24 prepared and put into court.

25 When an indictment is served on an accused person

1 before a trial and it goes to trial on the basis of that
2 document, setting out charges which could be any number,
3 it could be two or three, 20 or 30, or even more, it
4 sets out all the different charges and sets out the
5 facts and circumstances that are being advanced as the
6 conduct that's criminal.

7 Those documents are not set in stone. An indictment
8 is, in a sense, in a trial, a living document because it
9 starts off the trial, there's an indictment, the charges
10 are read, but ultimately in the course of the trial,
11 depending on the evidence that comes out, the prosecutor
12 might ask for the court to allow the indictment to be
13 changed or amended to reflect the way the evidence has
14 unfolded in court.

15 You may, for example, take out parts of the charge.
16 You may substitute a different formulation within the
17 charge -- and if the court permits that to happen. And
18 that's not an unusual feature of the trial process.

19 A. It's not. The one thing that doesn't happen is
20 additional charges being added.

21 Q. Absolutely, yes.

22 A. But in terms of amending the charges or removing the
23 charges, very much so. As the trial proceeds and the
24 evidence emerges, the prosecutor keeps that under
25 review, as does the court, and amendments are made

1 before the matter goes to the jury.

2 Q. And indeed, before the matter goes to the jury, the
3 prosecutor may -- and we'll see examples -- take a view
4 that certain charges should be withdrawn for one reason
5 or another. I'm not sure it's always possible to
6 articulate a single reason, but there are reasons
7 sometimes why some charges are withdrawn and not put
8 before the jury; is that correct?

9 A. That's correct. The reasons for that can be many and
10 varied, as you know. Part of the difficulty for us in
11 reviewing cases is those reasons are not always
12 apparent, even if we have their papers, and when we
13 don't have the papers they are almost impossible to
14 determine.

15 Q. And maybe another thing that people have to know is one
16 has to take some care if there's behaviour that might
17 come out in a trial that is criminal, then generally
18 speaking, if you want to lead evidence about it,
19 you have to have some kind of foundation in the
20 indictment?

21 A. Yes.

22 Q. You can't just simply introduce a criminal --
23 potentially criminal conduct into a trial where there's
24 no notice in the indictment that that is going to be the
25 subject of evidence. So indictments can sometimes

1 include matters, as a matter of perhaps safety, that you
2 can lead the evidence but ultimately your goal might be
3 to achieve a result in certain significant charges?

4 A. Yes.

5 Q. That's the reality of the process, isn't it?

6 A. In general terms that's correct. There are two broad
7 headings for that. Firstly, there can be what we call
8 evidential charges, so charges which are included on
9 which you know that you're not going to be able to
10 secure sufficient evidence, but which you need to allow
11 a witness to give the full account of what happened to
12 them. It can be sometimes artificial to ask a witness
13 to omit to mention certain aspects of their evidence.
14 Part of the purpose of the indictment is to give fair
15 notice to the accused of what the evidence is going to
16 be and what the criminality is that is going to be led.
17 But often, charges -- not so often, but from time to
18 time, we include what are known as evidential charges.

19 The second broad heading is really something of
20 tactics for the trial prosecutor. Often when the
21 evidence has emerged, the tactic will be to focus on the
22 most serious or the primary charge that the prosecutor
23 wishes to invite the jury to convict of. They'll only
24 do that obviously having regard to the whole
25 circumstances of the case, but if someone's charged with

1 a very serious assault and there's an ancillary
2 shoplifting charge, for instance, they may wish to say,
3 "I'm not too bothered about the shoplifting because this
4 is about the very serious assault and I want to focus
5 the jury's mind on that charge".

6 Those are the two broad headings. There may be one
7 or two other circumstances which give rise to it, but
8 that's my experience.

9 Q. That's from the standpoint of the prosecutor. But just
10 from the other side of the coin, the defence are keeping
11 an eye on the evidence and I suppose that at various
12 stages, particularly at the end of the Crown case, when
13 the Crown has led all their witnesses and led their
14 evidence in support of the indictment or the charges,
15 the defence can at that point say to the court, "There's
16 not enough evidence to allow this charge to go to a jury
17 and I want you to withdraw the charge from the jury and
18 direct that the accused be acquitted of this charge"?

19 A. Yes.

20 Q. That's again a not uncommon occurrence. In some cases
21 where there's a lot of charges, a defence counsel will
22 say at the end of the Crown case, "I have a submission
23 to make to the court that there is no case to answer in
24 law".

25 A. That's right, that's part of the process and it's open

1 to the defence to challenge the sufficiency of the Crown
2 case at that stage and also at the close of the
3 defendant's case.

4 Q. There are two opportunities, yes.

5 A. There's also an obligation on the court to regulate
6 proceedings and if the judge feels that there is a
7 concern then the judge can raise that as well.

8 Q. So there are various ways in which charges that start
9 off the trial might disappear, either through the
10 decision of the Crown counsel or the depute prosecuting,
11 or through the intervention of the defence, or indeed
12 the intervention of the judge --

13 A. Ultimately, the intervention of the judge.

14 Q. The judge has the final say, but it may occur because
15 it's raised by the defence counsel --

16 A. Yes.

17 Q. -- that they feel that there's not a basis on which the
18 jury should be asked to return a verdict.

19 A. That's correct.

20 Q. Going back to the first report, if I may, question 21.
21 I think you were asked -- we'll leave question 20 to the
22 supplementary report:

23 "How many of those who were convicted were former
24 staff members?"

25 And I think that the majority of people, and we'll

1 see that, were former staff members who were convicted
2 of various offences against children in the care of
3 Quarriers, both physical abuse, sexual abuse, and wilful
4 ill-treatment.

5 A. Yes, nine of the ten.

6 Q. One of whom was convicted but not legally convicted and
7 so that's one of the nine?

8 A. Yes, that's correct, one of the nine was the one that
9 I referred to earlier whose conviction was quashed on
10 appeal.

11 Q. I don't want to necessarily go through this by name, but
12 if you go back to question 20, back to the period of the
13 Orbona operation, which was completed around 2004,
14 although there were trials after that arising out of
15 that investigation.

16 If I go to question 20, of those convicted, and
17 where the convictions stood, albeit some may have been
18 quashed on appeal, the individual at number 1 in
19 question 20 was convicted and there are extant
20 convictions for that individual?

21 A. That's correct.

22 Q. Number 2 as well?

23 A. Yes.

24 Q. Although you'll want to alter, I think, the convictions
25 themselves.

1 A. Yes.

2 Q. Number 3 is the boy who was the son of the
3 house parents. He was convicted.

4 Number 4 is the individual who was convicted of
5 a single charge when it was a Moorov case, and that was
6 quashed on appeal?

7 A. That's correct.

8 Q. Number 5 is a conviction of an individual solely for
9 wilful ill-treatment under a statutory provision?

10 A. That was a plea of guilty.

11 Q. It was a plea of guilty because I think number 1 went to
12 trial.

13 A. Yes.

14 Q. Number 2 went to trial?

15 A. Yes.

16 Q. Was number 3 a plea?

17 A. Number 3 was a plea as well, yes.

18 Q. Number 4 went to trial.

19 A. That was the trial because that was the one that was
20 quashed on conviction.

21 Q. Number 5 was a plea --

22 A. Yes.

23 Q. -- to certain charges, because I think pleas can involve
24 offering a plea to certain charges on the basis that you
25 say, "I will plead to certain charges but I will not

1 plead to others", and it's a matter for the Crown to
2 decide whether it's prepared to accept the plea.

3 A. Yes.

4 Q. They can either then accept it or go to trial. They can
5 say, "I'm not accepting that, I'm going to go for trial
6 on more charges than you are prepared to" --

7 A. That's right. Plea negotiations is another complex
8 area.

9 Q. I'm not wanting to get into it, but these are the things
10 that happen, and this is not unique to this type of
11 situation.

12 Number 6 in question 20 was a conviction --

13 A. Yes.

14 Q. -- of a former member of staff?

15 Number 7 again a conviction by a former member of
16 staff. Number 8 as well, former member of staff.
17 Number 9, a former member of staff.

18 A. Yes.

19 Q. Number 10, I don't want to dwell -- that was a later
20 conviction, in much more recent times?

21 A. That's right. I can give you details of it, but yes, it
22 was offending that probably post-dates the Orbona
23 investigation.

24 Q. But did it concern children in care of Quarriers at the
25 time they were in care?

1 A. It did is my understanding, but the offence dates -- I'm
2 trying to find ... There were a few indictments in this
3 case, but I think the most recent indictment, the one
4 which went to trial, the offending ranges from 2008 to
5 2012.

6 Q. Okay. Was that at a particular location?

7 A. The address, which is given for the -- I'm just checking
8 if it's all the charges. The address which is given is
9 an address in Glasgow. I don't know if you want me to
10 read the address.

11 Q. Does it give anything more than the address?

12 A. Just an address. It doesn't --

13 Q. Does it appear to be a children's home or residential
14 unit or is it not clear?

15 A. It's not clear. I would need to check that.

16 Q. Leave that one. Maybe in due course, if you correct the
17 report, you might just give us a little bit of
18 background on that if you could.

19 A. We will do, yes.

20 Q. Okay.

21 Then on question 22, you confirm what we've already
22 discussed and touched upon, that some residents, we
23 think, faced a trial.

24 A. Yes.

25 Q. I think we've established that none were convicted at

1 the end of the day.

2 A. That's correct.

3 Q. And as far as external persons are concerned,
4 question 23, if I could put it more broadly, of those
5 who were convicted, there is one person in that category
6 who's the son of the former staff house parents?

7 A. Yes.

8 Q. If we could go to the supplementary report, just to get
9 a little more information on those who were convicted,
10 those who are mentioned in question 20. That's at
11 CFS.001.005.5632.

12 The first individual that is dealt with there is
13 John Porteous --

14 A. That's correct.

15 Q. -- who was tried in the High Court in 2002 --

16 A. That's correct.

17 Q. -- and convicted of certain charges.

18 A. Yes.

19 Q. He [REDACTED] faced a large number of charges on the
20 original indictment, if I could call it that. [REDACTED]

21 [REDACTED] I think there were 14
22 against Mr Porteous, [REDACTED]

23 [REDACTED]

24 A. That sounds familiar.

25 Q. The sexual offences were simply against Mr Porteous.

1 There were other charges of physical abuse or assault
2 and wilful ill-treatment and I think that in that case,
3 they were against ██████████ There was a mixture of --

4 A. Correct.

5 Q. -- assaults and wilful ill-treatment cases?

6 A. Yes.

7 Q. I think, as you tell us in the supplementary report,
8 after the trial in November 2002, there was a conviction
9 on four charges, two on what the law calls lewd,
10 indecent and libidinous practices and behaviour and two
11 of shameless indecency offences, which, I think you tell
12 us on page 5633, were quashed on appeal.

13 This is the opportunity perhaps for you to tell us
14 just very briefly why that would be the case. You've
15 said it was a complicated area of the law.

16 A. Yes. The update there is perhaps not as clear because
17 we've talked about the sentence being quashed without
18 necessarily saying that there was a successful appeal
19 against conviction on those two charges. We'll update
20 that.

21 The offence of shameless indecency was a common law
22 offence. Similar to how you described the lewd,
23 indecent and libidinous practices and behaviours
24 earlier, it covered a multitude of different types of
25 behaviour from -- the offence that we most commonly used

1 it for would be colloquially known as flashing, but it
2 was used for a number of other things, which included
3 some conduct in private where individuals were doing
4 things that society deemed shameless.

5 Now, with the introduction of the Scotland Act in
6 1998, the Scotland Act 1998, which was brought into
7 force -- in 1999, section 57 (2) introduced
8 a requirement that, amongst others, the Lord Advocate
9 had to act in compliance with the European Convention of
10 Human Rights. There was a case that was prosecuted in
11 Dunoon, Webster v Dominic, Webster being the name of the
12 local procurator fiscal, and in that case there were
13 offences of shameless indecency libelled.

14 The defence took issue with the charges, lodged
15 what was then known as a devolution issue, which was
16 what we framed as challenges to existing procedure by
17 reference to the European Convention of Human Rights at
18 that time, now referred to as compatibility issues. And
19 so the challenge was that the offences as libelled, and
20 the offence of shameless indecency, was contrary to
21 Article 7 of the European Convention of Human Rights.

22 Article 7 states that:

23 "Nobody shall held guilty of a criminal offence on
24 account of any act or omission which did not constitute
25 a criminal offence under national or international law

1 at the time it was committed."

2 The argument essentially was -- and I'm trying to
3 keep this as brief as possible -- that because the
4 concept of shameless indecency was so ill-defined and
5 captured all sorts of conduct that it didn't give the
6 citizen sufficient notice that what they were doing was
7 criminal under national and international law. That's
8 a very broad summary of what is a very complex issue.

9 LADY SMITH: May I say well done.

10 A. Thank you.

11 LADY SMITH: And there had been some articulation of
12 concerns about the crime --

13 A. Yes.

14 LADY SMITH: -- in the courts, particularly coming from the
15 Appeal Court --

16 A. Yes.

17 LADY SMITH: -- as to how we could carry on treating this as
18 a crime because of the issues that you've raised.

19 A. Yes.

20 LADY SMITH: I think the timescale we were looking at here
21 was that the Appeal Court decision on Webster v Dominic
22 was about a year after Mr Porteous' initial conviction
23 and then his appeal was the following year, I think
24 2003/2004/2005, I think.

25 A. I think that's the right time frame. My Lady is right,

1 there were other cases leading up to Webster which may
2 well have given Mr Dominic's legal team a hint in terms
3 of the point that was taken --

4 MR PEOPLES: Mr Porteous' legal team?

5 LADY SMITH: No, Dominic in Webster v Dominic.

6 A. The reported case which led to the law being changed.
7 Effectively the Appeal Court in Webster v Dominic
8 determined that we could no longer use the crime of
9 shameless indecency. They introduced a new concept of
10 public indecency, but that required any such offence of
11 necessity to be something that was in public and led
12 some guidelines around how that may apply in future.
13 But it did mean that convictions for shameless indecency
14 were no longer safe based on, as they were, on an
15 understanding of the law at that time, which the Appeal
16 Court had determined was unsafe.

17 Q. What you'd say by reference to the cases we've looked
18 at, including the one where it was quashed, is that
19 prior to this development and this challenge, it was not
20 uncommon to include shameless indecency charges in an
21 indictment that would accommodate what might be seen as
22 lewd and libidinous practices, or could include some
23 things that might have been charged under that category?

24 A. Yes. Possibly. We tended to use shameless indecency,
25 if I'm being frank, in circumstances where we weren't

1 sure it actually fell within the definitions of lewd,
2 indecent and libidinous practices and behaviour. So
3 that's probably why it was vulnerable to challenge
4 because it was used almost to capture that which we
5 didn't feel was right but didn't quite fit within the
6 statutory or the common law crime of lewd, indecent and
7 libidinous practices and behaviours as it was defined at
8 that time.

9 Q. I'm looking at the one in Mr Porteous' trial.

10 Charge 15, for example, which was one the ones that was
11 quashed in his case. Charge 15 in its primary form was
12 a charge of indecent assault on various occasions on an
13 individual and it then set out the various ways in which
14 the individual was indecently assaulted. It was
15 obviously a sexual assault libelled, but as an
16 alternative to that charge, there was also a charge of:

17 "That the accused conducted himself in a shamelessly
18 indecent manner."

19 Basically by doing the same things that were
20 libelled as an indecent assault.

21 A. Yes.

22 LADY SMITH: I think I'm right in remembering that the
23 description of what the accused had done was identical
24 in the shameless indecency charge to the description
25 in the indecent assault charge.

1 A. Yes. But there must have been concerns, and again
2 without going over old ground, about proving the assault
3 element of that charge. And so if you can't get over
4 the element of perhaps the mens rea for assault, then
5 you are then looking to see do you have -- is it lewd,
6 indecent and libidinous practices and behaviour or
7 shameless indecency? Going back to what we talked about
8 earlier in other context, the drafting of these matters
9 is an art form. It can be a very, very difficult
10 challenge for the prosecutors.

11 LADY SMITH: It was difficult, and picking up very briefly
12 on your reference to what we call the mens rea of
13 assault, that was no doubt concern about establishing to
14 the satisfaction of a jury that what was intended was
15 harm --

16 A. Correct.

17 LADY SMITH: -- hence the fallback of shameless indecency.
18 But the problem was, post Webster v Dominic, a line had
19 to be put through shameless indecency, which meant you
20 could no longer treat this as a case where the jury was
21 satisfied that that crime had been committed because
22 that crime didn't exist.

23 A. That's correct.

24 LADY SMITH: But maybe one was left with being able properly
25 to proceed on the basis, well, the jury must have been

1 satisfied that those things happened --

2 A. Yes.

3 LADY SMITH: -- albeit we now know the law says that they
4 were not allowed to say, those things having happened,
5 it was shameless indecency.

6 A. Yes.

7 MR PEOPLES: I think, unfortunately, in the case of
8 charge 15 -- and no doubt hindsight is a great thing --
9 the Crown actually sought a conviction on the
10 alternative charge, they didn't ask the jury to convict
11 on the primary charge.

12 A. The difficulty, Mr Peoples, is --

13 Q. I'm not criticising; I'm just saying that that's the
14 factual position. Of course, that's why the charge was
15 ultimately quashed for the legal reasons you've
16 explained.

17 A. The only reason I was qualifying it was without having
18 been at the trial and hearing the evidence I'm sure the
19 advocate depute made that decision and made that motion
20 based on the evidence, but I can only speculate to that.

21 Q. Don't worry. That's fine.

22 So if we move on in your supplementary report to the
23 next individual who I think was mentioned in the first
24 report at question 20. I'll just check. Yes. We're
25 following the order of question 20 in the original

1 report and that's Alexander Wilson.

2 A. Yes.

3 Q. I think my understanding is that in his case he was --
4 he faced 19 charges and was convicted unanimously on 15,
5 with one small deletion by the jury to the charges that
6 they were asked to consider and return a verdict on;
7 is that correct?

8 A. That's correct.

9 Q. And I think ultimately, he was, without trying to get
10 too technical about statutory, lewd, indecent and
11 libidinous practices and common law lewd, indecent and
12 libidinous practices, essentially he was convicted of
13 eight charges of lewd and libidinous practices and seven
14 of assault.

15 A. Yes.

16 Q. And I think there is a connection you're going to make
17 to that part of the supplementary report. I think there
18 was another charge that originally was put on the
19 indictment, but during the course of the trial there was
20 an amendment.

21 A. I think that relates perhaps to two charges, so we'll
22 update that and submit --

23 Q. So we're agreed -- and I think it's a matter we can see
24 from what we know already -- that he was convicted of
25 15 charges and we know the natures: eight were sexual

1 offences and seven were assault.

2 A. Yes.

3 Q. And indeed, I think we know there were eight complainers
4 at the end of the day.

5 A. Yes.

6 Q. I think we can maybe hear more about that from another
7 witness today, so you don't need to be concerned too
8 much about that. And we're aware of what sentence was
9 imposed in that case.

10 The next one is the son of the house parent at 5635.
11 That was a High Court case again?

12 A. That's correct.

13 Q. But in this case, there was a plea to three offences --

14 A. Yes.

15 Q. -- sexual offences? In light of the charges to which
16 the accused pled and were accepted by the Crown, the
17 accused received a community service order --

18 A. That's correct.

19 Q. -- by way of disposal?

20 A. Yes.

21 Q. And I think that the behaviour which he pled guilty
22 to -- am I right in thinking it occurred when he was
23 under 16 perhaps? Or is that asking for too much
24 detail?

25 A. I think at least in part, if not in whole, he was under

1 just finished looking at the third individual that was
2 named in question 20 and I was going to move on to the
3 fourth name in question 20, which is to be found at
4 CFS.001.005.5636.

5 I don't want the name of the individual just now,
6 but this individual was ultimately not convicted in law
7 of any of the charges that he faced; is that right?

8 A. Sorry, this is number 4?

9 Q. Page 5636. I don't know if your pages are numbered.

10 It's the individual who ...

11 LADY SMITH: The redaction on the screen is because of my
12 restriction order.

13 A. Ah, sorry, I was just trying -- I've prepared my own
14 version of the report with additional information, which
15 is where I --

16 LADY SMITH: We're looking for the content without
17 identification of the individual.

18 A. Yes, of course. The gentleman that I had referred to as
19 number 4 in the list of ...

20 (Pause)

21 MR PEOPLES: If I look at question 20 in the original
22 report, this is the person who was convicted after trial
23 of a single charge.

24 A. Yes.

25 Q. Have you got the one I'm thinking of?

1 A. I have now, sorry. My mistake.

2 Q. His conviction for that reason was quashed on appeal.

3 A. That's correct, sorry.

4 Q. It's sometimes difficult because of the --

5 A. I'm just getting back into it. I misunderstood.

6 LADY SMITH: That was the inadequate Moorov case?

7 A. Yes.

8 MR PEOPLES: The individual concerned faced a number of

9 charges but ultimately, as you set out on page 5636 of

10 the supplementary report, he was only convicted on one

11 charge of lewd and libidinous practices and behaviour

12 in relation to a child between the ages of 12 and 16.

13 This was one where, because of the lack of

14 corroboration from the other charges which were not

15 found proved, it led to the conviction being

16 successfully appealed against.

17 A. That's correct.

18 Q. Moving on, if I may, to the next person in the

19 supplementary report, number 5 in the list on

20 question 20 of the original report. This is

21 Mary Ann Drummond --

22 A. Yes.

23 Q. -- at page 5637. I think she also goes by the name

24 Miss Arnold at times. I don't know if that means

25 anything to you.

1 A. It doesn't to me, but it probably does to others sitting
2 at the rear of the room.

3 Q. It's certainly a name we've sometimes heard her being
4 described as.

5 In her case -- sorry, before I finish with the last
6 individual that we spoke about, whose conviction was
7 quashed, that was a case that was tried before a sheriff
8 and jury at the time?

9 A. That's correct.

10 Q. Sorry, I should have brought that out.

11 A. Yes, I think the Appeal Court said that the sheriff
12 could have dealt with it without the need for it going
13 to the Appeal Court, which is one of the things that we
14 mentioned, because having been convicted on just one
15 charge, the court --

16 Q. They could have dealt with it --

17 A. Dealt with it in a different way.

18 Q. -- at that level --

19 LADY SMITH: He could have directed the jury they could not
20 convict even although they thought they could.

21 A. Exactly, yes.

22 MR PEOPLES: Moving now to Mary Ann Drummond. This again
23 was a case that was in the sheriff court, a sheriff and
24 jury case.

25 A. Yes.

1 Q. And as the report tells us, there was no trial in this
2 case because there had been a plea agreed.

3 A. That's correct.

4 Q. As a result of the agreed plea, Mary Ann Drummond pled
5 guilty to five charges, all of offences under
6 section 12(1) of the Children and Young Persons
7 (Scotland) Act 1937, which related to:

8 "... wilful ill-treatment of children in a manner
9 likely to cause unnecessary suffering or injury to
10 health."

11 A. Yes, that's correct.

12 Q. In her case, as a result of the plea, the disposal was
13 that she was placed on probation for a period of three
14 years.

15 A. That's correct.

16 LADY SMITH: I see there were five charges; can you tell me
17 how many complainers there were?

18 A. I don't have that information. I can include that in
19 the updated report.

20 LADY SMITH: It would be helpful just to get a complete
21 picture.

22 A. Of course.

23 MR PEOPLES: I think our next witness might be able to help
24 us. So might I. There were five complainers on the
25 indictment, all female, 11 charges in all, including the

1 five charges under the 1937 Act as well as other charges
2 of assault.

3 The offences to which Mary Ann Drummond pled guilty
4 under section 12(1) were offences committed against four
5 of the complainers out of the five on the indictment.

6 A. That certainly sounds familiar, but I would have wanted
7 to check before I --

8 Q. That's fine. You can perhaps confirm, but I think I'm
9 pretty confident that's --

10 A. I'll ensure that the updated report includes that
11 information.

12 Q. That'd be very useful.

13 I think in her case the complainers were all former
14 residents.

15 A. Again, that is my understanding.

16 Q. And I think it was, given the dates of the charges under
17 section 12, they seem to have spanned a period from the
18 early 1950s until about possibly the end of the 1950s,
19 maybe straying slightly into the 1960s. So it is in
20 mainly in the 1950s that these matters relate to.

21 A. In the updated report we could perhaps put the range of
22 dates in if that would assist for those offences for
23 which the convictions apply.

24 Q. Yes. Sometimes it's useful to have the earliest and the
25 latest dates to see what period was covered by the whole

1 charges.

2 A. We can certainly do that.

3 Q. That's maybe perhaps handy if we can have that.

4 I may be wrong, but was this the individual that
5 having pled, attempted to withdraw her plea but was
6 unsuccessful? Do you know anything about that?

7 A. I think the next witness will have a better insight into
8 that, but I think that's ringing a bell.

9 Q. We'll maybe find out a little bit more about that matter
10 with the next witness.

11 Then the next person that is mentioned in the
12 report, the supplementary report, at page 5636 is
13 Joseph Nicholson, who was tried before sheriff and
14 jury --

15 A. Yes.

16 Q. -- and was convicted of one charge under section 4 of
17 the Criminal Law Amendment Act 1922. It's lewd and
18 libidinous practices and behaviour, but as a statutory
19 offence because of the age of the child concerned?

20 A. Yes.

21 Q. I think in his case, there were in fact seven charges on
22 the indictment and two complainers who were siblings.
23 One charge was found proved, charge 2, in the case of
24 a female who was 14 at the time of the offence. I think
25 that's the information I've got, perhaps pieced together

1 from what we've been given.

2 A. I think that's right.

3 Q. And unlike the case of the single charge in the case of
4 the conviction that was quashed on appeal because of the
5 lack of Moorov, presumably in this case there was
6 corroboration of the particular incident which meant --

7 A. Yes.

8 Q. -- that the charge would hold?

9 A. Yes, otherwise we couldn't have the single charge
10 conviction. So there must have been independent
11 corroboration of that individual offence.

12 Q. So that would be a case where at least there was someone
13 or some evidence beyond that of the complainer to
14 support the complainer's account and corroborate that
15 account?

16 A. Yes, I think the test is that there has to be a second
17 source of evidence which is capable of supporting the
18 evidence of the primary witness.

19 Q. I think this was a case where you tell us that
20 Mr Nicholson, who I think had been a former house parent
21 at Quarrier's Village and for a time a social worker
22 there, was sentenced to a period of two years in prison.

23 Just on that, and it may be something I can ask the
24 next witness, but I'll put it to you that in the
25 statement we have from the fiscal, who we'll hear from

1 shortly, she has a recollection that the sentence may
2 have been reduced on appeal to 12 months. Do you know
3 whether that be the case?

4 A. I don't, but I'll certainly get that checked and update
5 the report.

6 Q. It's maybe something that's just worth clarifying.
7 It is also maybe a case where procedurally what happened
8 was that, on being found guilty, the sheriff remitted
9 the convicted person for sentence, it was remitted back
10 because the maximum sentence was two years in prison,
11 and so it wasn't a case which could go for a longer
12 sentence in the High Court and the sheriff had
13 sentencing powers to deal with the matter.

14 A. Yes, again I maybe didn't make that clear earlier in the
15 discussion about the sentencing powers of different
16 courts.

17 When crimes are committed at common law, there
18 generally isn't a restriction on the sentence that can
19 be imposed, but for statutory offences such as this, the
20 statute will often specify what the maximum period of
21 imprisonment, maximum fine or other maximum penalty
22 would be. So the fact that this one's being prosecuted
23 under the statute then requires that there's a maximum
24 period.

25 Q. What you tell us of course -- and it is something that

1 perhaps people don't always appreciate -- is that the
2 prosecutor may choose to prosecute a case in the sheriff
3 court where there's a maximum sentencing power, and
4 particularly in the days when it was two or three years,
5 but there is a power certainly in the case -- unless
6 there's a restriction such as the one in
7 Joseph Nicholson's case -- there is a power to remit, on
8 conviction, to the High Court if the sheriff believes
9 that the High Court -- that sheriff's own sentencing
10 powers are inadequate to reflect the gravity of the
11 offence. So there are powers to remit; is that correct?

12 A. That's correct. A court can do that of its own volition
13 if it considers, having regard to the matters for which
14 the accused has been convicted and the severity of it
15 and having regard to anything else that's said in terms
16 of mitigation, that the sentencing power available to
17 that court is insufficient to mark the severity of the
18 penalty.

19 The case then transfers from the sheriff court to
20 the High Court and the High Court may not always agree,
21 and sometimes the sentence is imposed at a higher level
22 and sometimes it is not.

23 Again, coming back to this one, I think I mentioned
24 earlier that at a time the maximum period available to
25 a sheriff was two years -- it increased to three,

1 I can't remember exactly when, but I'll get that
2 information -- and then from three to five. I think we
3 may have been in the territory of three years at that
4 point for the sheriff, but I would need to check that.

5 LADY SMITH: But the problem was the statutory maximum.
6 Even if the High Court had tended to agree with the
7 sheriff that it looked insufficient given the gravity of
8 the crimes, there was nothing the High Court could do
9 about it.

10 A. Yes, again, as a general rule, if a case has that
11 maximum sentencing power we would not indict it to the
12 High Court unless there were other cases which had a
13 higher tariff, if I can put it that way.

14 MR PEOPLES: So that would explain the forum in this case,
15 that it was the sheriff court -- if it was all these
16 charges, that could explain why it might have been
17 a certain court?

18 A. It could, but obviously some of the other offences, for
19 example one of the charges he was acquitted for was
20 a common law charge, and so there would be no such
21 restriction, but obviously the decision of which forum
22 to precede in in the first instance is looked at, having
23 regard as I say to the serious nature of the crime, the
24 other surrounding circumstances and what the likely
25 outcome is and whether the sentencing power of that

1 court is sufficient.

2 The comfort one has in indicting to the sheriff
3 court is that the sheriff has that overarching power to
4 remit to the High Court if that judgment has strayed on
5 the wrong side of the margin.

6 Q. So there are checks and balances in the system and it's
7 not just down to the prosecutor to determine what the
8 sentence is ultimately going to be? There are ways --

9 A. The only qualification to that is that there is no power
10 of remit from summary procedure to solemn procedure. So
11 if the prosecutor chooses summary procedure, then we're
12 restricted to the maximum sentencing power of the
13 summary court, but otherwise, yes, on indictment.

14 Q. I suppose that while it's not a legal issue,
15 inferentially, if the sheriff in this case had whatever
16 understanding he or she had of their powers and thought
17 it should be remitted, they must have taken a serious
18 view of what was found proved by the jury?

19 A. Absolutely. The use of the power to remit is not
20 something that's exercised very frequently and certainly
21 my experience it is not something which is exercised
22 lightly. So whilst the sheriff erred in his
23 understanding of the maximum sentence he could impose,
24 I think it's a reasonable inference that he's considered
25 that this was a significantly serious offending that

1 perhaps was, in another time, perhaps beyond his powers.

2 Q. Going on to the next individual, number 7 I think on the
3 list, in question 20, this is Ruth Wallace.

4 A. Yes.

5 Q. Again she was tried before a sheriff and jury?

6 A. Correct.

7 Q. She was convicted of three charges of wilful
8 ill-treatment of children under section 12 of the 1937
9 Act.

10 A. Yes.

11 Q. She was also convicted of four charges of assault, one
12 to injury.

13 A. Correct.

14 Q. I think -- and you don't have this information in front
15 of you, but I think the charges that were found proved
16 spanned a period from about 6 August 1971 to
17 14 September 1981, so we are talking about a 10-year
18 period for the charges that were found proved.

19 I think that again, just for -- and it's not
20 information you've got in front of you. My
21 understanding is that there were originally, I think,
22 15 charges. Maybe we can work that out from your
23 document.

24 A. Yes.

25 Q. And there were nine complainers, three male and six

1 female. I think I'm correct in saying that they were
2 all residents of Quarrier's Village at the time of the
3 offences --

4 A. That's certainly my understanding, yes.

5 Q. -- or the time of the charges libelled.

6 A. Yes.

7 Q. In the case of Ruth Wallace, the disposal was probation
8 for a period of three years?

9 A. Yes.

10 Q. It seems a little light.

11 LADY SMITH: I was just watching the body language being
12 displayed on your face, Mr Donnelly. I take it there's
13 something you want to say.

14 A. It's difficult in the absence of looking at what was
15 before the sheriff and what the evidence was for someone
16 who's convicted of seven charges on indictment,
17 a non-custodial sentence wouldn't ordinarily be the
18 disposal. Three years was the maximum period of
19 probation which could be imposed at that time, so it's
20 clearly been something which the sheriff's viewed at the
21 upper end of the non-custodial disposals available to
22 him or her. But without wishing to be critical, in
23 ignorance of what information the sheriff had, at a very
24 bald analysis, it looks like a light disposal.

25 LADY SMITH: And we don't know simply from that any

1 conditions of probation or indeed Ruth Wallace's age or
2 state of health at that time that could have weighed.
3 It is hard to tell.

4 A. Again, I haven't brought all of that material with me
5 because I didn't anticipate needing it, so my apologies
6 for that. But I can look and see if there's anything
7 which might assist the inquiry.

8 LADY SMITH: If you have anything, it would be helpful to
9 see it.

10 A. We'll look at that.

11 MR PEOPLES: I think I can tell you, she was born in 1933.

12 LADY SMITH: When was she convicted?

13 MR PEOPLES: She was sentenced on 8 March 2006 to three
14 years' probation, which would make her ...

15 LADY SMITH: You said 1933, she was born?

16 MR PEOPLES: 73 or thereabouts.

17 A. My understanding was her date of birth was [REDACTED] 1935.

18 Q. 1935?

19 A. That's what appeared on the petition. I do have that
20 one.

21 Q. I originally had that as well. I seem to have put
22 another date in. She was certainly born in the 1930s,
23 let's put it that way. You think it's 1935?

24 A. That may have been amended on the indictment.

25 Q. I think it was amended on the indictment. I think

1 that's why I'm suddenly -- you now remind me why
2 I changed it. I think there was an amendment on the
3 indictment to reflect her birth date being 1933, which
4 would make her about 73 at the time of conviction.

5 A. Yes. I think, reflecting on the sentence, and again
6 with the caveats that I've already expressed, when we
7 look, some of the older cases -- there was perhaps
8 a different attitude to some of this type of behaviour
9 in the criminal justice system as a whole, and in
10 society, and I think perhaps a lack of understanding and
11 comprehension of just the ghastly nature of this type of
12 crime and the impact that it had on victims and
13 witnesses. We've seen that in some of our reviews of
14 materials, some of the approaches that are taken in
15 terms of whether or not witnesses were believed, and
16 that is a very different approach and attitude to the
17 modern approach. Again, that's maybe something that
18 at the criminal justice phase we may want to elaborate
19 on.

20 In some of the cases we were looking at, there's
21 people being psychiatrically assessed for things like
22 false memory syndrome or whatever. That type of thing
23 simply, in the modern approach, just doesn't stand any
24 scrutiny. I'm speculating, but whilst on first analysis
25 it looks to be quite a lenient sentence, having regard

1 to my experience of that time and looking at some of the
2 other disposals, it doesn't appear to have been perhaps
3 necessarily out of step with one or two of the other
4 disposals that we see.

5 Q. She wasn't a young woman when these offences were
6 committed. If she was born in 1933 and the offences
7 were committed between 1971 and 1981, it can't be put
8 down to inexperience.

9 A. No, but again I think it perhaps reflects a different
10 attitude from, as I say, the courts, the criminal
11 justice system as a whole, looking at her circumstance,
12 perhaps given more weight than it perhaps would now in
13 terms of that balance.

14 I don't want to tell my Lady how to sentence, but a
15 number of factors are taken into account in sentencing
16 and the weight that's given to each of those elements
17 and the balancing exercise in reaching an appropriate
18 sentence.

19 Q. The only other thing I would say about this case -- and
20 it's a point you make in terms of the -- there were
21 other charges, not of wilful ill-treatment but also of
22 assault, and indeed there were charges with a sexual
23 element that she was acquitted of ultimately, but they
24 were there and it was considered there was a sufficiency
25 of evidence to put them on the indictment?

1 A. Yes.

2 Q. And of course, the standard of proof, though, would be
3 beyond reasonable doubt?

4 A. Correct.

5 Q. And as we've seen from some recent cases where people
6 are charged with criminal offences and are acquitted,
7 they sometimes take civil action and the conduct is
8 found proved on a lower standard of proof, the balance
9 of probabilities.

10 A. Yes. There's a number of differences between the civil
11 courts and criminal courts.

12 LADY SMITH: There's no need for corroboration and hearsay
13 evidence is admissible. They are very substantial
14 factors that are different.

15 A. The lower balance of probabilities rather than beyond
16 reasonable doubt is definitely a factor in that as well.

17 MR PEOPLES: Just to be clear from the lay perspective, just
18 because someone is not found guilty because there's
19 a high standard of proof in the criminal proceedings, it
20 doesn't necessarily follow that the jury were satisfied
21 that it didn't happen?

22 A. That's my understanding. Obviously, we don't get to
23 know the basis for a jury's decision. That's another
24 fundamental principle of our law, but absolutely. Even
25 in the marking stage where the Crown is deciding whether

1 or not to take proceedings, it's something that I know
2 many witnesses and those who have been abused find it
3 difficult when charges aren't proceeded with. There's
4 a failing of judgement at that point, whereas from
5 a professional perspective, we are really looking at it
6 in a much more clinical way in terms of the assessment
7 of the sufficiency of the evidence and the ability to
8 present the case in a way which would allow the court
9 and the jury to convict.

10 That can be a difficult thing to explain,
11 particularly because the law is quite complicated and
12 challenging and there are a number of issues, as I've
13 mentioned earlier, around whether you can or can't apply
14 the Moorov doctrine, and going back to the historical
15 context, the understanding of when you could apply the
16 Moorov doctrine at the time of these decisions is very
17 different from what we think we could do now and
18 it would be very different as to what the jury would be
19 told now by the judge in considering their
20 deliberations.

21 Q. This is also a point that perhaps the next witness will
22 deal with. There has also been, over time, attempts --
23 initially I think without legislation and on the basis
24 of presenting certain expert evidence about how people
25 disclose -- whether they may disclose after a period of

1 time or an adult who there may be disclosure over time.
2 I think we now know, and there have been recent examples
3 where, under legislation, the Crown is permitted to lead
4 expert evidence about the way people disclose matters of
5 this kind without trying to form any assessment of the
6 credibility or reliability of a particular individual on
7 trial, but they can assist the jury by giving them
8 expert evidence about how people in that situation could
9 behave.

10 A. Yes.

11 Q. Is that your understanding? That does happen now?

12 A. It does. I think I've already referred to the evolving
13 understanding of my organisation, of the criminal
14 justice system, and society in general, of the reaction
15 of people who are abused and how they will disclose and
16 when they will disclose and, as you've said, not always
17 disclosing all at one time but incrementally often.

18 I'm no psychologist, but I've seen a number of
19 reports and studies where it's well recognised that
20 that is not unusual and there are various reasons for
21 it. There can often be different triggers for people as
22 to when they feel ready to disclose what's happened to
23 them.

24 That again presents challenges for prosecution
25 looking at it from that perspective, because, again,

1 when you're looking for more than one survivor to give
2 evidence, to provide that mutual corroboration, they
3 each have to be in a position where they've reached that
4 point where they want to disclose.

5 Secondly, if it has been an incremental disclosure,
6 you can have difficulties if further disclosures come
7 after you've already taken the proceedings for the
8 initial disclosure.

9 So there are a number of legal challenges around
10 that. But the good thing about it is that the law and
11 the legal system has had cognisance of that research and
12 now there's a much better understanding and that's
13 recognised in the way that cases are approached,
14 I think, in a way that perhaps back in 2002, 2004,
15 at the point we're looking at here, wasn't necessarily
16 the case.

17 I say that without reference to my colleague who's
18 going to give evidence.

19 Q. I think she will tell us a little bit about that as
20 well.

21 A. I think she was ahead of her time. She had a great
22 understanding of this area of work and her work was
23 exemplary in this particular case, but it was exemplary
24 for its time. It's how we do things now, but it is how
25 she did things then, but I can't say that how she

1 approached it then was how we all would have approached
2 it then and I think she is to be commended for that.

3 Q. Just apart from the competency of having such evidence,
4 which at one stage was challenged and there were certain
5 authorities that tended to suggest it wasn't competent
6 to place that type of evidence before a jury until there
7 was legislation to deal with that authority.

8 A. Apart from that, of course, it's not uncommon for
9 those that have been in the criminal courts, either
10 prosecuting or defending, to see that if someone has
11 different accounts at different times in statements that
12 are disclosed as part of the trial, that a defence
13 counsel will, as part of their function, routinely seek
14 to point up inconsistency or differences between
15 statements with a view to perhaps challenging the
16 credibility and reliability of the person who made these
17 statements.

18 A. Yes.

19 Q. That's quite a common thing in all types of crime.

20 A. That's correct. It's prevalent in all crime, as you
21 say, but particularly in this type of offending where
22 you do tend to have information given at different
23 times. You've got people trying to remember things that
24 happened to them when they were children and so their
25 account which they give in statements can differ from

1 one statement to another. Depending on the degree of
2 that discrepancy, it does open the door for defence
3 counsel, properly doing their job, to challenge the
4 credibility and the reliability of that evidence based
5 on the differences in account.

6 Q. But it can be a testing experience for a person who has
7 given those statements to then be giving evidence in
8 a trial and being cross-examined in relation to
9 statements they've given. I think you'll know from your
10 experience that witnesses, complainers who are speaking
11 to matters who have made a number of statements do find
12 this type of process extremely stressful.

13 A. I completely agree. You know, the process of giving
14 evidence for someone, particularly about some of the
15 more sensitive matters, is difficult enough without that
16 particular additional challenge.

17 Having said that, I'm not being critical of defence
18 counsel who are properly doing their job and trying to
19 introduce that element of reasonable doubt into the
20 minds of the jury in considering their case. They have
21 a responsibility to do their best for the accused, but
22 the adversarial nature of the system is such that it
23 does make the experience of the survivor difficult.

24 Again, I think that the criminal justice system has
25 improved in the way in which we support victims and

1 witnesses through the process, but there's probably
2 still a way to go in terms of how we best do that.

3 Q. And I think also, we don't need to go into the detail
4 because we've heard a little bit, but the law has moved
5 on in terms of protection for people's vulnerability and
6 the situation they're in to give them special
7 arrangements which will perhaps facilitate them in
8 giving evidence in the least stressful way possible.
9 It's never going to be stress-free but measures have now
10 been introduced and are being introduced to try and make
11 the process easier for those that have to take part in
12 it.

13 A. That's correct. There's a number of measures already
14 available and there's work ongoing. There's a further
15 bill tabled last month, or the month before, at the
16 Scottish Parliament looking to further ease the
17 experience of witnesses in court. Again, that's all
18 part of a longer term plan that I'm aware of in terms of
19 a series of measures which will hopefully improve that
20 experience as best it can be.

21 It's never going to be the most pleasant experience
22 for people; it's just about making it as comfortable as
23 it can possibly be against that background of knowing
24 that it's not going to be particularly comfortable.

25 Q. And I think, as part of the longer term plan, and it's

1 a matter of public knowledge, there are those that want
2 to change the process quite significantly to have
3 evidence brought out at an early stage to avoid this
4 question of statement after statement after statement
5 prior to a trial process. I'm not needing to go into
6 the detail, but I think we're aware that there is a move
7 in that direction?

8 A. Yes, that's correct. Again, the bill that I referred to
9 is, I think, the first stage in that process. The bill
10 is still before the Parliament so there are a number of
11 things that can still happen with that bill so I can't
12 say too much. But there's been very strong views
13 expressed about a desire to secure the evidence as soon
14 as possible, not just to avoid that constant repetition,
15 but to allow survivors to put the process of giving
16 evidence behind them. The criminal justice process can
17 take some time and to have the process hanging over
18 witnesses can be as challenging at times as waiting for
19 the decision to be reported and for the case to be
20 reported in the first place.

21 So anything that we can do to allow that evidence to
22 be captured at the earliest possible opportunity,
23 whether in the form of an early trial or in the form of
24 prerecording the evidence at an earlier stage, is to be
25 welcomed.

1 Q. One of the other things that I think is a common
2 complaint, not just by persons who are complainers in
3 sexual offences, but they are a group that do this, that
4 do make these complaints, that the process can take
5 a long time. I think in 2002, 2004, it wasn't uncommon
6 for a long time to elapse between a petition and a trial
7 and a result because of continued delays, perhaps for
8 perfectly good reasons, but sometimes perhaps not so
9 compelling reasons.

10 A. Yes.

11 Q. And therefore, from the point of view of a witness
12 in the process, whether a complainer or indeed an
13 accused, it could take a very long time.

14 A. That's right. We're certainly working, along with other
15 criminal justice organisations, to look to see what we
16 could do to reduce that time period. It's one of our
17 primary priorities at the moment.

18 You'll be aware from media coverage that Scottish
19 Government recently made some additional funding
20 available to the Prosecution Service and a large part of
21 that is designed for us to reduce the overall journey
22 times of cases involving serious sexual offending.
23 Again, that was accepted and recognised in the
24 Inspectorate Prosecution Report, which was published,
25 I think, around about the summertime, I can't remember

1 the exact date. It was important at the time, but the
2 days fly by.

3 Again, there was a recognition in that that we took
4 too long to get these cases to court and that there were
5 things we needed to do to improve our performance
6 in that regard. We've committed to doing that and the
7 additional funding from the government is a recognition
8 of that and an increase in the number of cases that are
9 actually coming to us, which had coincided with the
10 publication of that report.

11 So whilst we were working on improving the journey
12 times, the number of cases increased substantially year
13 on year and so the additional funding allows us to
14 attack both of those things.

15 Q. If I could go back to the supplementary report, just to
16 deal with the final -- I think I'll deal with two of the
17 individuals, I'll not deal with the final one.

18 There's a reference on page 5640. This is number 8
19 on the list in question 20 of the first report. This is
20 an individual known as Effie Climie, Euphemia Climie.
21 She was tried before a sheriff and jury, a sheriff court
22 case before a jury.

23 A. Yes.

24 Q. She was convicted of three charges of assault.

25 A. Yes.

1 Q. And I think they were offences against three separate
2 complainers, two of whom were members of the same
3 family, and another was another resident of
4 Quarrier's Village at the time of the offences.

5 I think again, just by way of background, and
6 I appreciate it's not in this part of the report,
7 I think that in her case, as your report indicates,
8 there were 11 charges on the indictment --

9 A. Yes.

10 Q. -- in all. There were seven complainers on the
11 indictment, five male and two female. And three
12 offences were found proved, all charges of assault.
13 I think I'm correct in saying the period covered by the
14 charges where there were convictions was from
15 10 December 1968 through to about 20 April 1973. So
16 a period of just over five years.

17 A. Yes.

18 Q. In that case, the disposal for this individual was
19 a community service order and I can tell you I have
20 found some information that it was 150 hours that she
21 was required to serve within a period, I think, of
22 12 months. I think I'm correct in saying that.

23 A. Okay.

24 Q. I don't know whether you have any observations on that.

25 A. The order we had didn't include that detail, which is

1 why it's absent from the report. All it indicated was
2 the imposition of a Community Service Order. Again,
3 it's a non-custodial sentence. My recollection, it has
4 been a while, but 240 was the maximum.

5 LADY SMITH: I'm glad you said that. I was thinking it was
6 240, if I've got the timing right.

7 A. I think that's corroboration. So 240 hours was the
8 maximum, so 160 hours is not even the maximum of the
9 sentencing power available for that particular disposal.
10 Again, without knowing all the detail, it's very
11 difficult, but it certainly looks on the lighter side of
12 a disposal, depending on the nature of the charges that
13 the conviction was returned in.

14 MR PEOPLES: I suppose on the face of it, looking at it from
15 the layperson's perspective, these were three assaults
16 by a person who had care of children --

17 A. Yes.

18 Q. -- and they were children who were assaulted. This
19 wasn't a question of reasonable chastisement; this was
20 a conviction for assault.

21 A. Yes. I can't really observe more than to say it appears
22 lenient from a very bald analysis without more detail.

23 Q. I can give you some detail because I think on one of the
24 charges that was found proved the child in question was
25 aged between 7 and 11. Another one was aged between 3

1 and 5. The third one was aged between 10 and 11.

2 A. Yes.

3 Q. So that maybe speaks for itself?

4 A. Perhaps. I can't take issue with that. As I say,
5 I can't speak for the sheriff who imposed the sentence.

6 LADY SMITH: Which sheriff court was this one?

7 A. That would have been Greenock.

8 MR PEOPLES: Yes, I think I recall it was.

9 Again, I appreciate these weren't charges that she
10 was found guilty of, but clearly there were a number of
11 other serious charges on the indictment. There were
12 11 charges in all and some, again, had a sexual element
13 to them.

14 A. Yes. As I say, I can't seek to condemn or justify the
15 sentence, I can only comment that, on the face of it, it
16 appears to be a light sentence from what you've
17 described. But I don't have the information to hand.

18 Q. I appreciate that. That's very fair of you.

19 Looking at the last person -- I'm not going to look
20 at the final person on the list because I think we're
21 going to get a bit more information about the person
22 who's number 10 on the list.

23 On page 5641, you finally deal with the case of
24 Samuel McBrearty, who was tried in the High Court and
25 was convicted, I think in about 2001. Yes, I think

1 he was sentenced on 28 September 2001.

2 You tell us there that he was convicted of a number
3 of charges -- I think eight in all?

4 A. Eight, yes.

5 Q. And two were convictions for rape?

6 A. Yes.

7 Q. In the case of one of victims, charge 1, the charge
8 related to rape on various occasions, I think, between
9 October 1961 and October 1964 when the child in
10 question, a female, was aged 11, between 11 and 14 years
11 of age.

12 A. Yes.

13 Q. The other rape charge was charge 8 and was a -- and the
14 period covered by the charge, I think, was between
15 1 October 1961 and 1 April 1968 when the child in
16 question was aged between 10 and 17 years of age.

17 A. Yes.

18 Q. That seems to have been the period covered by the libel.

19 So these were two significant convictions?

20 A. Yes.

21 Q. But in addition, as you tell us, there were other
22 convictions. There were another six convictions.

23 A. Yes.

24 Q. Three were for -- well, no, I think in fact ... I think
25 you've got assault as one of the charges. I've got

1 a feeling that all six, if my information is correct,
2 were lewd and libidinous practices and behaviour.

3 I think the indictment did undergo some amendment, so
4 a charge you may have thought was assault was deleted.

5 A. Okay. I'll have that checked.

6 Q. I think I'm correct in thinking that there were six
7 additional charges proved of lewd and libidinous
8 practices and behaviour --

9 LADY SMITH: So that's additional to the rape?

10 MR PEOPLES: Absolutely, yes.

11 LADY SMITH: So eight charges together?

12 MR PEOPLES: Eight charges.

13 I can say that there were 21 charges on the
14 indictment on the original indictment. I think in the
15 end, at least two of these charges were removed from the
16 indictment because the complainer was too ill to give
17 evidence. I don't know if that rings a bell or not. It
18 may not if you were not involved.

19 Then there were eight offences, as I've mentioned,
20 that were found proved, which related to three
21 complainers, female complainers, including the two
22 charges of rape and the remainder were lewd and
23 libidinous practices, both under the statute and at
24 common law.

25 Of course, as we've seen, the period seems to cover

1 the commission of these offences between about
2 October 1961 and, I think, around about June 1968.

3 A. Yes.

4 Q. In this case, as you tell us on page 5641,
5 Samuel McBrearty was sentenced originally by the trial
6 judge to 12 years' imprisonment and that this was
7 reduced to 10 years following an appeal against
8 sentence.

9 A. That's correct.

10 Q. I think are all the questions I have for Mr Donnelly.
11 I'm sorry to perhaps have presented you with some
12 information that wasn't to hand.

13 A. Not at all.

14 MR PEOPLES: But it perhaps gives more context and flavour
15 to some of the things you have told us about today.

16 Thank you for attending.

17 LADY SMITH: Are there any outstanding applications for
18 questions? That's all, Mr Donnelly. Thank you for
19 undertaking to amend the report, to update it with
20 further details. That will be really helpful.

21 (The witness withdrew)

22 MR PEOPLES: I think we were talking about a short break to
23 get the witness ready.

24 LADY SMITH: Very well.

25 (2.36 pm)

1 (A short break)

2 (2.40 pm)

3 MR PEOPLES: The next witness is Catherine White.

4 CATHERINE WHITE (affirmed)

5 Questions from MR PEOPLES

6 LADY SMITH: Please sit down and make yourself comfortable.

7 I'll hand over to Mr Peoples to start whatever he's
8 going to question you about first.

9 MR PEOPLES: Good afternoon, Miss White.

10 A. Good afternoon, Mr Peoples.

11 Q. First of all, just to explain, there is in front of you
12 in the red folder a copy of a signed statement that
13 you have provided to the inquiry, and it's a statement
14 I'll ask you some questions about today. Before I do
15 that, I will just give, for the benefit of the
16 transcript, the reference number we've attached to the
17 statement, which is WIT.001.002.2152.

18 The statement is on your screen as well in front of
19 you. If you prefer to use the screen, feel free to do
20 so.

21 Can I begin by asking you to turn to the final page
22 of the statement at page 2180 and confirm that you have
23 signed your statement?

24 A. Yes. I can see it on the screen.

25 Q. So you've provided a signed statement and can I also get

1 you to confirm at this stage that you have no objection
2 to your statement being published as part of the
3 evidence to the inquiry and that you believe the facts
4 stated in your statement are true?

5 A. Of course. The only thing I would say is that since
6 I made the statement I have been doing further reading
7 and although I thought that no one in the service would
8 have been involved in the investigation and prosecution
9 of crime involving children in a residential setting,
10 subsequent reading leads me to believe that I was wrong
11 with that and there were prosecutions, but I didn't know
12 about them.

13 Q. I'll maybe come to that when we get to some of the
14 points that you make about this. If you find an
15 appropriate point to tell me more about that, then feel
16 free to do so.

17 At this stage maybe if I could just start by asking
18 you to go to the first page of the statement at
19 page 2152 and simply confirm that you were born in 1964.

20 A. Yes.

21 Q. You tell us a bit about your professional background and
22 experience starting at paragraph 2 of your statement,
23 and I'll maybe just take some of the detail from you to
24 begin with.

25 You're currently a principal depute with the Crown

1 Office and Procurator Fiscal Service -- and for
2 convenience I'll just call it "the Crown Office".

3 A. Of course.

4 Q. And you're currently working in the summary department
5 in the procurator fiscal's offices in Ayrshire?

6 A. Yes.

7 Q. And you tell us that you've had a long association with
8 the Crown office and I think you started as a trainee
9 solicitor in the Crown Office in Edinburgh in 1986;
10 is that correct?

11 A. Yes.

12 Q. From that start, you went on to work as a trainee and
13 then fiscal depute in Ayr for a period of about three
14 years?

15 A. Yes.

16 Q. And then you moved to an office -- a fiscal's office in
17 Glasgow in about 1990?

18 A. Yes.

19 Q. At some point thereafter, I think you tell us that you
20 became head of the child witness unit at that office.

21 A. Yes.

22 Q. You tell us that that was a unit that had been set up by
23 a senior fiscal called Geri Watt, is that right --

24 A. Yes.

25 Q. -- in recognition that there was a need for special

1 consideration to be given as to how child witnesses were
2 dealt with when giving evidence in criminal cases?

3 A. Yes.

4 Q. Am I right in thinking that was an innovation or were
5 there other child witness units of a similar kind at
6 that time?

7 A. No, it was an innovation. Geraldine was ahead of her
8 time. She saw what was coming and she went to the boss
9 and said, "I think we should have a child witness unit",
10 so we did.

11 Q. When you arrived, did you take charge of that unit when
12 you joined the unit, did you take charge of it in
13 succession to Geraldine Watt?

14 A. No. There were subsequent people in the unit then.
15 I became the head of the unit I think in 1994 or 1995,
16 I think 1995. And I was head of the unit, but when
17 I say head of the unit, it was just myself,
18 a precognition officer, and a lady to do the admin. It
19 wasn't a huge unit.

20 Q. I suppose from small beginnings -- did it grow in your
21 time?

22 A. No, it didn't grow in my time --

23 Q. Okay.

24 A. -- but it was very busy.

25 Q. You tell us that when you did arrive at this unit -- and

1 I take it you're talking about the child witness unit in
2 paragraph 4 of your statement -- that you were given
3 permission by the assistant procurator fiscal to focus
4 on cases that only involved children; so that became
5 your area of expertise and speciality?

6 A. Yes.

7 Q. And indeed, you tell us in paragraph 5 that when you
8 were in the unit, you allocated such cases to yourself
9 and an HPO?

10 A. Yes, a higher precognition officer, that was the grade
11 at the time. That was a lady precognition officer I had
12 working with me, so I allocated them to her, allocated
13 them to me, did the initial legal work on them, letters
14 and things, gave her guidance -- I obviously didn't need
15 to guide myself because I knew what I was doing.

16 We then precognosced all the cases, so there was
17 continuity. I prosecuted the ones that were sheriff and
18 jury so the children were seeing the same person as much
19 as they could. Obviously the HPO couldn't appear in
20 court, but she would do the court visit with me -- I'm
21 sure she did -- and I would prosecute the cases. So if
22 I precognosced a child, I did the court visit,
23 I prosecuted the case so the child was seeing the same
24 person all the time.

25 We had no Victim Information and Advice Service in

1 that time, so people did phone in regularly, either to
2 have updates on the cases that were ongoing, or
3 sometimes even just to speak to me about cases that were
4 basically sitting waiting for a Moorov.

5 Q. Just for the benefit of the public that maybe reads
6 these transcripts, just explain to them what
7 precognosing involves. It's a term lawyers use and
8 love to use. Maybe you could demystify us for those on
9 the public benches.

10 A. It's just like taking a statement from a witness, but in
11 child abuse cases, sexual abuse cases, disclosure is
12 fragmented. What starts off as a case of lewd,
13 indecent, libidinous practices and behaviour can end up
14 a full-blown rape. So the precognition process is
15 really important in these cases, because a child has
16 disclosed to the police, they've been taken seriously,
17 they feel safe, they can disclose a wee bit more, they
18 then come in for precognition.

19 Again, that's a twofold thing: they might disclose
20 me to me than they had to the police, but also it meant
21 that if it was a trial, if was sheriff and jury, they
22 were seeing the same face.

23 It's difficult to talk about intimate things at the
24 best of times, but can you imagine having to talk about
25 something like that as a child when there are all these

1 taboos around these things?

2 Q. You tell us actually as part of what you did in those
3 days, in the unit, you would also attend -- if the case
4 ended up in the High Court you'd attend the High Court
5 with the children prior to the case to familiarise
6 yourself with the surroundings -- or to familiarise them
7 with the surroundings, to let them know what was it
8 like, what a court looked like. Was that innovatory so
9 far as you know at the time?

10 A. No, I think it was best practice. I would take my gown,
11 let them try on my gown, I would let them be the judge,
12 I would let them be a solicitor and an advocate, I would
13 let them go to the other side of the table. If there
14 were screens or CCTV, but that was later on really,
15 I would let them try them out as well so there was
16 nothing terribly scary for them. It's bad enough having
17 to talk about these things without it being an
18 environment that you don't know at all.

19 Q. And I think you tell us also that if it was a High Court
20 case that you were involved in, you'd be there at the
21 start of the trial and indeed you would be doing
22 introductions between the children who were to give
23 evidence and the prosecutor, the advocate depute?

24 A. If the advocate depute was happy to do so, I would
25 always ask, but some advocate deputes weren't

1 comfortable with that in those days. Things have
2 changed and it would be commonplace now to meet with the
3 AD prior to a trial. But in those days, there was a bit
4 of a resistance sometimes.

5 Q. You tell us just a little bit that you took, as you put
6 at page 2153, at paragraph 5, the final sentence:

7 "I took all the training offered by the department
8 and did more in my own time and [you] also did a course
9 on child law in [your] own time."

10 So you were exploring training opportunities to
11 better equip you to deal with this responsibility?

12 A. Absolutely.

13 Q. Can you indicate the sort of training that you underwent
14 if you can remember?

15 A. A lot of psychological things. There were tapes in the
16 unit which were a type of learning. So I used to take
17 them -- and you wouldn't do this now, obviously,
18 although you probably could because it was a learning
19 thing. I would take them and I would listen to them in
20 the car and I would listen to the psychologist, the
21 psychiatrist, the social worker, whoever was on the
22 tape, telling about how best to approach things, how
23 abusers operated, how children reacted, how children
24 kept things secret. Anything I could get my hands on,
25 I read, anything I could go to, I did.

1 Q. I think you indicate that obviously you did that and
2 that -- are you saying you weren't unique in that now?
3 Have you understood that there were other people that
4 were doing similar things or not? You made a point at
5 the beginning, I wasn't sure whether it was related to
6 this or ... Do you think you were?

7 A. It varied person to person. Some people were more
8 interested in this field of work than others. There
9 weren't many who were as immersed in it as I was, but
10 there were other people in other parts of the country.
11 There was very committed child witness resource in
12 Dumfries & Galloway, for example.

13 Q. That was sporadic? Was that your impression?

14 A. I didn't have a countrywide view, but my impression from
15 going to train other disciplines was that other places
16 would do things differently. But there was a lot of
17 departmental training at this point on children. There
18 were child witness resources throughout the country.

19 Q. And you say at paragraph 6 that you immersed yourself in
20 dealing with children who would be giving evidence in
21 criminal cases, and I suppose your aim was to try and
22 make the process as friendly and as easy as possible for
23 them to participate in. Was that part of your goal?

24 A. Yes.

25 Q. You will describe, as you say, particular difficulties

1 that a child would have in giving evidence but also the
2 problems that adults who were abused as children would
3 have in speaking about abuse that they suffered as
4 children.

5 A. Yes.

6 Q. I think we can touch on that later on in your evidence.

7 You say while you were in the unit -- and I won't
8 take long on this because we now know, or at least those
9 who have been listening today now know what a Moorov is
10 -- but you said you would keep a Moorov book at that
11 time. Was that on the basis that if something came up
12 that wasn't capable of corroboration, you still had
13 access to it to see if it linked up with new information
14 that came to the unit. Is that right?

15 A. Yes, because this was before the days of computers and
16 I can remember at least one prosecution we got because
17 when the subject sheet came in from the police I checked
18 it against the Moorov book and there was another
19 complainer there.

20 Q. Again, was this an innovatory thing so far as you are
21 aware? You weren't asked to keep these kind of books
22 routinely from a --

23 A. I'm not sure if they didn't it elsewhere but I know we
24 did it in Glasgow.

25 Q. And you tell us at paragraph 8 that you don't think that

1 other offices that were part of the Crown Office at that
2 time had child witness units, although they did have
3 what you call child witness resources. I take that that
4 would be people whose responsibilities were specifically
5 towards cases involving children?

6 A. As part of their other duties, if there was a case which
7 required specialist input, they should have done it,
8 they should have either precognosed it, prosecuted it
9 or both.

10 Q. You tell us that today, the Crown Office and
11 Procurator Fiscal Service does have an established
12 national unit for sexual offences. I think that's
13 a relatively recent development is it?

14 A. Yes.

15 Q. But they don't have a national unit for child witnesses,
16 and you describe that as a great loss. Is that
17 a personal view? I know you're not speaking for the
18 organisation.

19 A. Totally.

20 Q. You think that such a unit could be a valuable addition
21 to the service?

22 A. Definitely.

23 Q. Because there is a national unit for sexual offences and
24 obviously sexual offences can be committed against
25 children or adults. Why do you think a specific unit

1 for child witnesses would be a valuable addition?

2 Do you have a particular reason for thinking that?

3 A. Well, we had a child witness waiting room, which we made
4 as child-friendly as we possibly could: nice soft sofas
5 and things. I went to the local cinema and borrowed --
6 well, they gave me them -- I got big posters from the
7 current children's films. We made it as child-friendly
8 as possible so it was somewhere nice for children to
9 have to wait.

10 And sometimes children would be there, they might
11 have to be precognosced, there might be more than one
12 child or family that was being precognosced -- a mum
13 would come with two children, a mum would come with
14 a baby. I have not seen the sexual offences unit, but
15 this was something we did in Glasgow and we later tried
16 to replicate in Paisley to make things as child-friendly
17 and as nice for children as possible because they're not
18 cut-down adults.

19 Q. I suppose a point you're making there and maybe it's
20 a point that could be made generally, there are certain
21 settings in which children might find it difficult to
22 relax and say things and disclose things. If it's too
23 formal or it looks institutionalised or it looks too
24 much like a court they might find that daunting and
25 difficult to relax and speak in --

- 1 A. Yes.
- 2 Q. -- speak out in.
- 3 A. Yes.
- 4 Q. You tell us that after working in Glasgow you moved to
5 Paisley in 1996 and had responsibilities in various
6 units there, but you kept up your child witness role
7 in relation to, I think, the Argyll and Clyde area --
- 8 A. Yes.
- 9 Q. -- for a period of about four years?
- 10 A. Yes.
- 11 Q. And you also tell us I think in that period that you
12 were part of the Crown Office Standing Committee on
13 Children?
- 14 A. Yes.
- 15 Q. And you were doing training inside -- well, you call it
16 the department, is that the services?
- 17 A. Yes.
- 18 Q. And you represented the department providing training to
19 outside agencies on child abuse cases. This was all
20 in the period prior to 2000; is that right?
- 21 A. Yes.
- 22 Q. Was there any discussion at that time as part of the
23 training of dealing with child abuse cases in
24 a residential care setting?
- 25 A. Not as far as I recall. I did have one case when I was

1 in Paisley and it was a foster carer who had abused two
2 little girls.

3 Q. Does it follow from that that although you were taking
4 a direct interest and you were involved in a child
5 witness unit in Glasgow, that in those days not too many
6 cases of child abuse in residential care settings were
7 coming to the attention of you or your office for
8 possible prosecution?

9 A. Not in Glasgow, not in Paisley, not in everywhere I'd
10 been previously.

11 Q. And then you tell us that in about 2000, you moved to
12 Greenock, and I think this is where your involvement
13 with the cases in Quarriers first started; is that
14 correct?

15 A. Yes.

16 Q. Just moving on page 2154 of your statement at
17 paragraph 10, you tell us -- and I think this maybe
18 takes up the point I was asking about a moment ago --
19 that at the time you went to Greenock you say it was
20 unlikely that anybody in the office there had been
21 involved in the investigation and indeed prosecution of
22 abuse of children in a residential care setting.

23 A. Yes.

24 Q. You attempt, I think, to indicate when, in your opinion,
25 there was maybe a greater realisation that there was

1 a general or serious problem about child abuse, and
2 I think you tell us not child abuse in a care setting as
3 such, but just the general issue of child abuse in the
4 community.

5 A. Yes.

6 Q. You seem to see as a significant moment the broadcasting
7 of a programme, That's Life, in 1986 when there was a
8 highlighting of the issue of child abuse.

9 A. Yes.

10 Q. Do you recall that as perhaps being a significant
11 development in terms of public awareness of the issue?

12 A. Yes. When I went to work in Glasgow, I was told
13 basically after that programme, people coming in off the
14 street wanting to talk about having been abused, and
15 this before had been very much a taboo subject, people
16 didn't talk about it.

17 LADY SMITH: Is that when Childline was set up?

18 A. Yes, my Lady.

19 MR PEOPLES: The way you put it, and perhaps to see why it
20 had this impact and perhaps caused people to come
21 forward and indeed report abuse, not just simply talk
22 about it, you feel as if the fact it got public
23 recognition and publicity and people talked about it on
24 a TV programme had caused people to feel more empowered
25 to come forward and speak about abuse they'd suffered in

1 childhood?

2 A. Yes. It made people realise that they weren't at fault,
3 the abuser was at fault. And children always feel
4 guilty and feel responsible for some reason. No one
5 knows why, but they all do, even though the fault is not
6 theirs.

7 Q. On the same theme at paragraph 13, you say -- and
8 I think that the service that you've been a part of for
9 many years, the Crown Office, is by the nature of its
10 work a reactive service.

11 A. Yes.

12 Q. And really people have to come forward in the first
13 instance to the police and make a report for the matter
14 to be investigated and possibly prosecuted.

15 A. Yes.

16 Q. And you say that, at least it's your personal view, and
17 again I know you're not speaking for the organisation,
18 that from 1986 onwards it became more socially
19 acceptable for people to speak about abuse that they had
20 suffered as children.

21 A. Yes.

22 Q. Moving on to page 2155 at paragraph 14, you address the
23 issue of children in residential care and the fact that
24 you consider that they have additional barriers that you
25 believe make it more difficult for them to speak up

1 against their abusers or to speak about the abuse they
2 may have suffered.

3 A. Yes.

4 Q. Can you tell me a bit about that, what your thinking on
5 that is based on your experience over time?

6 A. Even outwith the residential care setting, it's very
7 difficult for children to make that initial disclosure.
8 They have been told by their abuser, it's our secret,
9 our little secret, something terrible will happen to you
10 if you tell anyone. There are other ways of keeping
11 children quiet, threatening perhaps another member of
12 the family, threatening a pet, threatening a beloved
13 parent. And they do say to the children about how the
14 family will be torn apart, it'll be difficult, and all
15 these things. A lot of these things are true because
16 once a disclosure is made, it is difficult for the
17 family and it is difficult for the child.

18 So if a child's being groomed and prepared and
19 convinced that no one will believe him or her, it's
20 a significant hurdle to overcome to say, "This happened
21 to me, it was wrong, and can you help me, please?"

22 Children in residential care have additional hurdles
23 to overcome because they're not in their family setting
24 because there's something gone wrong in their family
25 setting, perhaps a parents' died, perhaps they've

1 already been abused. Something has happened that means
2 that child is in a residential setting, so that's an
3 additional hurdle for that child to overcome.

4 Q. You mention a further problem at paragraph 17 that there
5 is the issue of who do you speak to if you want to
6 disclose something of that nature. Again, can you tell
7 us a bit about that and what you see as the problem,
8 particularly if you're in a residential setting?

9 A. If the person who is abusing you is your house father,
10 who do you tell? You can't really tell the
11 house mother, who is married to the house father. Can
12 you tell your social worker, do you see your
13 social worker, and are you at the stage that you can
14 say, "This is happening, I don't like it and I'm really
15 unhappy". Have you got to that stage mentally yet or
16 have so many terrible things happened to you that you
17 are not mentally at that stage yet? Although we know in
18 Quarriers a number of children did disclose, it wasn't
19 well received, and nothing really was done.

20 Q. Indeed, you make the point that not only as children,
21 but you say even when people who have been abused as
22 children become adults, trying to disclose what happened
23 as children remains a difficult exercise for them.
24 Is that your experience of these cases?

25 A. Yes.

1 Q. And indeed, I think this is where you make the point,
2 and perhaps the point that's better understood today,
3 that you don't get a disclosure all at once and you may
4 get a fragmented disclosure over time.

5 A. Yes, and the disclosure's delayed. The only time you'll
6 get an immediate disclosure that something has happened
7 is if it's -- a child has been dragged off the street
8 and that's incredibly rare. Most abuse of children
9 takes place with an adult that the child trusts and
10 possibly loves and is also dependent on. So it makes it
11 very difficult for that child to disclose.

12 Q. I suppose if in the case of children that were in
13 Quarriers for a long period and knew no one other than
14 their house parents as effectively their mother or
15 father figure, and the figure that they would look to
16 for love or comfort and they were the abuser, what sort
17 of dilemma does that put them in?

18 A. It's a dreadful situation. The children can often love
19 the abuser, they just want the abuse to stop. They have
20 no way of making it stop.

21 Q. You say at paragraph 19, from your general experience of
22 these cases, that you don't find it surprising that if
23 one is to search records that you don't find many
24 instances necessarily of complaints being made at the
25 time that the child was in care. That's not a big

- 1 surprise, is it, to you?
- 2 A. No.
- 3 Q. Why would that be? Why is it not a surprise?
- 4 A. Because there are so many hurdles for children to
5 overcome to be able to disclose. Quarriers and society
6 in general in those days was much more respectful of
7 authority. Everything was much more authoritarian and
8 again that's not conducive to having children telling
9 what's happening to them.
- 10 Q. I suppose the other point about records might be because
11 we have heard some evidence today indeed that adults who
12 reported abuse to the police during the Orbona years,
13 they reckoned that of those that made complaints about
14 Quarrier's Village, perhaps one in four were saying that
15 at the time they had said something to an adult.
- 16 A. And nothing was done.
- 17 Q. And did you find much evidence to show that if they did
18 report it, it had been recorded in any official records?
- 19 A. The example this morning was recorded.
- 20 Q. Was that a rare example?
- 21 A. Yes. Most of the examples -- there was another one
22 in the case where there was a conviction which was
23 quashed because of Moorov. And in that case, the person
24 had made the disclosure but had been told it's just
25 a nightmare, it's just a dream.

1 In one of the other cases, two people had complained
2 about the person and one had been told, "House parents
3 don't do that", and the second person, I think, from
4 memory, didn't feel supported, and they were a young
5 adult, they weren't a child, they were a cottage auntie.

6 Q. Was this a cottage auntie who subsequently made
7 a complaint and that complaint was found proved by
8 a jury? Is that one you're thinking of? I know of one
9 case, the case of Sandy Wilson, where two cottage
10 aunties were among eight complainers --

11 A. Yes.

12 Q. -- who had been young cottage aunties --

13 A. Yes.

14 Q. -- and I think their complaints went to a jury and were
15 found established.

16 A. I'm not sure what the finding of the jury was, but I do
17 remember one of the cottage aunties saying that she had
18 gone to someone in authority in Quarriers and had said
19 about it.

20 I also know there were complaints made in the
21 Porteous case by one of the child witnesses -- I think
22 it was to Dr Minto -- it might have been a slightly
23 oblique complaint, saying, "I don't like it, can you
24 move me?", being reassured, yes, something would happen,
25 going home, and not being moved and being left in the

1 situation.

2 Q. So during this investigation, there was evidence that
3 these things were being said in some cases and reported,
4 albeit you've told us some of the difficulties that some
5 children might find in doing that?

6 A. Yes. Again, that has a knock-on effect. If someone has
7 been brave enough to say and try and do something about
8 it, to not be taken seriously or worse, not believed,
9 that makes it much more difficult to tell the next time.

10 Q. And you also make another point, just at the final
11 sentence of paragraph 19, you say:

12 "Just because a child told no one at the time
13 doesn't mean they shouldn't be believed years later,
14 although the matter should be properly investigated."

15 I sense that you're saying at least there may have
16 been a time when that was the attitude. Or are you
17 saying that? Are you going as far as to say that
18 perhaps if you get a disclosure for the first time many
19 years on that there's certainly those who would say,
20 well, why didn't they say something at the time, if they
21 didn't say anything it probably didn't happen? Was that
22 an attitude you've come across?

23 A. I do hear people talk like that, but they don't
24 understand the delay in disclosure is normal. And there
25 are some people who will take these things to their

1 grave with them.

2 Q. I take it that some of the people that you had dealings
3 with during the period that you were at Greenock and
4 involved with the Quarriers cases, would they have
5 fallen into the category of people who were making
6 disclosures for the first time many years after the
7 event, some of them?

8 A. Yes. And certainly disclosures to the authorities.
9 Some of them had to be found by the police, they didn't
10 all voluntarily come to the police; the police had to go
11 and find them.

12 Q. Just moving on in your statement to page 2156, you say
13 at paragraph 21 the point you've just made, there are
14 people who will never be able to speak out about what
15 happened and will take the matter to their grave. So
16 that's something I think you recognise in this
17 particular situation where they've suffered some abuse
18 in childhood. Is that something that you know is the
19 general experience that people don't always report and
20 will just remain silent?

21 A. Because they don't say, you can't be sure, but that's my
22 feeling, and I think that's the understanding in
23 psychological terms. It's understood that not everybody
24 will disclose; some people will take it to their graves.

25 Q. It may be your thinking as well that -- I think there's

1 a well held belief that there's a lot of under-reporting
2 in this type of case.

3 A. Yes.

4 Q. Is that something that you tend to agree with?

5 A. Absolutely. Statistically it used to be thought -- and
6 I haven't looked at these statistics for many years --
7 that one paedophile will abuse 100 children in the
8 course of his lifetime. So if you have a disclosure
9 then you have a second person, then you have a third
10 person. The police had to go and find the rest. They
11 won't find all 100, but that's the importance of
12 investigating these cases properly. There will be other
13 people out there; they just have to be found and they
14 have to be at the stage where they'll disclose.

15 LADY SMITH: That statistic has obviously stuck in your
16 head. Do you remember what the source of it was?

17 A. I'm afraid I don't, my Lady.

18 MR PEOPLES: Was it some recognised piece of research that
19 you think you came across as part of your studies when
20 you were immersing yourself in this area?

21 A. Yes.

22 Q. You say something at paragraph 22 and it maybe echoes
23 something that the previous witness spoke about in
24 a rather different way about going through the process
25 itself because we've just heard that maybe at the time

1 we're looking at and some of the trials that were taking
2 place, and perhaps before then, that the process wasn't
3 always easy for people who wanted to complain of
4 a matter as serious as being abused as a child.

5 A. I can't tell you how difficult it is for people. I have
6 sat and I've taken the precognitions. I have calmed
7 their fears when they phoned, I have taken their
8 evidence in court. It's really hard for people. It's
9 a very brave thing to do. And that, of course, is what
10 keeps children safe, people being brave enough to talk
11 about it.

12 Q. But the process itself -- and I'm not trying to be
13 critical of the process and the right of accused persons
14 to defend themselves -- but the process is such that,
15 for the person coming forward, it can be very daunting
16 because if they are cross-examined by a person whose job
17 it is to defend an accused person who says they didn't
18 do it, that can be a pretty daunting experience for
19 complainers, can it not?

20 A. It is. And even with all the care and gentleness, it
21 can be difficult to get information out of people. If
22 questions are asked in an abrupt fashion or a harsh
23 fashion, you will close the witness down, and they will
24 feel worthless, they'll think, "Why did I disclose? Why
25 did I put myself through this? Nothing's going to

1 happen, everyone believes him".

2 Q. And I suppose another point that you are raising at
3 paragraph 24 of your statement at page 2156 is that
4 people who do enter the system, whether voluntarily or
5 through police enquiries, many of them have a basic
6 mistrust of authority and of the system that they're
7 engaging in. Has that been your direct experience --

8 A. Yes.

9 Q. -- that they don't trust authority?

10 A. No, especially in the Quarriers cases, because authority
11 had let them down, the system had let them down.

12 Q. I think you take the view -- and you say this at
13 paragraph 25 -- that when you were involved in the
14 Quarriers cases between 2000 and 2004 -- and we'll come
15 to the nature of your involvement -- you and indeed the
16 officers you worked with, you say, were taking great
17 care to try and deal with the matter in a sensitive way
18 and to support them and to ensure that the best
19 conditions existed to allow the evidence to be given and
20 to allow them to come forward and participate in trial
21 processes.

22 A. Yes.

23 Q. But one of the important ingredients in doing that is to
24 gain their trust?

25 A. Yes. You can't expect someone to tell the worst things

1 that have ever happened to them to you if they don't
2 like the look of you or they feel you're not listening.
3 You do have to engage with people and you do have to
4 earn their trust.

5 Q. Can I move on then, with those comments and insights
6 that you have given us about the process from your
7 direct experience, to Operation Orbona or the Quarriers
8 investigation, because I think technically
9 Operation Orbona didn't start until February 2002, but
10 clearly it was preceded by earlier investigations as
11 essentially part of a continuing process.

12 You deal with that at paragraph 29, starting at 29
13 on page 2157 of your statement.

14 A. Yes.

15 Q. The first point you make at paragraph 29 is that the
16 abuse went as far back as the 1950s. I think you're
17 correct in saying that the case of Mary Drummond did
18 concern abuse in the 1950s, but you maybe heard evidence
19 this morning that there were complaints of abuse which
20 pre-dated the 1950s and we've got some figures for that
21 in the police report. So, clearly, there were people
22 who were complaining of things that happened earlier
23 than the 1950s; is that correct?

24 A. Yes.

25 Q. Your first direct involvement you say at paragraph 31 on

1 page 2157 was involved in the case of Samuel

2 McBrearty --

3 A. Yes.

4 Q. -- which came to the attention of the police in 1999,
5 I think you said, or thereabouts.

6 A. Yes.

7 Q. So far as your involvement with the Quarriers cases are
8 concerned at paragraph 32, so we just see the relevant
9 time frame, you say that essentially your involvement
10 started from the summer of 2000 when you arrived in
11 Greenock and continued until 2 April 2004 when you left.

12 A. Yes.

13 Q. On the matter of assistance in dealing with such cases,
14 as were coming up as part of this investigation, at
15 paragraph 32 you mention something called Chapter 16 of
16 the Book of Regulations, which is a form of Crown Office
17 guidance, you say dealing with children as both victims
18 and accused. But you say that, so far as you can recall
19 now, you don't think there were instructions in that
20 guidance that were specific to children who had been --
21 either who had offended in residential care or indeed
22 had been the subject of presumably offending behaviour
23 in such settings.

24 A. I think so.

25 Q. Indeed, you make the additional point at paragraph 33

1 that, of course, the people you were dealing with
2 primarily, I think at that stage, were adults who had
3 been abused as children, not children coming forward or
4 participating as children in the criminal justice
5 process.

6 A. Yes, they were adults.

7 Q. You also mention another document in paragraph 33,
8 I just want to ask you about that, "The Precognoscer's
9 Handbook". How would that have helped you at the time?
10 Was it just a general guidance on taking statements
11 from --

12 A. Yes. From memory, it had lots of good stuff about how
13 to prepare cases, how to put them together, and there
14 was lots of departmental training on dealing with
15 children.

16 Q. But you do say that the experience -- that such
17 experience as you had of dealing with children who had
18 suffered abuse could be put to good use when dealing
19 with adults who were complaining of abuse as children
20 because you say that they're speaking of what they
21 remember as a child. Can you just explain what you mean
22 by that?

23 A. Child abuse is child abuse. It doesn't matter whether
24 the child is sitting in front of you or whether it's
25 a 40 or 50-year-old person. They're telling you things

1 that happened to them when they were children. And
2 child abuse operates -- sexual child abuse operates in
3 the same way.

4 Q. A point you make -- and I think you're complimentary of
5 the officers that you worked with at that time -- in
6 paragraph 37 is that they were an experienced group and
7 were quite dedicated to the task they were given and
8 indeed they had a knowledge of how to deal sensitively
9 with the vulnerable people that they had to deal with.
10 Was that your experience of this particular operation,
11 the people involved --

12 A. Absolutely, it was a privilege to work with them.

13 Q. And you say that as a result of that experience, a lot
14 of lessons were learned, I think, about how to handle
15 this type of situation?

16 A. Yes.

17 Q. I think I'm right in thinking that one officer who was
18 involved in it may have told us or told the inquiry at
19 least that thereafter this type of investigation may
20 have been used as a training model for other officers.
21 Is that something you had any knowledge of?

22 A. I don't think I had, but it is a good training model.
23 It was a good way to do things. I can't praise the
24 officers highly enough.

25 Q. At paragraph 38 on page 2159, you tell us that during

1 the period of your involvement with the Quarriers cases,
2 which on any view was a major operation, it had a HOLMES
3 incident room established, you say that you were meeting
4 on a regular basis with the officers involved in
5 carrying out that investigation?

6 A. Yes.

7 At that point, when the ECHR was coming in the
8 domestic law, there were devolution minutes raised in
9 all the historical cases, I think. It was just a new
10 body of law --

11 LADY SMITH: Are the devolution minutes you are remembering
12 those which challenged the cases being prosecuted at
13 that stage because the events with which they were
14 concerned had taken place such a long time before?

15 A. Yes, my Lady.

16 LADY SMITH: And also, I think, some of them challenged the
17 time it had taken to process the particular
18 prosecutions.

19 A. Yes, my Lady.

20 MR PEOPLES: I suppose if, in addition, some cases had come
21 to the attention of the state through an earlier report
22 to the police, that would be a third complication --

23 A. Yes.

24 Q. -- that they hadn't taken action soon enough and they
25 couldn't now take the action they ought to have done at

1 an earlier stage.

2 A. Yes.

3 Q. Were these all very live issues in the context of these
4 cases?

5 A. Yes.

6 Q. Did that cause a delay in the process? I'm not saying
7 it was a delay that's culpable, but it was a delay due
8 to challenges based on the Convention and that meant
9 that getting from petition to trial, as we've heard the
10 process, could take quite a long time?

11 A. Yes. It was also pre the High Court reforms as well.

12 Q. Yes.

13 LADY SMITH: Those are the reforms you're talking about to
14 do with special measures for vulnerable witnesses, were
15 they, or what?

16 A. Lord Bonomy's reforms, my Lady.

17 MR PEOPLES: Reforms to try and tighten up how quickly
18 a case got to court and what I'd call active judicial
19 management of cases. The Crown or the defence couldn't
20 just come along and say, "We want an adjournment or we
21 want more time", there was a -- judges were expected to
22 get cases into court and to trial as quickly as
23 practicable, by positive measures and procedural steps
24 to ensure that the timetable was adhered to. Is that
25 what you're thinking of, that kind of development?

1 A. Yes, that was later on, and the vulnerable witness
2 provisions were just starting to come in. Looking back,
3 a lot of these witnesses would be considered vulnerable
4 and would have special measures. In those days they
5 didn't. The special measures were hard fought. They
6 wouldn't just be agreed on the nod because the
7 perception was, on the defence side of the table, it
8 made the accused look guilty and it undermined the
9 presumption of innocence, so these things were hard
10 fought.

11 Q. I suppose another thing which wasn't so much the court
12 but maybe the service itself, some of us might remember
13 these things, I think the system now is that serious
14 cases tend to be assigned to -- very much in the way you
15 did back in the Greenock days, they're assigned
16 a specific individual to take from start to finish
17 rather than being passed from one Crown counsel to
18 another at various High Court sittings. I think we can
19 all remember that state of affairs where you would see
20 a case and never see it again and it might go through
21 many hands. That was the way it was, I think, at one
22 stage.

23 A. At one stage it was. It's much better when one person
24 takes it and one person keeps it.

25 Q. Yes. So all these things have changed, but at that

1 stage these were difficulties, and no doubt from the
2 public's perception and the perception of people who
3 were involved in the process as complainers
4 particularly, they would find these things difficult to
5 understand, "Why is my case not come to court?" Is that
6 something you encountered in practice?

7 A. Yes, they did.

8 Q. If I could move on in your statement, I want to pick up
9 on a point, it's mentioned on page 2162, and it's just
10 a general point I want to make. I don't want to look
11 at the context in which paragraph 55 appears. I think
12 you are trying to tell us that:

13 "It is part of the function of the police and is
14 good policing practice to be proactive when they receive
15 a report of, for example, abuse in an institution."

16 You see it as very much part of their core function
17 not just to look at the specific allegation but to talk
18 to people and establish whether there are others who may
19 have encountered the same type of conduct and treatment?

20 A. Yes.

21 Q. Proactive policing, I think, is the term that's used
22 there?

23 A. Yes.

24 Q. You see that as part of their duty?

25 A. Yes.

1 Q. You make a point at paragraph 57 on page 2163, and
2 I just wondered what you -- you left Greenock in April
3 of 2004. I think, as we've heard today,
4 Operation Orbona shut down perhaps a few months later,
5 is it August or something, in 2004? You do say you
6 express a little surprise that it closed down as quickly
7 as that. I think you felt there may have been further
8 work that could have still been done. Is that a view --

9 A. Yes, because of the number of cases that were coming out
10 of it.

11 Q. In the next chapter of your statement, at page 2163, you
12 deal with your involvement in specific cases, which were
13 part of the investigation into allegations of abuse at
14 establishments run by Quarriers. I'm going to take you
15 through them. I won't take you through all of the
16 detail, but I'd like to ask some questions about some of
17 these cases as we go along.

18 You tell us that you recall that the first report
19 that came to the attention of the fiscal's office was
20 in relation to the case of Samuel McBrearty; is that
21 right?

22 A. Yes.

23 Q. That's paragraph 60. He appeared on petition some time
24 around June 2000, and you will maybe just explain for
25 the benefit of the public what "committal for further

- 1 examination" means.
- 2 A. It's a first appearance in court which starts the time
3 bar running. It's a procedural hearing. Generally
4 speaking, an accused person appearing at that would
5 make -- in those days "no plea, no declaration" -- you
6 did get the very odd Paisley accused who did make
7 a declaration, but it was very unusual -- and the case
8 was continued for further examination. And the year
9 time bar started running from then if it was a bail case
10 or the 110 days, as it was in those days -- no, that's
11 from full committal, sorry. It started the time bar
12 running for the bail cases.
- 13 Q. So there were time limits that started to operate once
14 you got into the process to get the case from start --
15 to at least the start of the trial?
- 16 A. Yes.
- 17 Q. And the stage of this committal, as you say, very little
18 would normally be said, but the person might be remanded
19 in custody if it was a serious matter or they might be
20 admitted to bail?
- 21 A. Yes, and in the historical sexual cases generally
22 speaking they were bailed.
- 23 Q. That was your recollection, in those cases they were
24 generally given bail --
- 25 A. Yes.

1 Q. -- rather than remanded?

2 A. Yes.

3 Q. I think you had a limited involvement in that case,
4 is that correct --

5 A. Yes.

6 Q. -- because that was your first encounter with one of the
7 Quarriers cases in a direct way, was it really?

8 A. Yes.

9 Q. Your main function in that case, I think, as you tell us
10 on page 2164, was to take a statement or precognition
11 from one of complainers. I don't need her name. You
12 tell us her name in paragraph 63.

13 A. Yes.

14 Q. I think eventually she was one of the complainers who
15 appeared in the trial and indeed was speaking to a rape
16 charge.

17 A. Yes.

18 Q. And indeed, that charge was found proved.

19 A. I know that Mr McBrearty was convicted of a number of
20 charges, but I couldn't tell you what the specifics were
21 of the charges.

22 Q. I think I can tell you he was and it was charge 1 and
23 that was a charge of rape of which he was convicted --
24 yes, it is charge 1 for the individual you mention at
25 paragraph 63. If you take that from me at the moment.

- 1 A. Of course.
- 2 Q. You tell us a little bit about that particular person.
3 Just help us with that. Without mentioning her name,
4 tell me the difficulties that you faced in relation to
5 getting that person to get to court to speak to what
6 happened to her.
- 7 A. She had had a difficult life. She had had a troubled
8 life. She had lost one if not two children in infancy.
9 She was very troubled, very guarded, very hostile,
10 wouldn't shake my hand when I arrived. I think I maybe
11 went through with the reporting officer in the case.
12 I took an hour or so to explain about the precognition
13 process. I think I said to her, "It's your decision,
14 you can engage with me and tell me about it, I'll give
15 you time", I went away, had lunch, came back and she
16 spoke to me.
- 17 Q. From an initial hostility and mistrust she was prepared
18 ultimately to speak to you?
- 19 A. Yes.
- 20 Q. But you tell us at paragraph 64 that there was some
21 difficulty in practice obtaining a precognition or
22 statement on the first occasion that you met her;
23 is that right?
- 24 A. Yes.
- 25 Q. But you say that thereafter, when you gained her trust,

1 she developed a good relationship with you and in fact
2 contacted you on a regular basis thereafter?

3 A. She did -- she actually said that the department should
4 pay her phone bill!

5 Q. So you were providing essentially, apart from doing your
6 job as a prosecutor, part of that job, you were
7 providing effectively a support service for one of the
8 key witnesses for that particular case?

9 A. Yes.

10 LADY SMITH: Did you have any support or advice from
11 a trauma psychologist as to how to work with
12 a vulnerable person like this?

13 A. No, my Lady.

14 LADY SMITH: We're talking about 2001 then?

15 A. Yes, my Lady.

16 LADY SMITH: Do you know if the department does that now?

17 A. I don't know, my Lady, because I have not been involved
18 in that work for a number of years now.

19 LADY SMITH: Thank you.

20 MR PEOPLES: But you do say in paragraph 65 that in those
21 days the service didn't have for the benefit of -- not
22 of staff who were dealing with these cases, which maybe
23 something is a point her Ladyship was asking, but they
24 also didn't have a support service, support and advice
25 service for complainers?

1 A. No, we didn't. It was all provided by myself in
2 Greenock and when I was in the child witness unit and in
3 any of my cases up until we had Victim Information and
4 Advice.

5 Q. Because now there is a Victim Information and Advice
6 Service which operates to provide information, to give
7 support, advice, to keep those participating in the
8 process informed of the process and any reasons why
9 there's a delay in the process and so forth.

10 A. Yes.

11 Q. Indeed, to explain to them decisions that are taken
12 sometimes, important decisions; is that right?

13 A. Yes, and until then I would have done that myself.

14 Q. For example, just on that matter, if you'd been
15 prosecuting at the time -- and you did prosecute some of
16 these cases?

17 A. Yes.

18 Q. And you took the decision to withdraw a charge --

19 A. Yes.

20 Q. -- before it went to a jury, for example, would you have
21 had a discussion with the persons that were the subject
22 of the -- were the complainers on those charges, would
23 you have a discussion to try to explain to them why you
24 were taking that action or is that something you were
25 doing?

1 A. Possibly at that point it would be too late, but, for
2 example, if I had been offered a plea, I would discuss
3 it with the complainer. I would say, the decision's
4 mine but I want to have your input, here are the pros,
5 here are the cons, let me have your input, and I would
6 factor that into my decision-making.

7 Q. You tell us on page 2165 that that was the largest part
8 of your involvement in the McBrearty case; is that
9 correct?

10 A. Yes.

11 Q. Just taking the precognition from this witness but also
12 giving her the support during the process leading to
13 trial?

14 A. Yes. And being there in the first day of the trial.

15 Q. Then you say that things gathered momentum after that
16 when obviously there were further investigations coming
17 forward, but in addition to this person you have
18 mentioned, other people came forward in relation to
19 Samuel McBrearty to report things that had happened to
20 them. Is that something -- I think that's something you
21 tell us about at page 2165, that the police
22 investigations brought out various names from whom
23 statements were taken and indeed I think the names you
24 mention at paragraph 69 were names which appeared
25 ultimately in the indictment as complainers. Is that

- 1 right?
- 2 A. Yes, and I think they were all discovered by the police
3 prior to my arrival at Greenock.
- 4 Q. You say at paragraph 70 that:
- 5 "Other names were mentioned in the course of these
6 investigations but in some cases the police were not
7 able to trace the individuals to see what they could
8 tell the police about the matters under investigation."
- 9 Is that correct?
- 10 A. Yes.
- 11 Q. You also say at paragraph 71 -- I've asked you a little
12 bit about what guidance there was for those involved in
13 the prosecution side of things, but you say that it's
14 your recollection that there were no police guidelines
15 in place at that time in regards to the investigation of
16 these types of crimes. Is that your recollection?
- 17 A. In respect of residential settings, yes.
- 18 Q. Abuse in residential settings.
- 19 A. Yes.
- 20 Q. So there was a bit of learning to be done in perhaps
21 deciding how best to approach this particular situation?
- 22 A. Yes.
- 23 Q. You tell us about another individual, Joseph Nicholson,
24 who we have heard some evidence about today, which was
25 another case which came up in your time at Greenock.

- 1 A. Yes.
- 2 Q. I think this is a good example, you say at paragraph 73,
3 of where it took time to get to trial because there were
4 a number of ECHR, European Convention, challenges;
5 is that right?
- 6 A. Yes, I'm sure we had a debate. The papers for that case
7 have been purged from the system, but from my memory
8 there was an ECHR debate on it, and the part of the
9 system that records when cases are calling, I'm sure,
10 shows lots and lots of attempts to get the trial
11 started.
- 12 Q. But I suppose from the perspective of the people that
13 were complainers, that might have seemed a delay and
14 create anxiety for them that it was never getting to
15 a trial stage?
- 16 A. Totally.
- 17 Q. But did they hold their nerve and actually get there at
18 the end of the day?
- 19 A. Yes, I precognosced them myself and I prosecuted it
20 myself.
- 21 Q. I think you tell us in the case of Joseph Nicholson,
22 paragraph 74, page 2166, that you prosecuted, as you
23 say, in the sheriff court before a sheriff and jury, and
24 I think that decision on the appropriate court would
25 have been taken based on Crown counsel's consideration

- 1 of the matter and an instruction?
- 2 A. Yes.
- 3 Q. I was going to ask you at paragraph 75, because you'll
4 maybe recall today that I asked Mr Donnelly about
5 Joseph Nicholson's sentence.
- 6 A. Yes.
- 7 Q. It's your recollection that while he got two years on
8 conviction from the presiding sheriff, on appeal that
9 was reduced to 12 months; do you recall that?
- 10 A. Yes, it was due to a change in the sentencing in the
11 Criminal Amendment Act.
- 12 Q. Right.
- 13 A. So I think at the time of the offences, the maximum
14 sentence was a year. By the time I prosecuted him it
15 was two years. So we couldn't really then subsequently
16 say, well, you can have two years, but that was
17 something I hadn't realised at the time.
- 18 Q. No, because the penalty at the time of the offence was
19 less than the penalty imposed at the time of conviction?
- 20 A. Yes.
- 21 Q. And I suppose that would have created Convention
22 challenges or potential challenges?
- 23 A. Yes, oh definitely, and rightly so.
- 24 Q. The other point you make at paragraph 76 -- and it's one
25 we did touch upon with the previous witness -- is the

1 difficulty of framing charges in the case of sexual
2 abuse of children, which you describe as:

3 "At the time the law was a bit of a minefield."

4 A. Yes.

5 Q. And I think we've already heard some examples of that
6 with the shameless indecency charges, where they were
7 being used, but ultimately were found not to be
8 compatible with Article 7 of the European Convention of
9 Human Rights?

10 A. Yes.

11 Q. And I think, again, we know that when one's looking at
12 the same conduct, it may be the subject of different
13 charges because of the age of the particular child?

14 A. Yes.

15 Q. And these would create difficulties in terms of framing
16 appropriate charges?

17 A. Yes. Although in those days I was au fait with the
18 legislation and it wasn't difficult for me because I was
19 used to it, but it would be difficult to people that
20 weren't dealing with it on a regular basis.

21 Q. Just moving on, the next person that you tell us about
22 is Mary Drummond. I think I have called her Miss Arnold
23 at times; I don't know if that is a name that means
24 anything to you.

25 A. I think that was her maiden name.

1 Q. This was a case where her case was one where you tell us
2 there were again numerous procedural hearings. Does
3 that mean it did take a long time to get anywhere near
4 a trial?

5 A. No.

6 Q. No?

7 A. I think there was a debate, when the debate -- when the
8 challenge to the indictment wasn't upheld, she pled.
9 But thereafter, she tried to withdraw her plea of guilty
10 and the case went on and on and on. The complainers
11 were respectable middle-aged ladies who turned up for
12 every hearing and it was very stressful for them.

13 Q. The stress there wasn't the time it took to get to the
14 conviction, the stress was the time it took to get to
15 the sentence because there were a number of
16 continuations before Mary Drummond was finally
17 sentenced --

18 A. Yes.

19 Q. -- to three years' probation?

20 A. Yes.

21 Q. Do you now in any way echo the views of Mr Donnelly
22 about this, the sentence imposed? I think he had some
23 reservations, given the nature of the charges, the
24 number of the complainers, their age, that three years'
25 probation, to some, might not seem very much after all

1 that effort.

2 A. I understand that and we ask a lot of witnesses and
3 I can see why people would be disappointed in such
4 a verdict, in such a sentence.

5 LADY SMITH: You're being very diplomatic and I can fully
6 understand why. Let me ask you this: were you
7 surprised?

8 A. Possibly not, because from memory, after Quarriers, she
9 had led a blameless life.

10 LADY SMITH: Right.

11 A. It wasn't that she was continuing to abuse and
12 continuing to offend.

13 MR PEOPLES: I think some people have advanced that defence
14 in other contexts with war crimes, but it doesn't always
15 hold much water in that context.

16 LADY SMITH: It tends not to work in our courts now, but of
17 course we're talking about quite a long time ago.

18 A. I precognosced the witnesses, I recommended sheriff and
19 jury, I took the case myself. It was physical assaults
20 and I used section 12 of the Children and Young Persons
21 Act to cover the horrible ill-treatment that went on and
22 I used section 12 in other cases as well because the
23 indictment carries a penalty of a maximum of 10 years,
24 so I felt that was a very useful tool for a prosecutor.

25 LADY SMITH: Perhaps we can proceed on the basis of saying,

1 well, we know what the sentence was at the time it was
2 prosecuted, but we can't say what the sentence would
3 have been had the case been prosecuted at the time the
4 offences occurred.

5 A. Yes, my Lady.

6 LADY SMITH: Thank you.

7 MR PEOPLES: You also have a section in your report dealing
8 with the trial of John [REDACTED] Porteous. You gave us
9 the background to how this matter arose and I think it
10 initially arose from a complaint or a report by a former
11 male resident who contacted the police in early 2000;
12 is that right? I think you say that at paragraph 83 on
13 page 2167, that that was the start of the investigation
14 into this particular individual, Mr Porteous.

15 A. The contact was made on his behalf, yes.

16 Q. On his behalf. And then it came to light, I think, that
17 there had previously been an allegation by another male
18 resident in 1982, and I think, as we have discussed
19 earlier today, there was some evidence from that
20 individual during the inquiry, in 2000 to 2004, about
21 what had been done at that time by way of investigation.
22 It was a police matter in 1982 and there was some
23 evidence from him about what took place.

24 A. Yes. Even in 2000, I knew about that and I addressed it
25 in the precognition, the report to Crown Office as part

1 of the precognition.

2 Q. That individual who made that allegation in 1982 was
3 included on the indictment --

4 A. Oh yes.

5 Q. -- along with two other male complainers for the sexual
6 offences?

7 A. Not initially. Initially, there were only two male
8 complainers. I reported the case to Crown Office. And
9 then because of the publicity in the McBrearty case,
10 another person came forward. She brought with her her
11 sister, and then we had an additional late complainer.
12 So there was actually three cases involved in that one
13 case, the original case against John Porteous, then
14 there was the additional cases against John Porteous

15

16 Q. To do with assault and wilful ill treatment, that type
17 of case?

18 A. Yes, and additional sexual charges in respect of
19 John Porteous.

20 Q. Because of the third male complainer who came forward in
21 2002?

22 A. No, I don't think he was referred to in those SPRs.
23 He was a late addition. It was sexual charges in
24 respect of the lady complainers in that second and third
25 case. Sorry, only the case against John Porteous; there

1 were no sexual charges in the report received for

2

3 Q. Yes. I don't think there was ever any sexual charges

4 against [REDACTED]

5 A. No, there weren't.

6 Q. There were assault and wilful ill-treatment charges

7 against her [REDACTED] I think there was also ...

8 LADY SMITH: Can we confine ourselves to John Porteous?

9 [REDACTED] is covered by my restriction order.

10 MR PEOPLES: Yes.

11 I think you're correct in saying that there were
12 sexual offences against John Porteous arising out of
13 reports received by female residents, that's correct --

14 A. Yes.

15 Q. -- that were charges that were included in the
16 indictment in relation to that as well as other charges
17 like assault and wilful ill-treatment. I think they
18 were more directed to the other accused.

19 A. Yes. Although there were at least one, I think, of each
20 in respect of Mr Porteous.

21 Q. Yes. You mention on page 2168 some of the difficulties
22 in this case in relation to the case against
23 John Porteous. One of the difficulties was that this
24 was a case which would depend on Moorov corroboration --

25 A. Yes.

- 1 Q. -- for the sexual offences against John Porteous.
- 2 A. Yes.
- 3 Q. One of the difficulties you tell us about in
4 paragraph 87 is that one of the sources of that
5 corroboration originally was the individual who'd made
6 the allegation in 1982.
- 7 A. Yes.
- 8 Q. We've seen today the record that was in Quarriers
9 records about what was said at the time about that
10 individual.
- 11 A. Yes.
- 12 Q. I think you may have -- you saw there was a reference to
13 it in the police presentation this morning, what the
14 records said.
- 15 You say that, given that that allegation had been
16 a long time -- was made a long time before, it had come
17 to nothing and nothing had happened in relation to it
18 for so long, I think you had a concern about an ECHR
19 challenge.
- 20 A. Yes.
- 21 Q. And no doubt a concern about whether the case would
22 prove?
- 23 A. In respect of the original case, where there were only
24 two complainers, if that complainer's evidence had been
25 discounted, we couldn't have obtained a conviction

1 because there was only one person and it relied on
2 Moorov.

3 Q. This would have been a situation, like the other case,
4 where there was a lot of charges, a lot of complainers,
5 one was found proved, but it was a Moorov case so the
6 whole thing collapsed?

7 A. Yes.

8 Q. In paragraph 97 you tell us that while it was important
9 to have had two complainers because at least you had
10 a Moorov case, it was other evidence that you say
11 ensured the conviction of Mr Porteous, and that was the
12 evidence of David Whelan?

13 A. Yes.

14 Q. At paragraph 100, I think the way you put it at
15 page 2170 is that the evidence of David Whelan was, as
16 you put it, the icing on the cake because of the type of
17 person he would present as to a jury. Now, that might
18 seem controversial, what you're going to say, but
19 can you explain your thinking and explain how you
20 believe juries would view cases involving vulnerable
21 people with a dysfunctional life making allegations
22 against people who, on the face of it, were respectable
23 pillars of the community?

24 A. Yes. There were, I think, six complainers, including
25 Mr Whelan. The jury only found charges proved in

1 respect of Mr Whelan and one other. Given that
2 application of Moorov, the necessity of Moorov, there
3 would have been no conviction obtained against
4 Mr Porteous without the late addition of Mr Whelan.

5 It's very difficult for juries. Their knowledge of
6 sexual abuse is, hopefully, limited. Nobody wants to
7 believe these terrible things happen, and I understand
8 that, and they look at people who are nervous wrecks,
9 have had difficult lives, they maybe have previous
10 convictions that are being put to them. They present as
11 less than perfect and then you have the accused who is
12 sitting in a suit and tie, very dapper, and has not
13 a conviction to his name.

14 LADY SMITH: What you're describing is the range of points
15 that can be put forward by defence counsel to suggest to
16 the jury that, at the very least, the person whose life
17 is chaotic isn't a reliable witness. Of course, you
18 don't need to go as far as saying they're not telling
19 the truth --

20 A. Absolutely.

21 LADY SMITH: -- but just say that for all these reasons and
22 the things that have happened to this person, the
23 illnesses they've had, perhaps, the drug addiction they
24 have had, can you really, ladies and gentlemen, rely on
25 this evidence?

1 A. Absolutely, my Lady.

2 MR PEOPLES: The other side of the coin in the case of
3 Mr Whelan, as you point out in your written evidence,
4 is that he was taking a substantial risk because he had
5 a reputation, he was successful, he didn't need to come
6 forward and indeed he only came forward, as he told us,
7 because of a phone call he got from an individual
8 related to Mr Porteous, and that he had a lot to lose if
9 he put himself in the witness box --

10 A. Absolutely.

11 Q. -- to give evidence against Mr Porteous.

12 A. Yes.

13 Q. But nonetheless, he was prepared to do that and I think
14 he came forward, spoke initially to the police officers
15 in Greenock, and then he spoke to you; is that correct?

16 A. The next day, yes.

17 Q. So far as the case of Alexander Wilson is concerned --
18 and I don't want to take this at any length, but at
19 page 2171, starting at paragraph 103, you tell us a
20 little bit about that case from your knowledge of the
21 case and you say that that one was a case which took
22 a long time to get from the stage of petition to trial.
23 It really started off life in about June 2002 and didn't
24 get to trial until February 2004?

25 A. Yes.

1 Q. And that was, you say, a case where there were numerous
2 delays?

3 A. Yes.

4 Q. You say that in part, those delays were attributable to
5 the fact that, I think, Mr Wilson had to have his leg
6 amputated during the course of the criminal proceedings;
7 is that right?

8 A. Yes.

9 Q. That resulted in a series of delays on that account.
10 I take it, since you would be concerned with this case
11 directly, what impact did that have on the witnesses who
12 were waiting for this trial to come forward? Can you
13 recall?

14 A. I can't actually recall. I had to work very hard to
15 keep everyone on board and fit to testify over a lot of
16 the cases. One of the witnesses in particular in this
17 case required considerable support, which I provided.

18 As to distress at the delays, I can't remember, but
19 there was a lot of distress. And although I can't
20 remember it, common sense tells me that they would have
21 been distressed by the delays. They would have been
22 upset by it -- although if someone is physically ill,
23 it's always easier to explain that to witnesses than
24 anything else. You can't get much more dramatic than
25 losing a leg.

1 Q. No. I suppose that someone in that position could have
2 considered the evidence against them and considered
3 whether they ought to be acknowledging the charges
4 against them, because I think in his case, if I'm not
5 mistaken, there were 15 charges that went to the jury
6 and they were all unanimous guilty.

7 A. Of course he should have pled, and there was discussion
8 at one point of a plea, but I'm not sure if that was the
9 advocate depute approaching the defence in the hope of
10 a plea or whether Mr Wilson had had his counsel approach
11 the AD for a plea, but nothing came of it.

12 Q. Eventually, he put those victims through the trial
13 process?

14 A. Yes, with horrendous consequences.

15 Q. What have you in mind?

16 A. Well, one of the witnesses was incredibly upset about
17 it. She'd been really, I think, damaged by Mr Wilson
18 and by other abuse that she'd suffered. She ended up in
19 a hospital after Mr Wilson was convicted. She was
20 a witness in one of the other cases, and I see, when
21 I look back at the records, that she was never fit to
22 testify in the subsequent case.

23 Q. Then moving on in your statement -- and I won't be very
24 long with you now as we're nearing the end of the
25 statement -- you tell us about another case at

1 paragraph 106. I don't want the name of the person --

2 LADY SMITH: I think we know what happened with this one.

3 We've already touched on it. It was the single charge
4 that one was left with that you couldn't Moorov, as we
5 say.

6 MR PEOPLES: The only thing I might pick out of that is at
7 paragraph 109, the lady that you had in mind in the
8 Sandy Wilson case, had to be removed from the indictment
9 in that case for the reasons you've just explained.

10 A. Yes.

11 Q. Then there's Ruth Wallace, and I think she originally
12 appeared on the petition with another individual who was
13 removed on instruction of Crown counsel from the
14 proceedings and I think again we've heard that she was
15 convicted in March 2006 of various charges. I think
16 there were 15 charges, she was convicted of seven
17 offences, four of assault, three of wilful ill-treatment
18 involving two male and four female complainers over
19 a 10-year period, and she got three years' probation.

20 A. Yes.

21 Q. What was your reaction to that?

22 A. My involvement was in the early stages of this.

23 I didn't take the trial, so I ... Without being in
24 possession of all the facts, I don't want to comment
25 because I don't know what happened at the trial.

1 LADY SMITH: That's fine.

2 MR PEOPLES: That's fair enough, yes.

3 I think you finish off your statement -- in the
4 final paragraphs, you've got quite a number of
5 observations about victims of abuse and the court
6 process, and I think we can read them for ourselves.
7 I think they echo some of the points that you've already
8 articulated today about the difficulties of, firstly,
9 coming forward and speaking out but, secondly, of
10 engagement in the court processes and the particular
11 difficulties that people who are reporting or have been
12 abused face --

13 A. Yes.

14 Q. -- in both these respects.

15 A. Yes.

16 Q. We've touched on the psychologist and use of evidence
17 and you don't need to go into that. You deal with it in
18 your statement, but I think we've heard already that you
19 used it, then you had to stop using it because of
20 a particular legal decision, and then legislation
21 allowed it to be used again --

22 A. Yes.

23 Q. -- and it's still now being used to this day.

24 A. Yes.

25 Q. The other thing, I'll just maybe say, is you made

1 a point -- and I don't want to go to the particular
2 example -- but I think there was someone who was
3 friendly with one of the convicted individuals who had
4 difficulties believing that this individual could do the
5 things that they were convicted of. I think that you
6 try to offer an explanation for people who are in that
7 position at paragraph 138 at page 2177. If I just pick
8 that up.

9 You indicate that the sort of things like this,
10 particularly in the situation we're dealing with,
11 children in care, looked after by a trusted adult,
12 people find it difficult to believe the sort of things
13 that we've seen they were convicted of, they find it
14 difficult to believe these things could have happened,
15 particularly for children who are being cared for in
16 a supposedly safe setting.

17 A. Yes.

18 Q. I suppose at times though such people have to suspend
19 disbelief because terrible things do happen and
20 apparently respectable people do commit them.

21 A. Yes.

22 Q. We know that from common experience, do we not?

23 A. Yes. As a society, we probably have to educate our
24 children to tell about these things and we have to do it
25 in our homes, we have to do it in our schools, and

1 we have to keep repeating it and say to children to tell
2 because that is the only way that something can be done
3 about it. We also have to educate adults to take these
4 things seriously.

5 Q. I think you make a point, and I think it's one that
6 others have perhaps made in a different way, at
7 page 2178, at paragraph 149, that Quarriers was set up
8 with the best of intentions, but you believe there was
9 a certain naivety in the belief that if someone wanted
10 to or professed to want to work with children, that that
11 meant they would be a suitable person to do so.

12 A. Yes.

13 Q. And you say that really, giving someone authority and
14 perhaps with a lot of autonomy to look after someone
15 with no real power does create the conditions where
16 abusive behaviour can occur?

17 A. Yes. A place like Quarriers attracts the best of
18 people, it attracts the worst sort of people. It
19 attracts those who love children, it attracts those who
20 love power, and it attracts paedophiles.

21 Q. You say I suppose that -- because we have heard some
22 evidence of practices going on, not sexual abuse, but
23 abusive practices going on, including physical abuse of
24 children, in the presence of other people.

25 A. Yes.

1 Q. That's not a Moorov problem any more. But at page 2179,
2 paragraph 151, you offer a bit of an explanation there.
3 I think you say that you think probably many of the
4 people that have been called to account, or at least
5 some of them that we've heard about, would not have
6 believed at the time that that would happen to them, and
7 therefore they could almost feel they could do such
8 things openly without fear that they'd ever be called to
9 account --

10 A. Yes.

11 Q. -- particularly if it was a person in a position of
12 authority, their word against that of a vulnerable
13 child?

14 A. Yes.

15 Q. The other thing I wanted to just very briefly touch on
16 at paragraph 152 is that you were involved in this
17 investigation for a long period of time and you make the
18 point that, so far as evidence goes, there was nothing
19 that came to light during that investigation that would
20 suggest that the individuals who were investigated and
21 ultimately prosecuted were acting in concert.

22 A. Not in respect of the sexual cases.

23 Q. And I think, lastly, you basically leave us with
24 a message that ultimately what is required in this
25 context of childcare is the need for constant vigilance.

1 A. Yes.

2 MR PEOPLES: These are really all the questions that I have
3 for you today, other than to say thank you very much for
4 coming and waiting. I appreciate you've waited perhaps
5 longer than you anticipated.

6 A. You're very welcome.

7 LADY SMITH: Are there any outstanding applications for
8 questions?

9 MR GALE: My Lady, I don't have any questions for this
10 witness, but David Whelan has asked me if I would
11 express to Miss White publicly his thanks, his very
12 sincere thanks, for her exceptional professionalism and
13 sensitivity in her dealings with him during the Porteous
14 prosecution and eventual conviction. He is very
15 grateful to her.

16 LADY SMITH: Thank you very much for that, Mr Gale.

17 Miss White, I'm sure you appreciate that. Can I add
18 my thanks to you for the detailed work you've done in
19 providing the statement that we've been looking at with
20 you and coming here today to give such detailed and
21 frank evidence. It's very helpful to me and I'm now
22 able to let you go.

23 A. Thank you, my Lady.

24 (The witness withdrew)

25 LADY SMITH: Mr Peoples.

1 MR PEOPLES: My Lady, that concludes matters for today.

2 I think, given the lateness of the hour, that's as much
3 as we can achieve. Of course, we will be having a break
4 next week from this case study. I think you have
5 reminded parties that there is evidence being led next
6 Wednesday and perhaps it may be worth reminding --

7 LADY SMITH: I remind everybody of that. The details are on
8 the website: one witness from another case study will be
9 giving evidence on Wednesday in the hearing room in the
10 usual way, and we will hear from Mr MacAulay, I think.

11 MR PEOPLES: There will be a change of voice -- perhaps
12 a relief for some!

13 LADY SMITH: Until Wednesday, thank you very much. I'm
14 going to rise.

15 (4.10 pm)

16 (The hearing adjourned until Wednesday

17 21 November 2018 at 10.00 am)

18

19

20

21

22

23

24

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DI DESMOND MCKENNA (sworn)1

 Questions from MR PEOPLES1

KENNETH DONNELLY (sworn)69

 Questions from MR PEOPLES69

CATHERINE WHITE (affirmed)155

 Questions from MR PEOPLES155

- 1
- 2
- 3
- 4
- 5
- 6