

1 Wednesday, 10 April 2019

2 (10.00 am)

3 PROFESSOR IAN LEVITT (continued)

4 Questions from MR MacAULAY (continued)

5 LADY SMITH: Good morning and welcome back,

6 Professor Levitt. I'm delighted to see that you've made

7 it safely back here to continue your evidence. I'm

8 hoping that you're ready to pick up where you left off.

9 I'm sure Mr MacAulay will explain the relevant link from

10 where you were to where he wants you to go this morning.

11 Mr MacAulay.

12 MR MacAULAY: Good morning, my Lady.

13 Good morning, professor.

14 A. Good morning.

15 Q. Last week, we had done the first three sections of your

16 report and, in particular, you gave evidence about the

17 Social Work Services Group and that its main function,

18 at least initially, was the supervision of the

19 implementation of the 1968 Social Work (Scotland) Act;

20 is that correct?

21 A. That's correct, yes.

22 Q. It also had an advisory function in connection with

23 local authorities?

24 A. That's correct.

25 Q. The Central Advisory Service, CAS, was set up in advance

- 1 of the 1968 Act; is that right?
- 2 A. That's correct, yes.
- 3 Q. As I understand it from what you told us last week, it  
4 had probably three functions. The first to provide  
5 professional advice to SWSG?
- 6 A. That's correct, yes.
- 7 Q. It also had a function in connection with deaths in  
8 care?
- 9 A. That's correct, yes.
- 10 Q. And an inspectorial function?
- 11 A. Yes, that's correct.
- 12 Q. Can I just be clear about the inspectorial system  
13 pre-1968?
- 14 A. Could I just add another item? The Chief Social Work  
15 Adviser also had a function, a duty, to inform the  
16 Secretary of State on any matter concerning social work  
17 provision in Scotland.
- 18 Q. Right.
- 19 A. My understanding, reading it, is that that person could  
20 have a direct line to the Secretary of State on any  
21 particular issue.
- 22 Q. And the Chief Social Work Adviser, that was the person  
23 who led CAS?
- 24 A. That's right, yes.
- 25 Q. Looking then at the inspectorial systems, on the eve of

1 the 1968 Act, if you like, by then, of course, CAS had  
2 been set up?

3 A. Yes.

4 Q. Under the auspices of the Scottish Education Department;  
5 is that correct?

6 A. The Scottish Education Department held the vote for the  
7 Social Work Services Group and therefore CAS.

8 Q. So far as the Scottish Education Department was  
9 concerned from an inspectorial perspective, it had  
10 jurisdiction in connection with Scottish schools,  
11 including approved schools?

12 A. That's correct, yes.

13 Q. You told us that at a point in time, I think in about  
14 1960, the childcare functions of the Scottish Health  
15 Department were transferred to the SED?

16 A. The Scottish Home Department.

17 Q. That brought within the jurisdiction of SED and hence  
18 CAS an inspectorial function in connection with  
19 children's homes?

20 A. That's correct, yes.

21 Q. Voluntary homes?

22 A. Yes.

23 Q. Children boarded out?

24 A. Yes.

25 Q. Remand homes?

- 1 A. Yes.
- 2 Q. Did that mean, therefore, really from a jurisdictional  
3 perspective and inspectorial perspective, SED/CAS had an  
4 inspection function in relation to essentially all  
5 children in care?
- 6 A. That's correct, yes.
- 7 Q. Post-the 1968 Act, and we're going to come to 1975 in  
8 a moment, because the registration of voluntary  
9 children's homes rested with local authorities, the  
10 inspection of those establishments also became the  
11 responsibility of local authorities?
- 12 A. That would appear to be the interpretation that Social  
13 Work Services Group placed on it in terms of the  
14 decision over the Lochvale Boys' Home in Dumfries.
- 15 Q. You mentioned that last week?
- 16 A. Yes.
- 17 Q. And I think you saw that as a sort of test case?
- 18 A. That appeared to be put up as a test case.
- 19 Q. Can I just understand, what principle was being tested?
- 20 A. Whether the primary function of inspection rested with  
21 the registration authority or whether Social Work  
22 Services Group and CAS also had a duty to inspect those  
23 particular homes. And the decision was that it was  
24 a matter for the local authority.
- 25 Q. This may be a legal issue, but we do know that there

1           were provisions in the 1968 Act that placed a duty on  
2           the Secretary of State to inspect.

3       A. To inspect, but the decision in the Lochvale case was  
4           the initial responsibility, if you like, rested with the  
5           local authority. My understanding on reading the  
6           decision that was taken in 1972/73 was that it would  
7           cause complications for the Secretary of State if his  
8           advisers had inspected a home and came to conclusions  
9           which were at variance with the local authority decision  
10          on that particular home.

11       LADY SMITH: Just let me confirm, Professor Levitt, when you  
12          say decision, whose decision do you have in mind?

13       A. The decision of the Secretary of State that a home  
14          should be closed on the advice of the Central Advisory  
15          Service's social work advisers and the Social Work  
16          Services Group.

17       LADY SMITH: Sorry, that was the local authority decision.  
18          What you said was, on reading the decision that was  
19          taken in 1972 to 1973, and I just wanted to get into the  
20          notes which decision you were talking about.

21       A. The Social Work Services Group decision on the Lochvale  
22          Boys' Home in Dumfries.

23       LADY SMITH: I thought that was right. That confirms it,  
24          thank you.

25       MR MacAULAY: That decision, which was in 1972 or 1973, was

1 the primary responsibility because registration --

2 A. Yes.

3 Q. -- rested with the local authority?

4 A. That's right, to avoid any complications that the  
5 Secretary of State might have if the advisory service  
6 had recommended the closure of a home on the issue of  
7 appeal either by the local authority or the home itself.

8 Q. That then deals with children's homes. Did that also  
9 relate to children who were boarded out?

10 A. It would appear to be the case because I've not really  
11 discovered any retained file which covers the inspection  
12 of boarded out children by CAS after 1968.

13 Q. I think, as we'll see shortly, so far as List D schools  
14 were concerned, they remained the responsibility of the  
15 Secretary of State and hence CAS?

16 A. That's correct, and that is because of the funding  
17 arrangements that were still in place in 1971 when the  
18 approved schools were reclassified as List D schools.

19 Q. As we will see and as we have seen, you have uncovered  
20 inspection reports in respect of List D or approved  
21 schools?

22 A. That's correct, yes.

23 Q. But what you don't appear to have uncovered is much by  
24 the way of inspection reports of children's homes or  
25 voluntary homes?

- 1 A. That's correct. There are a small number, 1973, and  
2 then there aren't any more in terms of the retained  
3 files.
- 4 Q. There's the Lochvale case?
- 5 A. Lochvale seems to have been the break point in terms of  
6 CAS undertaking inspections of voluntary homes.
- 7 Q. And of course, your research in the main was under  
8 reference to NRS files?
- 9 A. That's correct, yes.
- 10 Q. But if inspections were being carried out, as was  
11 expected, by the Secretary of State and CAS, by the  
12 local authorities, where would these inspection reports  
13 end up?
- 14 A. Any inspection report by the local authority would be  
15 held by the local authority and would not necessarily  
16 have been transferred to Social Work Services Group and  
17 CAS files.
- 18 Q. And the regularity of inspections by local authorities,  
19 let's say, for example, local authority homes  
20 themselves, what would be expected by way of regularity?
- 21 A. I think in section 4, there is a reference to Aberlour.  
22 That's the only reference I've got where CAS notes that  
23 the registering authority has actually inspected  
24 Aberlour on an annual basis. So my assumption  
25 is that -- and it is only an assumption -- CAS sought to

1           assure itself that there was an annual inspection.

2           Q. In connection with Aberlour?

3           A. In connection with Aberlour and if they were in  
4           discussion with the local authorities on other homes  
5           that they also reassured themselves that there was an  
6           annual inspection. But that's an assumption.

7           Q. Yes. There's no record of that?

8           A. There's no record of it.

9           Q. So if we look at places that the inquiry has been  
10          interested in and is interested in, like Smyllum, for  
11          example, and the Nazareth Houses, your research has not  
12          uncovered any report post-1968 in connection with these  
13          establishments, any inspection report?

14          A. I have not come across any inspection report. There's  
15          certainly some correspondence with Quarriers, but that  
16          doesn't relate to inspections.

17          Q. I think we had seen, when you gave evidence previously,  
18          that you had uncovered certainly one report for Smyllum.  
19          An inspection report for Smyllum, albeit a short report?

20          A. Yes.

21          Q. And also for Nazareth House in Aberdeen?

22          A. Yes, that's correct.

23          Q. We can remind ourselves that SWSG and CAS, although they  
24          did not have any legal personality as such, they were  
25          effectively duly authorised officers of the



1 Secretary of State in carrying out their functions?

2 A. That's correct, yes.

3 Q. Can we then, against that background, turn to the next  
4 section of your report. We begin at SGV.001.007.9566.  
5 This is section 4 and it's headed "Central Advisory  
6 Service 1975 to 1984", so this is the last lap of the  
7 period -- the second last lap of the period you're  
8 covering.

9 Can you summarise what this section is designed to  
10 cover?

11 A. This section is designed to cover, really, the operation  
12 of CAS, which is now effectively devoid of the  
13 inspection duties concerning voluntary homes, other  
14 children's homes, and boarding out schools, and  
15 concentration on the issues of List D schools and also  
16 the issues surrounding children who died in care.

17 Q. You link your discussion here to the reorganisation of  
18 local government in Scotland in May 1975.

19 A. Yes.

20 Q. How relevant is that particular context to what happens  
21 after 1975?

22 A. What you need to remember is by 1975, there are many  
23 more professionally qualified social workers entering  
24 service and it was therefore a period of a rapid change  
25 in the professional profile of childcare services within

1 the local authorities, and also you had, given the size  
2 of the local authorities after 1975, substantial  
3 manpower or person power available for ensuring that the  
4 1968 Act was being implemented. I think I quote that  
5 the number of professionally qualified social workers  
6 was certainly in excess of 80% of childcare staff by the  
7 end of the 1970s.

8 Q. I think that's in paragraph 4.2 on page 9567.

9 A. Yes.

10 Q. Having set out before that the advisory role that CAS  
11 played when these regional authorities were being set  
12 up.

13 A. Yes.

14 Q. For example, a place like Strathclyde, that would be  
15 a fairly large organisation with a large social work  
16 department?

17 A. Almost half the size of Scotland, Strathclyde, yes.

18 It would therefore have a Director of Social Work  
19 Services on a substantial salary with deputies, also on  
20 substantial salaries, and I think I mention or I think  
21 I have mentioned in an earlier section the change in  
22 attitude of the large local authorities towards the  
23 function of CAS in terms of its social work advisers.

24 Q. In that paragraph, just to remind ourselves, you do  
25 mention, as we've just discussed, that List D schools

1 continued to receive formal inspections by CAS advisers  
2 and the HM Inspector of Schools.

3 A. That's correct.

4 Q. So the position was as pre-1968?

5 A. That's correct.

6 Q. Looking at the figures towards the bottom of that  
7 paragraph, you say that by 1978, there were 1,891 senior  
8 and main grade social workers in those authorities.

9 A. Yes.

10 Q. And you tell us that's an increase of 62% since 1974.

11 A. That's correct.

12 Q. A large increase?

13 A. A substantial increase, which clearly altered the nature  
14 of childcare services within Scotland at the time.

15 Q. And as you say, a large percentage, 89%, held  
16 a professional qualification.

17 A. Yes. I think later on, I indicate that there are 12  
18 education institutions in Scotland, universities,  
19 colleges, central institutions, offering social work  
20 training courses by that period.

21 Q. The next part of this section is devoted to looking at  
22 child abuse and deaths in care between 1975 and 1984.  
23 The first case you look at is a case of a boy in Perth.  
24 Is that right?

25 A. That's right.

- 1 Q. Can you tell us about that case? What was involved  
2 in that?
- 3 A. It would appear that the child had been assaulted by the  
4 mother and probably foster father and that there were  
5 issues concerning his admission to hospital and also the  
6 interaction between the various social services and the  
7 Health Authority services in providing care. The result  
8 was that, with the consent of Perth, the  
9 Secretary of State agreed that a private inquiry should  
10 be held into the case of this particular boy.
- 11 Q. I think the foster parents were sentenced, the father to  
12 four years' imprisonment and the mother to two years'  
13 imprisonment.
- 14 A. That's right.
- 15 Q. And the inquiry you mentioned was carried out by, as he  
16 became, Lord Jauncey.
- 17 A. Yes, and the report was published.
- 18 Q. But the inquiry itself was in private?
- 19 A. The inquiry was in private, but I think the fairly  
20 detailed report indicates the extent to which there was  
21 inter-service collaboration in this particular case.
- 22 Q. And I think the report was published in February 1975?
- 23 A. That's right, yes.
- 24 Q. And what were the conclusions of the report?
- 25 A. The conclusions were that there had been a breakdown,

1           really, in the joint arrangements that there ought to  
2           have been in the provision of supervisory care over this  
3           particular boy between the local authority childcare  
4           services, the health visitor services, the GP services  
5           and the hospital services.

6           Q. What action was taken?

7           A. The action was the production of two memoranda by the  
8           Scottish Office, Social Work Services Group. The first  
9           to indicate the need for local authorities and the  
10          Health Authorities to work much more collaboratively in  
11          issues where there was suspected child abuse and that  
12          a register of children at risk should be established by  
13          the local authority social work departments. The second  
14          was that the Secretary of State ought to be informed of  
15          the details of any child who died through, I think,  
16          misadventure, whether or not they were in statutory  
17          care.

18          Q. This was a case, I think, where a medical examination  
19          should have been done and, if it had been done, it may  
20          have disclosed that the child had had bruising.

21          A. That's correct, yes.

22          Q. And that might have changed the pattern of events?

23          A. Yes.

24          Q. Were instructions then given to local authorities as to  
25          what the procedure should be?

1 A. CAS officers engaged with the local authorities in  
2 seeking to develop an at risk register. At the same  
3 time it was decided that they wouldn't prescribe  
4 precisely the administration of that at risk register  
5 but would seek to guide them in an appropriate way, that  
6 there would be a common standard across all Scottish  
7 local authorities.

8 Q. Did that then result in a joint circular being issued  
9 from SWSG?

10 A. Yes, to simply ensure that local authorities were  
11 developing an at risk register of any child, whether or  
12 not they were in statutory care.

13 Q. I will put this on the screen, although I don't think  
14 we'll all be able to see it very chiefly, but just to  
15 identify it. This is the joint circular.  
16 SGV.001.008.6977.

17 You should see it on the screen in front of you?

18 A. Yes.

19 Q. It's dated 18 April 1975.

20 A. That's correct, yes.

21 Q. It's not easy to read, but it's headed "Non-accidental  
22 injury to children "and then there's a number of  
23 headings. For example, on the second page, 6978, action  
24 before injury has occurred. Then action where injury or  
25 suspected injury has occurred. And so on. It's

1 a fairly lengthy document.

2 A. It is a very lengthy document, which indicates the  
3 obvious concern they had with the Perth case.

4 Q. But it was expected then that local authorities would  
5 take on board the guidance that was set out in this  
6 document?

7 A. Yes, that's correct.

8 Q. Did the procedure involve reports being requested from  
9 local authorities as to what procedures they had in  
10 place?

11 A. There's certainly one retained file, which details the  
12 position in the then Lothian region and the degree of  
13 acceptance that the Lothian procedure would appear to be  
14 the way that Social Work Services Group and CAS thought  
15 appropriate. But that's the only one that I've  
16 uncovered in terms of retained files.

17 Q. I think what you say in paragraph 4.8 on page 9571 --  
18 I think this is from the circular itself:

19 "Reports will be requested by 31 March 1976 from the  
20 new local authorities once they have had an opportunity  
21 to take stock of the situation and develop or revise  
22 existing arrangements to suit new circumstances."

23 A. That's correct, yes.

24 Q. You say you've seen one?

25 A. I have seen one that has been within the retained files.

1           That's not to say they weren't others, but I can't  
2           confirm that others were received by Social Work  
3           Services Group.

4       LADY SMITH:  So if we're talking about new local authorities  
5           in 1976, we're talking about the new regional councils  
6           who had this responsibility for children.

7       A.  That's correct, yes.

8       MR MacAULAY:  You also mention at paragraph 4.9 a further  
9           joint circular being issued from SHHD and SWSG to local  
10          authorities and health boards.  Is that correct?

11      A.  That's correct.

12      Q.  Is this a different circular?

13      A.  That's really a follow-up to the circular issued in  
14          1970, which reaffirms the desire of the  
15          Secretary of State to receive reports surrounding the  
16          death of any child in local authority care whether or  
17          not they were in statutory care, and I think the  
18          emphasis is on even where they were not in statutory  
19          care.

20      Q.  And I think this is something you develop in this part  
21          of the report, that CAS/SWSG were anxious to see how the  
22          position lay, not just with children who were actually  
23          in care --

24      A.  That's right.

25      Q.  -- but children who may have had some involvement with



1 the care services?

2 A. I think that is CAS trying to, if you like, link the at  
3 risk register and any child who might subsequently have  
4 a misadventure, even although they were not within  
5 statutory care at the time.

6 Q. At paragraph 4.11, on page 9572, you mention that the  
7 CAS advisers carried out an analysis of the replies to  
8 local authorities on the arrangements for dealing with  
9 cases of actual and suspected child abuse. And after  
10 a review of the replies, a senior social work adviser  
11 suggested that a short further study should be  
12 undertaken, and you set out the propositions. What's  
13 happening here?

14 A. I think that CAS is trying to establish within itself  
15 the most appropriate way that local authorities should  
16 develop the at risk register. One hasn't been developed  
17 before and therefore it's trying to establish the most  
18 appropriate format.

19 Q. Was such a register established?

20 A. As I've said, there is evidence that Lothian region had  
21 a fairly elaborate register in place by 1976/77.

22 Q. I think you make the point and you said this before,  
23 that it wasn't the intention of SWSG to dictate to  
24 authorities and boards how they should undertake this  
25 particular work. You say this on paragraph 4.12.

1 A. Yes. That's right. That again reflects the position  
2 that the 1968 Act devolved primary responsibility for  
3 issues of childcare on the local authority and that the  
4 Secretary of State should not in the first instance  
5 indicate exactly how the at risk register should be  
6 developed or kept.

7 Q. So do we understand this to be the Secretary of State  
8 trying to put a little bit of distance between himself  
9 or herself, I think himself in those days, and local  
10 authorities?

11 A. My assumption, and it is an assumption, is that if in  
12 fact an issue arose, the Secretary of State could then  
13 indicate the necessary steps for a local authority to  
14 take to develop a more appropriate register.

15 Q. You go on at paragraph 4.13 on 9573 to take from the  
16 SWSG annual report of 1977 that the issue of  
17 non-accidental injury to children remained a matter of  
18 concern.

19 A. Yes.

20 Q. And what was the basis for that concern at that time?

21 A. I think they're still reflecting on the Perth case and  
22 a concern that non-accidental injury to children was  
23 something that they needed to constantly review in terms  
24 of their procedures centrally and also to ensure that  
25 local authorities understood the seriousness of which

1 non-accidental injuries caused a particular child.

2 Q. Do you tell us then at paragraph 4.14 that in 1978,  
3 a special unit jointly funded through the RSSPCC, the  
4 Scottish Office, Strathclyde Regional Council and the  
5 Greater Glasgow Health Board, had been established in  
6 Glasgow with the object of providing treatment for  
7 non-accidentally injured children and their families?

8 A. That's correct. I think the phrase "treatment" is  
9 probably -- we'd say "care" rather than "treatment".  
10 Different forms of care that would be available to the  
11 child and also to support the family.

12 Q. You go on to tell us about a review in 1982 by SWSG.  
13 What did that review conclude?

14 A. That review concluded, essentially, that the processes  
15 and procedures that CAS had established in reviewing  
16 cases of non-accidental injury and non-accidental death  
17 were actually working, that they understood that where  
18 a local authority did feel the reports that CAS  
19 undertook ensured the local authority would change its  
20 procedures.

21 Q. Then if we move on to 9575, paragraph 4.17, there you  
22 tell us about a case of a child where the father was  
23 charged and convicted of culpable homicide.

24 A. Yes.

25 Q. And the post-mortem had confirmed that the death was due

1 to a brain injury consistent with severe shaking. The  
2 Highland Regional Authority, I think, were the relevant  
3 authority here; is that correct?

4 A. That's correct, yes.

5 Q. What was the position here?

6 A. The position was that the child was not in statutory  
7 care at the time of admission to hospital, but that by  
8 being in hospital it was assumed that they were detained  
9 in hospital under a place of safety order. The local  
10 authority had actually moved to ensure the child was in  
11 statutory care.

12 Q. So did that then -- is this an example of a child who  
13 had not been in care at the time of the injury?

14 A. Statutory care.

15 Q. Nevertheless, CAS/SWSG taking jurisdiction over the case  
16 because at a point in time there was a place of safety  
17 order?

18 A. No, the regional authority had placed a safety order on  
19 the child once they'd been admitted to hospital. So it  
20 was effectively putting the child in statutory care once  
21 an event had occurred.

22 Q. Yes. The next example you give, is that a similar sort  
23 of example?

24 A. Yes.

25 Q. Where a 4 year-old girl was admitted to Glasgow's Sick

1 Children's Hospital following suspicion of  
2 a non-accidental injury at home, and again the  
3 stepfather here was later convicted of culpable  
4 homicide. This is on page 9576. What happened in this  
5 case?

6 A. It would appear that the local authority, Strathclyde,  
7 had reviewed the case and not sought to place the child  
8 under statutory care, ie had not gone through the  
9 reporter and the children's hearing system, and that  
10 there seemed to be some breakdown in communication  
11 between the health visitors, the GP, and the hospital  
12 consultants as to the cause of the injuries that the  
13 child had received.

14 Q. Was this a case where it was thought that a home visit  
15 to review the family circumstances would have been  
16 appropriate and that hadn't happened?

17 A. It hadn't happened. The procedures that CAS assumed  
18 should have occurred had not occurred, ie that the home  
19 circumstances that the child was in would have been  
20 reviewed and some of the issues that emerged later would  
21 have been established earlier and the child might have  
22 survived.

23 Q. You provide us with a similar sort of case at paragraph  
24 4.19 on page 9577, following the death of a 3 year-old  
25 girl as a result of an assault at home, again within the

1 same local authority, Strathclyde Regional Council.

2 A. That's correct, yes.

3 Q. What was the background to this case?

4 A. There is only a tangential note on this case. The  
5 actual case papers have not been retained, so all we can  
6 do is look and see what is said within the  
7 correspondence concerning the previous case as to what  
8 occurred in this particular case. It would appear that  
9 the children had been within local authority care and  
10 I think one or more of the children had actually been in  
11 a children's home at some time, but they had been moved  
12 from a children's home back into the parental home where  
13 the incident occurred. It was clearly an issue which  
14 CAS thought that there was a severe breakdown in local  
15 authority, if you like, control of this family  
16 situation.

17 Q. Was the local authority's response then that they  
18 undertook to implement some new procedures?

19 A. New procedures, new training packages for main grade  
20 workers and senior staff, senior social work staff, were  
21 introduced.

22 Q. Against that background then, if we turn to 9578,  
23 paragraph 4.20, you have set out there what a SWSG  
24 official had commented on. Can you take us through that  
25 and what the thinking was now in relation to the cases

1 we've been looking at over the last few minutes?

2 A. I think the issue here is that they accepted that where  
3 a child had died as a result of a non-accidental injury,  
4 even although a child had not been in statutory care,  
5 the public outcry was such that it would be  
6 a dereliction of their duty not to enquire to the  
7 fullest detail the procedures that the local authority  
8 had applied and to indicate any change in procedures  
9 that CAS/Social Work Services Group actually required.  
10 If a child was on the at risk register but not in  
11 statutory care, that didn't make any difference; they  
12 would still wish reports in these cases.

13 Q. The last comment:

14 "Personally, I do not think that we need to make the  
15 case to an authority when we want information from them.  
16 I think that we have established that the  
17 Secretary of State is entitled to ask for whatever  
18 information he wishes."

19 A. That's correct. Again, it's an assumption on my part.  
20 Reading between the lines, no local authority wished to  
21 have another private inquiry as in the Perth case  
22 imposed on them by the Secretary of State. Therefore it  
23 was better to collaborate with Social Work Services  
24 Group and CAS on any issue rather than suddenly discover  
25 that they had a private or public inquiry.

1 Q. Do you set out at paragraph 4.21 three issues that came  
2 out of the death of this 3 year-old girl?

3 A. Yes. The case conference between all the relevant  
4 authorities should have all the necessary paperwork in  
5 front of them. The issue isn't necessarily about  
6 registration, which actually means putting a child  
7 within statutory care. And it was important that the  
8 key worker, the primary social worker who had overview  
9 of the case, should not disregard the case conference  
10 decision.

11 Q. Because that seems to be what happened here?

12 A. Yes.

13 Q. That the key worker disregarded the decision of the case  
14 conference.

15 A. Yes.

16 LADY SMITH: Just to summarise what you're saying in a very  
17 brief way, Professor Levitt, did we reach a period that  
18 you could see local authorities wanting to forestall  
19 another inquiry or themselves being criticised by  
20 keeping the Secretary of State fully advised about  
21 everything, even if the children weren't in care who  
22 were involved in a harmful incident that could result in  
23 death?

24 A. That is my assumption, reading the phraseology being  
25 used within the Social Work Services Group and CAS



1 minutes and letters, that Strathclyde were concerned  
2 that the Secretary of State might insist on an inquiry  
3 and they didn't really want a public document floating  
4 around as a result of the inquiry, which criticised  
5 their conduct of childcare.

6 LADY SMITH: Of course, I fully understand you haven't been  
7 able to access all reports there may have been of this  
8 type, but would it be a fair assumption to make that  
9 they would have contained not just information about  
10 what had happened but what their own analysis was of how  
11 it had happened and what steps they had taken to try and  
12 improve protection for the future?

13 A. That would seem to be the case in regard to the case  
14 I have just mentioned, this young girl who died after  
15 leaving the hospital.

16 LADY SMITH: Yes.

17 A. That's a fairly large file that has been retained and it  
18 has been retained, I think, I assume, because it's  
19 a change in procedure.

20 LADY SMITH: Yes, it makes sense. They wouldn't want to  
21 just tell the Secretary of State, to use  
22 a colloquialism, "There's been a disaster in our area".

23 A. Precisely, yes.

24 LADY SMITH: They would want to then go on to reassure him  
25 that they were, to use another colloquialism, on the

1 case, being professional, thoughtful, and planning for  
2 better things in the future?

3 A. Even although a child was not in statutory care and  
4 therefore technically outside the 1968 Act.

5 LADY SMITH: Yes. Thank you.

6 MR MacAULAY: I think another point emerges from this point,  
7 the importance of there being transparency between  
8 different disciplines.

9 A. Yes.

10 Q. For example, if you look at paragraph 4.23 on that page,  
11 again dealing with this 3 year-old, the family's GP  
12 confirmed to the social work team that he had been  
13 consulted about the girl's loss of hair and poor  
14 appetite, but he said he had lost his records.

15 A. Yes.

16 Q. I think you also tell us that different doctors gave  
17 different opinions at different points in time?

18 A. Yes, different doctors gave different opinions, and in  
19 at least one of them, the social worker at the centre  
20 had no knowledge that that particular consultant or  
21 hospital doctor had reviewed the case.

22 Q. And paragraph 4.24, this is having regard to evidence  
23 given at the stepfather's trial, that the girl, when  
24 in the hospital, had:

25 "Hit her doll in the ward with some object and had

1           then said to one of the nurses, those are her bruises."

2           A. That's correct, yes, and that came from one of the  
3           nurses, but again that information had not been minuted  
4           in any direct way to the key social worker.

5           Q. So then if we look at paragraph 4.25:

6                        "To CAS [this is the conclusion] the case  
7           illustrated that the errors of judgment were due  
8           principally to poor agency procedures."

9                        Can you elaborate what is meant by that?

10          A. That there had been a transfer of responsibility for the  
11          child between different social work teams within  
12          Strathclyde, that the role of the hospital social worker  
13          was not tied in closely to, if you like, the community  
14          family based social work team. There was an issue  
15          surrounding case conferences, where, as I've said, not  
16          all information was conveyed to everybody. There were  
17          issues concerning the procedure of referral to the  
18          reporter. That is the registration to ensure the child  
19          was placed within statutory care. And generally  
20          speaking, there were issues of the supervision and  
21          support of staff, both within and outside the hospital.

22          Q. Do you go on to tell us that in June 1982, SWSG issued  
23          a new circular --

24          A. Yes.

25          Q. -- on child abuse, which amended the previous circular?

- 1 A. That essentially underlined the necessity for  
2 inter-agency and inter-professional coordination and  
3 collaboration.
- 4 Q. In the next section, paragraph 4.28 on page 9581, you go  
5 on to look at residential establishments.
- 6 A. Yes.
- 7 Q. As we touched upon earlier this morning, under the 1968  
8 Act the registration of residential homes came under the  
9 responsibility of the local authority.
- 10 A. Yes.
- 11 Q. You then tell us that in 1972, SWSG clarified that the  
12 inspection of such homes became the responsibility of  
13 the local authority and, after 1975, the social work  
14 department of the respective regional authorities.
- 15 A. That's correct, yes.
- 16 Q. So do I take it from that that 1972 was when this new  
17 regime was put in place and it was continued once after  
18 local authority reorganisation had taken place?
- 19 A. Yes, that's correct. The decision on the Lochvale Boys'  
20 Home in Dumfries stood.
- 21 Q. As you mentioned before, Aberlour Child Care Trust,  
22 although no longer within the inspectorial jurisdiction  
23 of CAS and SED, nevertheless was examined, if I can use  
24 that neutral word?
- 25 A. That's right, I think CAS were invited to review the

1 issues surrounding this particular incident, and if you  
2 like in a non-directive way produce a set of conclusions  
3 to take the issue forward.

4 Q. What was the issue at Aberlour this time?

5 A. It would appear to have been that there was a breakdown  
6 in communication between the trust and one or two of its  
7 employees, which resulted in an industrial tribunal  
8 taking place. That seemed to be the kernel, but then,  
9 behind that, there were issues of the quality of  
10 childcare within Aberlour Trust itself in this  
11 particular area.

12 Q. Again, this was not an inspection by CAS.

13 A. Not an inspection, it was simply non-directive review  
14 that CAS were providing to assist the Aberlour Child  
15 Care Trust forward in the way it organised its childcare  
16 system.

17 Q. And we see this with other voluntary organisations, but  
18 at this point in time in 1980, there was a decline in  
19 residential placements?

20 A. There was clearly a reluctance of the local authority to  
21 place children within any form of residential care and  
22 the numbers began to decline quite markedly.

23 Q. What advice at this point in time was being provided by  
24 CAS then to the Aberlour Trust?

25 A. CAS was essentially saying that they should seek to

1           convert their existing regimes into new forms of care  
2           that the local authorities concerned would wish to take  
3           for their children. If it did not, then Aberlour Child  
4           Care Trust would probably cease to exist.

5           Q. You indicated that this discussion paralleled  
6           discussions with Quarriers.

7           A. Yes.

8           Q. Were Quarriers in a similar position?

9           A. Quarriers were in a similar position. Strathclyde  
10          certainly did not like the provision that was being  
11          offered at Quarriers. I think at one stage they decided  
12          that it would no longer send children to Quarriers and  
13          that resulted in Quarriers seeking the advice of CAS as  
14          to its future direction.

15          Q. On page 9583, you set out the options, the first option  
16          being to keep children in their own homes with their own  
17          families if at all possible.

18          A. Yes.

19          Q. The second option was to put the child in care in  
20          a substitute family.

21          A. Foster care, yes.

22          Q. And the third option, residential care, would be seen as  
23          a last resort.

24          A. That's correct. I think this indicates the impact the  
25          1968 Act was having on the provision of childcare

1 services. The now reorganised local authority social  
2 services with professionally qualified social workers  
3 sought to keep a child within their own family. If not,  
4 then fostered, and as a last resort, if the conditions  
5 were such, some form of residential care.

6 Q. On page 9583, at paragraph 4.30, do you draw attention  
7 there to information in connection with Quarriers and  
8 what their decision was?

9 A. The decision was that Quarriers would seek to provide  
10 alternative childcare services on the basis that  
11 Strathclyde no longer wished to use its village  
12 services, its residential services as such.

13 Q. Do you note there that a record to indicate that  
14 in February 1981 Strathclyde indicated that it had not  
15 placed a child at a Quarriers residential home  
16 since July 1980?

17 A. That's correct, yes.

18 Q. You go on to mention another children's home, this is at  
19 Catkin in Glasgow, quite recently opened, in some sense,  
20 in that it had opened in 1956?

21 A. Yes.

22 Q. But again, encountering the same sort of difficulties as  
23 Quarriers and Aberlour in the early 1980s?

24 A. And it decided that it would close and sell the home and  
25 seek to develop non-residential care services for the

1 various local authorities in Scotland.

2 Q. You provide a statistic towards the bottom of page 9583  
3 that in Scotland, as a whole, between 1979 and 1986, the  
4 number of children's homes fell by almost 50%, from  
5 5,062 to 2,661?

6 A. That's correct.

7 Q. A fairly dramatic fall.

8 A. Halved, yes.

9 Q. Can we then look at List D schools. We can remind  
10 ourselves that they did remain within the jurisdiction  
11 of the inspectorial jurisdiction of CAS?

12 A. That's correct, yes.

13 Q. But at paragraph 4.32, 9584, you draw attention to  
14 a statement made by the Secretary of State in the House  
15 of Commons in August 1976.

16 A. That's correct, yes.

17 Q. What message was being conveyed here?

18 A. Well, that was simply the same message as was indicated  
19 in 1971 to local authorities and the then approved  
20 school managers, that there were significant financial  
21 issues attached to the transference of List D schools to  
22 the local authorities and there were administrative  
23 issues as to its future management, particularly local  
24 authority control of voluntary management boards.

25 Q. Again, I'll put this on the screen. It's a bit more



1 legible than some of the other documents. It's  
2 SGV.001.002.3954.

3 I don't know if we can make that a little bit  
4 bigger. We see the date is 4 August 1976. The  
5 Secretary of State is Mr Millan. It begins by saying:

6 "In November 1972 the then Secretary of State for  
7 Scotland announced his decision that arrangements should  
8 be put in hand to bring to an end, as soon after local  
9 government reorganisation as was reasonably practicable,  
10 the present system under which exchequer grant is paid  
11 to the List D schools."

12 Just so I can understand the financing, does that  
13 indicate that it's coming from a central authority as  
14 opposed to local authority?

15 A. What it is indicating is that there is a direct grant  
16 from the UK Treasury through SED Social Services Group  
17 to List D schools, both for the maintenance of pupils  
18 in the schools and also for any capital costs that the  
19 school might require to improve its facilities and  
20 premises.

21 Q. Does that provide a rationale for the inspection  
22 jurisdiction resting with SED?

23 A. Yes. The issue, really, if one looks at it very  
24 closely, is that no formula had been devised for  
25 adjusting the then rate support grant that local

1 authorities would receive if they took over financing  
2 from their own funds, the List D schools. That was the  
3 issue, that was one of the central issues involved in  
4 1971/72, and again in 1976: how were the local  
5 authorities to finance or what mechanism was put in  
6 place to compensate local authorities for this new  
7 additional responsibility?

8 Q. The additional responsibility, if it were to be  
9 transferred to local authorities, would also involve  
10 inspection?

11 A. It would also involve registration and inspection.

12 Q. He goes on to say that he indicated that in his view,  
13 there would be a continuing need in this field for both  
14 denominational and other schools and that the schools  
15 would gain from a closer association with the new  
16 regional authorities and from continuing participation  
17 in management by voluntary managers, including the  
18 churches. Can I just understand what's the message  
19 there?

20 A. The message, if one reads it again in a particular way,  
21 is that there is no assumption at this stage that List D  
22 schools would cease to exist, that List D schools still  
23 had a function within the terms of the 1968 Act. The  
24 issue concerned the finance and the management of these  
25 particular facilities within Scotland.

1 Q. And I think he makes reference to a report by  
2 Professor Mitchell on how the arrangements for List D  
3 schools would be put in place once the Exchequer grant  
4 had ceased.

5 A. Yes. As I've just indicated, there were serious  
6 financial issues attached to a local authority assuming  
7 financial control and that there would have to be some  
8 form of assurance from the centre, from Central  
9 Government, effectively through the then rate support  
10 grant, that a local authority would not be embarrassed  
11 if in fact running costs exceeded expectations.

12 Q. The main conclusions of the Mitchell Committee, firstly,  
13 were:

14 "In view of the regional authorities' statutory  
15 responsibilities and their future role as the providers  
16 of financing, it would be unrealistic to contemplate for  
17 the future a form of national control of List D  
18 schools."

19 Are we moving away from central control?

20 A. They're seeking to move away, but recognising if one  
21 looks at it again that serious issues remain in  
22 transferring financial and administrative responsibility  
23 to a local authority. So the Secretary of State is  
24 saying, yes, I want to go down that particular line, but  
25 I have not reached a formula which would be acceptable

1 to all parties.

2 Q. And I think on the next page, 9355, although there's  
3 a recognition that ultimately regional authorities would  
4 take control --

5 A. Yes.

6 Q. -- halfway down the first paragraph on the page he goes  
7 on to say:

8 "My department will for a time have to maintain some  
9 oversight of the situation."

10 A. That's a recognition that the financial and  
11 administrative difficulties, as outlined in 1971 and  
12 1972, remained, and therefore there was no question of  
13 transferring financial and administrative supervision to  
14 the local authorities in 1976.

15 Q. But was there an undertaking given that he would report  
16 back to --

17 A. In due time, at some future time.

18 Q. It's quite a way down the line, I think?

19 A. That is a parliamentary statement, I think indicating  
20 that the Secretary of State has some issues and  
21 difficulties in implementing the full extent of the 1968  
22 Act.

23 Q. We'll come later, I think to, another statement in  
24 Hansard to the House of Commons in June 1985. Is that  
25 when we get a decision on this?

1 A. That's when we get a decision, but the circumstances and  
2 usefulness of List D schools had altered by then.

3 Q. Yes.

4 LADY SMITH: What do you think the Secretary of State or his  
5 officials, I suppose, to be more accurate, had in mind  
6 when they said, "My department will for a time have to  
7 maintain some oversight of the situation"? What type of  
8 oversight, is there any indication?

9 A. That meant inspections.

10 LADY SMITH: Because, of course, he was worried about money  
11 and the transfer of funds as well as administrative  
12 responsibilities, as it was put, but you think that was  
13 being expressed in terms of inspections of what was  
14 going on? Is that right?

15 A. Inspections and the issues surrounding the allocation of  
16 a pupil to a particular school, which, as you remember  
17 from what I've said in earlier sections, was still under  
18 the control of the Social Work Services Group, and there  
19 were clearly issues surrounding whether it was  
20 appropriate to send a child to one school as opposed to  
21 another school, transferring a child from one school to  
22 another school because of particular circumstances, and  
23 also the financing improvements in those particular  
24 schools. There was capital expenditure involved and  
25 that was coming from the centre.

1 LADY SMITH: Yes, thank you.

2 MR MacAULAY: The List D schools were in different regions  
3 but not in every region?

4 A. Not in every region. There wasn't one in the Borders.  
5 I don't think there was one in Dumfries & Galloway, nor  
6 do I think there was one in the Highland region.

7 Q. We can check all of that by looking at this map,  
8 paragraph. SGV.001.002.4113. Can that be made a bit  
9 bigger?

10 Can I just say, this is a map that's an attachment  
11 to a report on List D schools. I think you are quite  
12 right, professor, in that we see the little black dots.

13 A. Yes.

14 Q. And we see no black dot in the Borders, Dumfries &  
15 Galloway and Highland, and we only have one in Grampian  
16 according to this map. The List D schools themselves  
17 are listed at the top of the map and I think at this  
18 time there may have been about 24 or 25 List D schools.  
19 In fact, approved accommodation, 23 at this time.

20 So if a child from Highland or borders were to be  
21 placed in a List D school, it would have to be outwith  
22 the region?

23 A. Yes, that's correct.

24 Q. In the main, they seem to be clustered in a central  
25 area. Tayside also has its fair share.

1 A. Tayside had its fair share, but historically the  
2 majority of approved schools were located in and around  
3 Glasgow.

4 Q. I think thereafter in your report, you look at a number  
5 of incidents involving List D schools and under  
6 reference to records that you've been able to identify.  
7 Still, of course, these are schools that are coming  
8 under the inspectorial regime of CAS.

9 A. Yes.

10 Q. And these records are within NRS?

11 A. Yes.

12 Q. The first you mention is an issue over Wellington List D  
13 school in 1973, when the then headmaster resigned and  
14 a new headmaster took over and introduced a new regime.

15 A. That's correct.

16 Q. What was this regime?

17 A. I think one could probably encapsulate it as being more  
18 libertarian, that the child themselves would take  
19 decisions about their appearance, about their  
20 educational programme, the sharing of tasks, evenings  
21 out and so on. And the child was an adolescent and  
22 should not be regarded as a delinquent.

23 Q. What then happened as a consequence?

24 A. The consequence would appear that there was a breakdown,  
25 if you like, in the regime at school. Vandalism

1           increased, abscondings increased, the relationships  
2           within the school between the staff also decreased, and  
3           educational provision seemed to be highly questionable.  
4           The headmaster was informed that his contract would not  
5           be renewed.

6           Q. That was what happened, I think?

7           A. Yes.

8           Q. A new headmaster was put in place?

9           A. Yes, that's right.

10          Q. So the more liberal regime just did not work in this  
11          situation?

12          A. That's right. It would appear that there was  
13          considerable interest in the regime from outside of the  
14          List D school environment, probably in relation to the  
15          times, in a sense, that a more child-centred approach  
16          was coming to the fore, the issue being essentially that  
17          it wasn't just a question of instituting a new regime,  
18          you also had to have a different level of support and  
19          different forms of support staff for children in that  
20          kind of regime. That's essentially, I think, what CAS's  
21          review of the situation was.

22          Q. It would appear that CAS had quite significant  
23          involvement with this particular school once these  
24          issues arose?

25          A. Yes. The issue was, given that there was clearly



1           considerable interest from the local communities,  
2           I think an MP was involved, how would you explain it to  
3           everyone? And the Chief Social Work Adviser indicated,  
4           yes, this is the way, if we are seeking to develop  
5           residential accommodation in the future, this is the way  
6           we should be developing. That it was important to look  
7           at children within terms of their general educational  
8           development, not just in terms of treating them as  
9           a delinquent, but that the eventual letter that was  
10          issued was considerably altered to ensure no defamation  
11          of any individual concerned.

12        Q. I think you talk about that in your report at 9586.

13        A. Yes.

14        Q. Was that a letter to the minister?

15        A. That was a letter, I think, going out to the local MP  
16          and also to the board of managers.

17        Q. Part of the regime involved, if we go back to page 9585,  
18          that for example the children could choose what subjects  
19          they wished to study and indeed when.

20        A. That's right, yes. As I say, it was child-centred,  
21          seeking to ensure that the child took control much more  
22          of the development that was around them, that they would  
23          take control of the facilities that the school offered,  
24          and make positive choices.

25        LADY SMITH: Are we seeing some signs here of the Social

1 Work Services Group, the CAS as well, picking up an idea  
2 which had been badly implemented?

3 A. Yes.

4 LADY SMITH: And recognising that actually the kernel of  
5 that idea is a good one, that we ought to run with and  
6 learn from?

7 A. That's what I get from the Chief Social Work Adviser,  
8 that this is the way forward, but that at Wellington the  
9 element of staff support and facility support was not at  
10 a level that could support that kind of child-centred  
11 development.

12 MR MacAULAY: You do say at paragraph 4.35 that the  
13 innovations that had been introduced had been widely  
14 recognised within the professional field and Wellington  
15 had received many visits from universities and training  
16 institutions keen to learn from the methods applied.

17 A. That's correct, yes.

18 Q. But notwithstanding that, the methods in this instance  
19 simply did not work.

20 A. That's correct. I think there were a number of  
21 publications as a result of that particular experiment,  
22 that university staff and CQSW training staff took on  
23 board.

24 Q. As we touched upon earlier, the outcome was that the  
25 headmaster left and a new headmaster was appointed.

- 1 A. That's right, who introduced a fairly traditional  
2 regime, effectively turning the clock back.
- 3 Q. I think it's described from one of the social work  
4 adviser's reports that you quote on the top of page 9587  
5 as "classic management approach".
- 6 A. That's correct, yes. Very traditional approved  
7 school/List D school approach.
- 8 Q. One point you do make here, and you have taken from the  
9 records, is that Wellington was a school that had  
10 a tradition of not using corporal punishment.
- 11 A. Yes, that's correct.
- 12 Q. So we're talking in the late 1970s here, so that was  
13 a fairly enlightened approach to corporal punishment?
- 14 A. Yes. I'm not sure when corporal punishment was  
15 abolished within Wellington School itself, but it would  
16 certainly seem to be 10 or 15 years it had not been  
17 used.
- 18 Q. So that's taking us into the 1960s?
- 19 A. That's correct, yes.
- 20 Q. I think the headmaster was able to explain that that  
21 policy of not having corporal punishment was the product  
22 of a generous staff/pupil ratio.
- 23 A. Yes. But that's not the same as staff who had the  
24 facility and the capability of operating a more  
25 child-centred regime.

- 1 Q. I understand that, but it at least tells us that if  
2 you have enough staff, you're able to implement  
3 a non-corporal punishment policy?
- 4 A. Yes, that's right, yes.
- 5 Q. And it now seems that absconding had been minimal only,  
6 with one local incident; is that correct?
- 7 A. Yes.
- 8 Q. So it had been turned round by --
- 9 A. It had been turned round, yes.
- 10 Q. You then talk about a List D school, I think in Dundee,  
11 Balgay, and what the joint report by the HM Inspector of  
12 Schools and the social work adviser reported upon.
- 13 A. Yes. This seemed to be taking the previous Wellington  
14 regime on further and that the girls -- and it was  
15 a girls' List D school -- had an element of choice as  
16 to, again, what they should do, including what they  
17 should study and when they should study.
- 18 Q. Was it working in this particular establishment at this  
19 time?
- 20 A. The suggestion is it was working, although there were  
21 concerns over the degree of freedom and the extent to  
22 which any curriculum was being followed by the girls.
- 23 Q. But I think, as you indicate at paragraph 4.39 on  
24 page 9588, the joint report was broadly positive of the  
25 school?

1 A. It was.

2 Q. At this time?

3 A. Yes. I think what they were suggesting was a degree of  
4 choice within certain parameters.

5 Q. You also look at Snowdon School in Stirling on page 9589  
6 under reference to an inspection that was carried out by  
7 the HM Inspector of Schools and CAS. Was Snowdon  
8 a List D school at this time?

9 A. Yes, it was.

10 Q. And what was the conclusion of the joint report?

11 A. They appeared to be somewhat appalled by the physical  
12 conditions and the staff support within the school and  
13 if it had sought registration as a children's home under  
14 the 1968 Act, there would be some difficulties.

15 Q. This is a 1977 report?

16 A. Yes.

17 Q. Well, some of the comments you've taken from the report,  
18 I think you indicate that the bathroom and toilet  
19 facilities were "a disgrace".

20 A. Yes.

21 Q. With three of the latter lacking a door. The report was  
22 particularly scathing on the provision of care?

23 A. Yes. There was a considerable distance between the  
24 staff and the girls involved and there was no attempt to  
25 engage with them in any childcare social work facility.

- 1 Q. We see that one of the children in the school was aged  
2 only 10.
- 3 A. Yes.
- 4 Q. Although admitted at the age of 9. Is that correct?
- 5 A. That's correct, yes.
- 6 Q. The social workers' concern at the state of the child  
7 was mentioned and the response seemed to have been that  
8 she was just a dirty wee thing.
- 9 A. That's correct, yes, which indicates the attitude that  
10 the staff had towards the children, I think. That's why  
11 I think it's there.
- 12 Q. So what was the response to this particular inspection?  
13 Do we know from the records what happened?
- 14 A. No, we don't, no.
- 15 Q. From what we've seen from other CAS-type inspections,  
16 there do appear to be follow-ups once they have an  
17 initial inspection?
- 18 A. Once they have an initial inspection where they appear  
19 to have considerable concerns then they appear to review  
20 the situation within a short space of time.
- 21 Q. But in any event, you found no records to indicate what  
22 happened next?
- 23 A. No, no. I don't think Snowdon was a particularly large  
24 school at the time.
- 25 Q. Then you turn your attention in the report to

1 Dr Guthrie's Girls School at paragraph 4.41 into the  
2 next page, 9590, and here you identify a series of  
3 inspections between November 1975 and February 1976,  
4 which disclosed concerns. Is that correct?

5 A. That's correct. I think reading the reports, it would  
6 appear they thought that Dr Guthrie's Girls School had  
7 not moved in line with the 1968 Act or its conversion  
8 from an approved school to a List D school.

9 Q. There's some criticism of the facilities at the school  
10 and also the education?

11 A. The facilities for physical education, games and  
12 recreation were poor, and that, again, reflecting  
13 pre-1968 Act attitudes, the activities for the girls  
14 were linked to sewing, laundry and workshop activities,  
15 reminiscent of similar schools prior to the raising of  
16 the school leaving age in 1970.

17 Q. But here we have an incidence where there was  
18 a follow-up report?

19 A. Yes. An indication that the school had taken on board  
20 the criticisms and that more experienced teachers had  
21 been recruited and arrangements put in place for  
22 shifting the curriculum away from the laundry-type of  
23 facility to one geared to education.

24 Q. So the inspection had provoked a response from the  
25 school?

- 1 A. Yes.
- 2 Q. As you point out in paragraph 4.42, none of the reports  
3 that we've been looking at, Balgay, Snowdon and  
4 Dr Guthrie's schools, raised any issue in connection  
5 with physical abuse of the pupils?
- 6 A. Yes.
- 7 Q. And as we've noted, in Wellington the school avoided the  
8 use of corporal punishment in any event?
- 9 A. Yes. That's correct.
- 10 Q. Do you draw attention to a report in April 1976 where  
11 the police were carrying out an investigation into  
12 Wellington School?
- 13 A. That's right, a former member of staff, I assume  
14 a teacher, had committed misconduct and had engaged in  
15 homosexual activities with some of the boys.
- 16 Q. And do the records indicate what happened?
- 17 A. No, no.
- 18 Q. Or what happened to the teacher?
- 19 A. A former member of staff, that's all it says, so he's  
20 obviously left service. But there's no report of any  
21 criminal procedure being taken.
- 22 Q. Then you focus on what you have discovered from records  
23 in connection with Rossie, and again Rossie is a List D  
24 school.
- 25 A. Yes.



- 1 Q. What was the concern here?
- 2 A. The concern had been, to use their phrase, irregular  
3 punishments, that is there had been excessive and  
4 irregular punishments on some of the boys, that a boy  
5 had been punished, the tawse had been used before  
6 admission to hospital for a back problem, and that  
7 clearly that did concern CAS and a senior social work  
8 adviser was requested to visit the school and discuss  
9 the situation.
- 10 Q. The time frame here is towards the latter part of 1974?
- 11 A. Yes.
- 12 Q. The description, I think you've taken from the records,  
13 is that of excessive and irregular punishments?
- 14 A. Yes.
- 15 Q. Although it would appear that the parents of the boys  
16 did not want to make a formal complaint?
- 17 A. That's correct, yes. I think the phrase "irregular  
18 punishment" means that under the 1961 regulations that  
19 if there was a health issue, the boy should not have  
20 been punished in the way he was punished.
- 21 Q. Do I understand from that that the admission to hospital  
22 for a back problem was not related to the tawse having  
23 been applied to the boy's posterior, as you set out?
- 24 A. Yes, that was the issue. It was under the 1961  
25 regulations still permissible to apply a tawse to the

1 posterior, but not if there was a health issue.

2 Q. So what was the outcome of this investigation?

3 A. The school logbook for punishments indicated that the  
4 complaint was unfounded and that was the end of the  
5 matter.

6 Q. But I think when the headmaster was spoken to, he did  
7 confirm that both boys had been punished, but according  
8 to the rules?

9 A. According to the rules, yes.

10 Q. So is it the allegation of the use of the tawse on the  
11 posterior when the boy had a back problem what was being  
12 denied?

13 A. That was being denied, yes, that the punishment had  
14 conformed to the 1961 rules.

15 Q. And it appears from what's being said here that  
16 a punishment logbook was being kept by the school?

17 A. Yes. According to the regulations, a logbook was being  
18 kept. But the issue here was Rossie had one of the  
19 highest rates of the use of corporal punishment within  
20 all the List D schools for boys at that time.

21 LADY SMITH: Was there any discussion of that finding that  
22 Rossie stood out as having a higher rate?

23 A. I think later on, the report here indicates that  
24 CAS/Social Work Services Group had constant and  
25 continual concern about excessive corporal punishment

1 across the board in List D schools, including Rossie.

2 MR MacAULAY: But not Wellington, as you have told us?

3 A. Not Wellington, no.

4 Q. The records, I think we talked about this the other day,  
5 these would be the reports made, for example, by Rossie  
6 to SWSG?

7 A. Yes.

8 Q. As to what punishments were being meted out?

9 A. That's right. They were required to send in their  
10 logbook every, I think, quarter or every half year.

11 Q. So one would imagine the process would be a punishment  
12 is recorded in the punishment book, and every half year  
13 extracted from there and put into this log?

14 A. That's right.

15 Q. And then sent to SWSG?

16 A. Yes.

17 Q. So what would appear before SWSG would depend on the  
18 punishment having been logged at source?

19 A. That's correct, yes.

20 Q. I think you do mention that there was some suggestion of  
21 an unrecorded punishment in the Rossie logbook.

22 A. Yes, but no detail is provided as to what that  
23 punishment was or to who it was. It's simply  
24 a statement that yes, they accept that they hadn't  
25 completed the logbook as appropriate. It might well

1           have been a punishment that met with the 1961  
2           regulations, but it had not been logged.  It's  
3           impossible to say.

4           Q.  If it hasn't been logged, it hasn't been logged?

5           A.  Yes.

6           Q.  You go on to tell us that a new headmaster was appointed  
7           to Rossie in 1977.  But nevertheless, the use of  
8           corporal punishment continued at Rossie; is that  
9           correct?

10          A.  That's right, yes.  It continued at a high level of  
11          corporal punishment -- still existed.

12          Q.  Had there been an inspection after the appointment of  
13          that new headmaster?

14          A.  The record indicates the suggestion that they waited  
15          until the new headmaster had established himself before  
16          reviewing Rossie again.

17          Q.  But you have noted here that the proposal was that both  
18          CAS and the HM Inspector of Schools would continue to  
19          engage in joint inspections?

20          A.  Yes.

21          Q.  "to stimulate" change?

22          A.  That's right.  The view clearly was that this was  
23          a school that required a high level of support and  
24          supervision to reduce the incidence of corporal  
25          punishment.

1 LADY SMITH: Just taking this picture that emerged from  
2 Rossie as being a place where you were at higher risk of  
3 corporal punishment than other places, is there any sign  
4 of the inspectors actually speaking to the children  
5 about it?

6 A. They were permitted, I think under the 1961 regulations,  
7 to speak to the boys and girls as they thought  
8 appropriate. There's some indication that they did  
9 speak to the boys and girls, and I think I note that  
10 later on in another report. But again, one is dependant  
11 on what is stated in the reports that are submitted.

12 LADY SMITH: Of course, yes. I'm sure you guess what's  
13 going through my mind is the punishment book may neatly  
14 be entered in a way that describes the punishment so as  
15 to match the regulations.

16 A. Yes.

17 LADY SMITH: But it would be interesting to know what the  
18 children said about it.

19 A. Yes, precisely.

20 LADY SMITH: Very helpful.

21 A. As I say, it's not ... If there had been, I would have  
22 inserted it.as I say, there is no indication that they  
23 are talking directly to the children about corporal  
24 punishment, they're just simply noting it.

25 LADY SMITH: Even going back to the case of the boy who was

1 going into hospital because of his back, there's  
2 indication that they got information about the parents'  
3 attitude. We don't know whether they spoke to the  
4 parents or not, I take it, do we? Spoke themselves?

5 A. Off the top of my head, I don't think that the adviser  
6 spoke to the parents. The parents simply told the  
7 school that they would not take it forward.

8 LADY SMITH: But one might have thought that they would  
9 separately speak to the boys, particularly the boy who  
10 was going into hospital.

11 A. Yes.

12 LADY SMITH: No sign of that?

13 A. There's no indication that they did speak to the boy.  
14 But of course, by the time that this arose, the boy  
15 might have left the List D school.

16 LADY SMITH: Of course, yes. Thank you.

17 MR MacAULAY: As we noted before, the explanation for the  
18 non-corporal punishment policy at Wellington was related  
19 to the high staff/pupil ratio.

20 A. Yes.

21 Q. Was there any indication here that this was something  
22 that was being explored by CAS with the headmaster at  
23 Rossie?

24 A. They certainly were aware of the staff/pupil ratio.

25 There's no indication that they thought that Rossie was

1           understaffed. I think the issue here is that they  
2           didn't like the regime, full stop.

3       Q. In these schools, clearly the headmaster would have  
4           a central role to play in the regimes?

5       A. The assumption was that the headmaster would institute  
6           a particular kind of regime, as had occurred at  
7           Wellington, which had collapsed, and a new regime  
8           established at Wellington, which reverted back to the  
9           traditional form. At Rossie, the assumption was that it  
10          was the headmaster's personal view of keeping control  
11          that dictated the punishment regime.

12       Q. It's a difficult report to read because of the type, but  
13          I think the headmaster's described in the report as  
14          being an insensitive headmaster. Does that ring a bell  
15          with you?

16       A. That's right, yes. That's a polite way of saying that  
17          he was a disciplinarian.

18       Q. You go on to tell us on paragraph 4.43 on page 9592 that  
19          a new headmaster was appointed to Rossie in 1977 and  
20          that there was a subsequent inspection in late 1978.

21       A. Yes.

22       Q. So again, we see here that at least Rossie is very much  
23          being looked at by CAS.

24       A. It's on the radar, it's clearly one of a set of schools  
25          which there's considerable concern about on the regime

1           that existed within it.

2           Q. That concern remained with CAS or SWSG and went no  
3           further than that?

4           A. It went no further in terms of some material going to  
5           one of the ministers, you mean?

6           Q. Yes.

7           A. They clearly believed that by constantly reviewing  
8           Rossie and inspecting Rossie that the administrative  
9           actions they were taking would stimulate change, as it  
10          indicates.

11          Q. What you have set out in your report, professor, what  
12          you have taken from the report is that the senior  
13          social work adviser's report commented that there was:

14                 "A very high level of corporal punishment, which can  
15          only result eventually in a total alienation of the  
16          children."

17          A. That's correct.

18          Q. That's fairly strong language?

19          A. That's fairly strong and it's putting a marker down,  
20          I would suggest, in case if something did reach  
21          a minister, ie a parent or an MP complained to  
22          a minister, that they would have a note on file, that  
23          there was a concern but they were seeking to change the  
24          regime.

25          Q. And their thinking at that time was that they would



1 continue to engage in joint inspections?

2 A. Yes.

3 Q. As you've said, to stimulate change of the regime?

4 A. Yes.

5 MR MacAULAY: My Lady, that's just coming up to 11.30. It's

6 a good point to stop.

7 LADY SMITH: Very well. We'll stop now for the morning

8 break and take about 15 minutes.

9 (11.30 am)

10 (A short break)

11 (11.45 am)

12 LADY SMITH: Are you ready to continue, professor?

13 A. Yes.

14 LADY SMITH: Thank you.

15 Mr MacAulay.

16 MR MacAULAY: Can I take you then, professor, to page 9593

17 of the report. Here you begin looking at what you've

18 managed to ascertain from the records in relation to

19 Geilsland List D school. At paragraph 4.44 you also

20 point out that this was another school which had

21 a reputation for the use of corporal punishment.

22 A. Yes.

23 Q. The issue that concerned SWSG and CAS after 1974 was the

24 use of handcuffs. Is that correct?

25 A. That's correct.

1 Q. Can you fill us in on the background to that?

2 A. The background was that although they had received no  
3 reports of unrecorded or excessive use of the tawse, it  
4 was the use of handcuffs as a measure of restraint,  
5 particularly to absconders, that concerned them greatly;  
6 that on one occasion, the headmaster had admitted that  
7 he had taken a boy, a pupil, to a panel in handcuffs,  
8 and that boys going to the secure unit at Rossie,  
9 what was termed the MacDonald wing, were also handcuffed  
10 when necessary.

11 Q. Did this transpire from a visit to the school in May  
12 1977 by a social work adviser?

13 A. Yes, that's right. A particular incident occurred.

14 LADY SMITH: Can you remind me, professor, of the age group  
15 of children at Geilsland at that time?

16 A. I think they were 12 to 16. It wasn't a junior school.

17 LADY SMITH: No, but a 12 year-old in handcuffs?

18 A. Yes.

19 LADY SMITH: A possibility?

20 A. Yes.

21 LADY SMITH: Thank you.

22 MR MacAULAY: So far as taking a boy to the panel hearing in  
23 handcuffs would be concerned, was there any legal  
24 justification for that?

25 A. No.

1 Q. Or indeed taking boys to the MacDonald secure wing at  
2 Rossie. Again, so far as you're aware, was there any  
3 legal basis for that?

4 A. No.

5 Q. You then, I think, draw attention to what the  
6 social work adviser's report said about two particular  
7 pupils who had absconded in February 1977 and how they  
8 were treated once they were apprehended. Can you tell  
9 us about that?

10 A. Yes. One was put in the segregation room, the majority  
11 of List D schools, as previously, had what was termed  
12 a secure unit, a room where a pupil could be held  
13 securely. But as they only had one secure room, unit,  
14 the second boy was handcuffed and kept in the general  
15 office overnight and handcuffed to the radiator  
16 overnight on the assumption that the night supervisor  
17 would presumably wander round and make sure he was okay.

18 Q. And I think a mattress was provided on the floor for  
19 him?

20 A. Yes.

21 Q. Do the records show what age this boy was at the time?

22 A. Off the top of my head, I can't say, but certainly not  
23 less than 12.

24 Q. What was the headmaster's attitude to the social work  
25 adviser as to why he had taken this particular course of

1 action?

2 A. I think you could say on one level, defensive. On  
3 another level, quite assertive. He did not like the  
4 idea of boys absconding and getting away with it.  
5 Therefore he would use whatever means he had available  
6 to prevent that and justified it by saying that other  
7 schools had handcuffs.

8 Q. And I think we'll see, as we move on, that there is at  
9 least another one school that used handcuffs?

10 A. Yes, that's correct.

11 Q. So far as the social work adviser was concerned, have  
12 you set out in your report in 9594 that:

13 "I expressed my disapproval of the practice of  
14 handcuffing boys, but had to admit that as far as  
15 I knew, the practice was not forbidden by regulation,  
16 though technically handcuffing might well be a form of  
17 personal assault."

18 A. Yes. There was nothing in the 1961 regulations which  
19 prevented the use of handcuffs, although he thought --

20 LADY SMITH: Maybe it was never foreseen when they were  
21 drafted.

22 A. Well, I think that's probably the case, yes.

23 MR MacAULAY: I think putting it another way, there's  
24 nothing in the regulations that would justify  
25 handcuffing a child, for example, to a radiator?

1 A. No, not to a radiator at night. I have double-checked  
2 and there was some embarrassment within Social Work  
3 Services Group that some time previously, the handcuffs  
4 were issued as part of their annual allocation.

5 LADY SMITH: You have just anticipated my next question,  
6 which is: where were these handcuffs coming from?

7 A. They were part of the annual -- probably some time after  
8 1965, and there was an obvious embarrassment that they  
9 had been issued as part of the supplies requested by  
10 this particular List D school.

11 MR MacAULAY: Yes, this particular school and possibly one  
12 other or one or more had requested handcuffs.

13 A. Yes.

14 Q. This school was not a secure unit, did not have a secure  
15 unit?

16 A. No, no, no. It had a secure room, a secure unit, but  
17 not secure accommodation as we would later term it.

18 Q. So how did this develop then in relation to the  
19 Geilsland policy on handcuffing?

20 A. The initial reaction was that the social work adviser  
21 thought that CAS should seek to educate the headmaster  
22 away from such restraint, but that it then went up to  
23 the Chief Social Work Adviser, who indicated that there  
24 could be severe political repercussions if in fact this  
25 got into the public arena, and indicated that from the

1 review that the advisers had, at least one other school  
2 continued to use handcuffs.

3 Q. Just looking towards the bottom of page 9594, this is  
4 from the Chief Social Work Adviser's note:

5 "One thing is certain. As the registering authority  
6 we cannot let the situation go unremarked and neither  
7 can we as an organ of Central Government permit the  
8 continuation of a belief in the right of power over  
9 youngsters as evidenced by the use of handcuffs, which  
10 should at the very least only be used by the law  
11 enforcement officers backed by the court ie the police."

12 A. That's correct. So they certainly believed that only  
13 the police could do that, but I think the previous  
14 paragraph is quite important where the senior  
15 social work adviser suggests that such punishments,  
16 instead of being unusual, should be considered usual in  
17 some of the List D schools. So there's a recognition  
18 that some punishments may not go recorded.

19 Q. Sorry, so --

20 A. It's that paragraph:

21 "Unusual punishment in the Geilsland report, but, as  
22 he rather gloomily says, it may not justify the word  
23 'unusual'."

24 Q. Yes. To go unrecorded, even an unusual punishment ought  
25 to be recorded?

1 A. What he's suggesting is that there are sets of  
2 punishments which are not recorded, but nevertheless one  
3 could regard them as usual.

4 Q. So is he saying therefore, if you use handcuffs, even if  
5 you describe it as unusual, it should be looked upon as  
6 usual and recorded?

7 A. I think he's indicating that the regulations are being  
8 broken.

9 Q. Yes.

10 A. And that unrecorded punishments, which include the use  
11 of handcuffs, might be more widespread than are  
12 indicated in the official reports.

13 LADY SMITH: So this is a rather coy way of observing that  
14 there may be common practice in some schools involving  
15 the use of handcuffs?

16 A. Or other forms of punishment.

17 LADY SMITH: Or other forms of punishment, yes.

18 A. I think they're quite clear that there's only one other  
19 school which admits to the use of handcuffs and I think  
20 they're relatively assured on that, but that other forms  
21 of punishment exist, which are unrecorded, which might  
22 be regarded as usual rather than unusual.

23 LADY SMITH: So judging by those comments, it doesn't seem  
24 as though the inspectors felt that they had the power to  
25 just remove the handcuffs there and then?

1 A. They were then the property of the school, even although  
2 they had been issued by the Social Work Services Group  
3 or its predecessor.

4 LADY SMITH: And on that basis, despite deep disapproval and  
5 concern on the inspectors' part, it seems they left them  
6 in situ?

7 A. Yes. And I think later on, or previously, I have  
8 indicated that the power of the Secretary of State to  
9 intervene in day-to-day management was severely  
10 restricted.

11 LADY SMITH: Of course, yes. a child-centred approach? Well,  
12 I don't expect an answer to that. It just doesn't sound  
13 very satisfactory, looking at it through the children's  
14 eyes.

15 A. No.

16 MR MacAULAY: Even the undersecretary, you have set out his  
17 view towards the top of page 9595, and that is that:

18 "I agree that it is no credit to the List D system  
19 to find traces of a technique of physical restraint,  
20 which nowadays is mainly heard in relation to IRA  
21 terrorists appearing in court. It is not used even in  
22 junior establishments in the penal system, nor in more  
23 immediately practical terms would I have cared to  
24 explain to ministers in the event of a publicised  
25 incident why a boy was left chained to a heating pipe



1           overnight."

2                   One could see how that could be rather embarrassing  
3           from the minister's perspective?

4       A.   Yes, that the inspection system had not picked up this  
5           before.

6       Q.   Or somehow immediately brought it to an end when it was  
7           picked up?

8       A.   Yes, but given that the power of the Secretary of State  
9           to intervene in the day-to-day management of approved  
10          schools, List D schools, was limited, it would be even  
11          more embarrassing to explain to a minister what they  
12          could do.

13      Q.   So what happened then here in relation to Geilsland, and  
14          I think we'll look at Rossie in a moment, but what  
15          happened?

16      A.   The Chief Social Work Adviser would discuss the issue  
17          with the director of the Church of Scotland social work  
18          department, which was the responsible authority for  
19          Geilsland, to indicate the deep concern that Social Work  
20          Services Group and CAS had. It was reported that the  
21          director wished the matter to be discussed with him  
22          first because he had a concern over his management  
23          committee that was perhaps rather old-fashioned in terms  
24          of rigid authoritarianism.

25      Q.   That's the director of the Church of Scotland social

1 work department?

2 A. Yes.

3 Q. He, clearly, then, was made aware of the practice?

4 A. Yes, that's right.

5 Q. And they were the managers of the school?

6 A. He was the day-to-day manager, overseer of the school,  
7 yes.

8 Q. But the managers would have the jurisdiction to bring to  
9 an end at a stroke this practice?

10 A. The managing authority, which would be his committee,  
11 would have the authority to ensure that the handcuffs  
12 were not used again.

13 Q. So that would be the obvious route then as to how to  
14 bring the practice to an end?

15 A. But the director said he didn't wish his committee to  
16 have any involvement as they might not see eye to eye  
17 with the view of CAS.

18 Q. In respect of --

19 A. The use of handcuffs.

20 Q. Are you suggesting that the committee might have  
21 approved of the use of handcuffs?

22 A. Well, all that's minuted is: because the nature of the  
23 Church of Scotland's management committee that held  
24 oversight of Geilsland was of a very rigid,  
25 authoritarian kind, and the inference is there might be

1           some issues with seeking to get their approval to the  
2           course of action that CAS wanted and that I assume the  
3           director also wanted.

4       Q.   So what then happened here in relation to this  
5           particular practice?

6       A.   The social work adviser again visited the school and  
7           reported that the headmaster had not used the handcuffs  
8           since his previous visit and the adviser thought it was  
9           unlikely he would do so again. CAS's view was that it  
10          was contrary to good childcare practice and that this  
11          was followed up by a phone call from the senior  
12          social work adviser, who indicated the position of the  
13          Social Work Services Group undersecretary, and the  
14          headmaster had clearly felt uncomfortable given his  
15          position in the use of handcuffs.

16       Q.   Does this come to an end, where the headmaster, although  
17           he continued to defend the use of handcuffs, he had  
18           given an understanding that they would not be used  
19           in the future?

20       A.   That's correct, yes.

21       Q.   And that was minuted in September 1977.

22       A.   That's correct, yes.

23       Q.   We then look at Rossie.

24       LADY SMITH: Sorry, how long was that after their use had  
25           first been uncovered?

1 MR MacAULAY: I think May 1977.

2 A. So within a month.

3 LADY SMITH: Well, May to September.

4 A. Sorry, yes, but the senior social work adviser follow-up  
5 was within a month of the initial ...

6 LADY SMITH: Yes, I get that. I'm thinking in terms of an  
7 ideal world where the person who finds they're being  
8 used can remove them there and then. But the reality  
9 is that it took between five and six months to get to  
10 that stage that they were banned.

11 A. Yes.

12 MR MacAULAY: Just to be clear, in paragraph 4.44 on  
13 page 9593, you discuss the visit under reference to the  
14 social work adviser's report of 11 May 1977.

15 A. Yes, that's right.

16 Q. So it's taken several months from that point until the  
17 headmaster agrees that he would not use handcuffs again.

18 A. That may simply be because of the contact that they had.

19 Q. What we don't know is how prevalent the use of handcuffs  
20 was prior to May 1977.

21 A. No, we don't.

22 Q. Can I then look at Rossie, 9596, paragraph 4.50. This,  
23 you tell us -- the use of handcuffs at Rossie was raised  
24 at a visit by two social work advisers, and this visit  
25 seems to have been in June 1977. Is that correct?

- 1 A. Yes, that's correct.
- 2 Q. What was the position here?
- 3 A. The headmaster who was a newly appointed headmaster,  
4 previously deputy at Geilsland, had used them to take  
5 children to Children's Panels.
- 6 Q. As you point out, his previous post had been the deputy  
7 at Geilsland, which we've just been talking about.
- 8 A. That's right.
- 9 Q. In relation to the use of handcuffs, did anything come  
10 out of that as to whether or not this practice would  
11 continue?
- 12 A. The headmaster was informed as the headmaster at  
13 Geilsland that CAS disapproved of them and would not  
14 wish to know of their use in future.
- 15 Q. There was also some reference to a complaint at  
16 paragraph 4.51 by a newly appointed social work member  
17 of staff at Geilsland.
- 18 A. Yes.
- 19 Q. What was that about?
- 20 A. That would appear to have been some mild form of  
21 physical punishment for not completing domestic duties,  
22 and that was confirmed by the headmaster.
- 23 Q. Was that something that should have happened?
- 24 A. I think it was in a grey area in terms of the Approved  
25 School Regulations, but probably not.

1 Q. I think we understand from the regulations that, really,  
2 corporal punishment should be a doctrine of last resort?

3 A. Yes. But we don't know whether this was corporal  
4 punishment or not. It just says physical punishment.

5 Q. Yes.

6 A. It could be a slap on the wrists, a slap on the --  
7 whatever.

8 Q. But as we noted earlier, at this time Rossie had for its  
9 roll proportionately the highest level of the use of  
10 corporal punishment of all List D schools?

11 A. Yes, that's correct. That's from the returns submitted.

12 Q. I said Rossie, I meant Geilsland, of course. We're  
13 looking at Geilsland now.

14 A. Yes.

15 Q. At this time. And this time, we're looking at 1977 to  
16 1979.

17 A. Yes, that's right.

18 Q. There was some liaison with the Church of Scotland's  
19 director of the social work department and he seems to  
20 have accepted the complaint in relation to the mild form  
21 of physical punishment, whatever that may have been.

22 A. That's correct, and that unauthorised punishment outside  
23 the regulations would not be permitted.

24 Q. There are also some comments here about the nature of  
25 the education provided at Geilsland under reference to

1           this particular report of 1979. What was being said  
2           here?

3           A. That was essentially saying the continuation of  
4           Geilsland's regime since its establishment in the  
5           mid-1960s -- that there was a high emphasis on  
6           vocational training, vocational education, if you like,  
7           and that schoolroom education was not perhaps given the  
8           emphasis that it should be.

9           Q. The paragraph in 4.52 to comical fun chastisements or  
10          joke style relationships which the headmaster had  
11          adopted. What was that about?

12          A. I'm not absolutely sure, but I think what that implies  
13          is that the headmaster said, "You're going to be  
14          punished with the tawse", another teacher, who was then  
15          present on the regulations, indicated "Why don't you let  
16          the boy off?", and that's what's meant by "joke style  
17          relationships", that it was putting fear and then  
18          letting the child off.

19          Q. Did you understand from what was being said that this  
20          was a set-up?

21          A. It was, yes, to try and get compliance.

22          Q. The comments made on page 9598 in connection with  
23          corporal punishment, this is, I think, in that same  
24          report, this is the social work adviser talking about  
25          the use of corporal punishment and what he says is:

1           "The use of corporal punishment seems rationalised  
2           as a shortcut to establish the status quo ante delictum,  
3           but it gives no answer to the question as to why the boy  
4           offended in the first place. It permits both parties to  
5           avoid the real issue."

6           So that's his view?

7           A. That's his view, which simply reflects the position of  
8           the inspections in the mid-1960s, which I think  
9           section 2 or section 3 dealt with. So it's  
10          a continuation of the same regime at Geilsland as had  
11          occurred since its establishment.

12          Q. Do we see from a number of these reports now that the  
13          CAS approach essentially is against corporal punishment?

14          A. It's certainly against corporal punishment and it  
15          believes that there should be more emphasis on  
16          schoolroom-based education rather than vocational  
17          training.

18          Q. You have noted at paragraph 4.53 that the Church of  
19          Scotland welcomed the advice from the reports by the  
20          social work advisers. Is that correct?

21          A. That's right, yes.

22          Q. What happened thereafter insofar as Geilsland was  
23          concerned?

24          A. It was a new director that was in the Church of Scotland  
25          and he or she was clearly of a different ilk to previous



1 directors, and eventually the headmaster retired and  
2 a new one was appointed in 1982. It was noted that the  
3 curriculum was being expanded and that corporal  
4 punishment was gradually being phased out.

5 Q. And that's a report in, I think, 1983?

6 A. That's right, yes.

7 Q. You then, I think, contrast the position at Dr Guthrie's  
8 Boys School to Rossie and Geilsland. What was the  
9 position there according to the social work adviser's  
10 report 1979?

11 A. This was a very detailed 11-page report, which indicated  
12 that there was clearly a desire and attempt to be more  
13 child-centred in terms of particular needs of the boys  
14 concerned.

15 Q. It is a lengthy report, but the investigation itself  
16 took several days?

17 A. It took several days. They were clearly determined to  
18 look very closely at this particular List D school and  
19 examine every detail of the change in approach that  
20 Dr Guthrie's seemed to be adopting.

21 Q. And for example, we see that the report in 1979 tells us  
22 that each boy was subject to an assessment meeting,  
23 which would take place within three months of  
24 admission. Is that correct?

25 A. That's correct, yes.

1 Q. Indeed, the social work adviser examined case records of  
2 a sample of ten boys at the school. So again, it tells  
3 us it's a fairly detailed inspection of the school.

4 A. It is, yes. Certainly one of the few of the retained  
5 files where I see that level of investigation and  
6 inspection.

7 Q. Was there any particular background as to why it was  
8 thought necessary to engage in that type of detailed  
9 inspection?

10 A. There's no indication why. I suspect that it was  
11 a change of policy, that they would now begin to look  
12 more closely at the paperwork attached to each boy or  
13 girl, depending on what List D school it was, and seek  
14 to assess how far these particular schools had moved in  
15 line with previous Social Work Services Group/CAS policy  
16 in terms of joint assessment of children and involvement  
17 of outside social work health agencies.

18 Q. And psychiatrists?

19 A. Yes.

20 Q. We're told there that a psychiatrist would also attend  
21 the school from time to time?

22 A. Yes.

23 Q. Moving on to page 9600, the report records three lines  
24 from the top:

25 "A major emphasis in recent years has been the

1 attempt to establish as close contacts as possible  
2 between a boy and his home, and this extends in some  
3 cases to his home community."

4 This reflects the policy that we have discussed  
5 already in keeping the child in care in contact with his  
6 own family and community?

7 A. That's right, yes. It was seeking to go beyond,  
8 effectively, what the 1961 regulations had indicated,  
9 that the boy or girl would not be completely removed  
10 from their home environment.

11 Q. But the report goes on to talk about constraints as well  
12 in relation to the provision of care.

13 A. Yes.

14 Q. And focus on staff issues.

15 A. That's right, yes. I think the issues that emerged from  
16 this inspection surrounded the ability of a List D  
17 school to provide the child-centred care, if you like  
18 round the clock, given the fact that it was a List D  
19 school, there were difficulties in recruiting staff and  
20 recruiting staff of sufficient professional quality to  
21 meet the needs of the children.

22 Q. Also problems caused by the structure of the buildings  
23 themselves?

24 A. Yes.

25 Q. Not being conducive to smaller units?

1 A. That's right. They could not break that particular  
2 school building down into the units that children's  
3 homes had been advised to follow.

4 Q. I think that report that we've been looking at, which  
5 seems quite positive, was in March 1979.

6 LADY SMITH: Was it May or March?

7 MR MacAULAY: Footnote 503 ...

8 LADY SMITH: We come on to the May report after that, sorry.

9 MR MacAULAY: And indeed, there is another inspection  
10 in May 1979, not long after that.

11 A. Yes.

12 Q. What was the position now?

13 A. Again, this was from the HM Inspector of Schools,  
14 effectively restating the issues concerning staff  
15 turnover and the quality of education that could be  
16 provided. There were certain issues concerning the  
17 pupils' ability to select or help choose the curriculum  
18 that they wished. Although there was an attempt by  
19 Dr Guthrie's to move to a more child-centred approach,  
20 there were structural and organisational issues which  
21 inhibited its development.

22 Q. You then come back to a point you made before at  
23 paragraph 4.57, page 9601, that by 1979 it had become  
24 apparent that the number of children being committed to  
25 List D schools was in decline.

1 A. Yes.

2 Q. You draw attention to a particular project initiated by  
3 Strathclyde, known as the Community Parents Project. In  
4 particular, Strathclyde were pursuing a policy of  
5 attempting to keep their children with difficulties  
6 in the community.

7 A. Yes.

8 Q. As long as possible.

9 A. That reflects, if you like, the change of attitude that  
10 was in the professional community at the time.

11 Q. Was this then at least of concern to the staff in List D  
12 schools as to what their positions, looking ahead, might  
13 be?

14 A. It certainly seemed to become apparent that if such  
15 a policy was pursued, then whether or not List D schools  
16 would survive in their then present format was in doubt.

17 Q. If you look at page 9602, at 4.58, I think we have  
18 a report from the social work adviser to the effect that  
19 school staff had every right to be concerned as there  
20 will certainly be some rationalisation of the schools.

21 A. That's right, yes. The numbers being committed to  
22 a List D school were being to decline quite markedly.

23 Q. You give us in the next paragraph figures for the  
24 reduction in May, I think. This was to lead the  
25 Secretary of State to consider the implications of the

1 supply of places.

2 A. Clearly there were Exchequer issues attached to the  
3 reduction of the number of pupils being sent because  
4 they had these 20 plus schools, which were certainly  
5 costing the Treasury quite a lot of money, and there was  
6 an issue then: should there be some rationalisation?  
7 Simply on a cost basis if for no other reason.

8 Q. And at paragraph 4.60, do we see that the  
9 Secretary of State agreed to close St John Bosco's and  
10 St Ninian's?

11 A. That's correct, yes.

12 Q. That was in 1981?

13 A. That's right. Certainly, St John Bosco's regional  
14 authority had no wish to use it.

15 Q. And St Ninian's, that's Fife. Is that Gartmore?

16 A. Gartmore, Stirling, yes. The Central Regional Council  
17 had made little use of the school.

18 Q. On page 9603, you provide us with some information  
19 you've obtained from the records in connection with two  
20 List D schools we have looked at before, that's Balgay  
21 and Balgowan, both in Dundee?

22 A. Yes.

23 Q. Again, the background is that the roll of both schools  
24 had fallen quite significantly for the reasons you've  
25 discussed?

- 1 A. Yes.
- 2 Q. You also indicate that Balgowan was another school where  
3 the issue of corporal punishment had remained high;  
4 is that right?
- 5 A. Yes. From the official returns, one has to say.
- 6 Q. And do you tell us that in January 1981, after  
7 a disturbance, the deputy Chief Social Work Adviser,  
8 accompanied by a senior social work adviser and an HM  
9 Inspector of Schools, visited Balgowan and provided  
10 certain information as to the conditions?
- 11 A. Yes.
- 12 Q. What did they discover?
- 13 A. The condition of the bedrooms was extremely drab.  
14 Dreary association rooms. The decaying nature of the  
15 wash and shower rooms. The windows had been smashed.  
16 Even though boards had been put up to protect them, they  
17 had been damaged. A door that absconders used had been  
18 nailed up and the general atmosphere was depressive, if  
19 not oppressive, in terms of the relationship between the  
20 staff and the young boys.
- 21 Q. I think it's described as a "them and us" attitude?
- 22 A. Yes.
- 23 Q. Generally, the report begins by saying:  
24 "The physical conditions at Balgowan were  
25 appalling."

- 1 A. Yes.
- 2 Q. So clearly, the physical conditions had been allowed to  
3 become appalling?
- 4 A. It would appear to be the case. Again, one is dependant  
5 on the retained files at NRS to be able to track back  
6 and establish what a previous report may or may not have  
7 indicated.
- 8 Q. This report is a report in January 1981, but there had  
9 been a previous report in 1978.
- 10 A. Yes.
- 11 Q. And what had that discovered?
- 12 A. That's three years previously. Again, it's not clear  
13 when there had been an earlier report. There was  
14 a degree of satisfaction that there had been some  
15 movement in terms of the provision and the level of  
16 resources, but it would appear that they weren't  
17 entirely satisfied even in 1978.
- 18 Q. On the face of it, in 1981, with appalling conditions,  
19 there seems to have been a deterioration, at least in  
20 the physical condition of the school?
- 21 A. Yes.
- 22 Q. You then look at Balgay and this is in relation to  
23 a report in November 1981, when two HM inspectors  
24 visited the school; is that right?
- 25 A. That's right.



1 Q. What did they find when they --

2 A. They withdrew on the second day as there was  
3 a heightened state of unrest amongst the girls. They  
4 restated the position that CAS had found in 1976, there  
5 was no curriculum plan, and attendance at the majority  
6 of classes never rose above 50%. So there appeared to  
7 be a complete breakdown, if you like.

8 Q. And this comes out of the report of November 1981?

9 A. Yes.

10 Q. I just want to look at one paragraph in that report.

11 Again, it's not very clear on the screen.

12 SGV.001.002.4155. If I turn to the next page, 4156.

13 There's a list of the worrying features, including  
14 attendance at classes, which you have just mentioned,  
15 and girls expressing their dissatisfaction and storming  
16 out of classes, and they were allowed to go, I think is  
17 what's been recorded?

18 A. Yes.

19 Q. At 4.2.3 we read:

20 "Behaviour in all classes, except the three  
21 practical ones seen, was poor. Girls threw tantrums,  
22 shouted out, used obscene language freely, grabbed books  
23 from each other and threw things around. In one class  
24 the inspector had to retire when rubbers and rulers  
25 began to fall around him."

1           I think that's the background to why they had to  
2           withdraw from the school?

3           A. Yes.

4           Q. It's a fairly depressing picture?

5           A. It's extremely depressing.

6           Q. And what happened then? Because I think you tell us  
7           that there was some plan that Balgowan and Balgay would  
8           merge?

9           A. Yes. The parliamentary Undersecretary of State was  
10          advised to tone down any announcement of a merger, that  
11          the regime was not tolerable, and the parliamentary  
12          Undersecretary of State at that time agreed that there  
13          should be no movement to bring matters to a head, but  
14          that, if you like, CAS, Social Work Services Group and  
15          education inspectors should not allow matters to drift.

16          Q. Yes. What then happened subsequently?

17          A. The Social Work Services Group met the Balgay managers,  
18          the headmaster. The HM Inspector of Schools accepted  
19          that numbers had fallen, clearly, and that it was  
20          obvious that social work departments, Children's Panels,  
21          were sending children who were more highly disturbed to  
22          List D schools than previously and that it was generally  
23          an older age group than 10 years previously.

24          Q. Did matters come to some sort of a head when the  
25          headmaster at Balgay assumed the headship of Balgowan?

1           You talk about this at paragraph 4.65?

2           A. Yes.

3           Q. The previous headmaster at Balgowan had been declared  
4           redundant?

5           A. That's right, yes. The two boards had been disbanded,  
6           a new board for both schools established, though the  
7           schools remained physically separate. The issue then  
8           arose that at Balgowan the boys were on the roof,  
9           causing considerable damage. A social work adviser was  
10          authorised to visit the school, though, as he heard from  
11          his own sources that the boys were on the roof, had  
12          already decided to travel, without being authorised to  
13          travel.

14          Q. What did he say in his report?

15          A. He clearly was extremely depressed by what he saw, that  
16          the school building, the physical state of it, would do  
17          nothing to improve their view of life. Large bedroom  
18          facility. Ugly partitions. An attempt to introduce  
19          a unit-style accommodation that clearly failed. He felt  
20          that it was the result of the managers themselves not  
21          really appreciating perhaps how care of children had  
22          altered in the previous decade.

23          Q. What he says in the report, and this is a report  
24          of October 1982, on page 9606 is:

25                 "I saw little in the main school building that would

1 do anything for children other than diminish their sense  
2 of worth."

3 A. That's right, yes.

4 Q. He goes on to say how he made other comments:

5 "This type of provision is a condemnation of the  
6 managers who could tolerate it."

7 A. Yes.

8 Q. He goes on to say:

9 "I had little impression of participation by staff  
10 and when later some of the boys went on the roof, there  
11 seemed to be an inability to do much about it."

12 A. Yes. This is certainly not the Wellington type  
13 approach, as we've seen previously, which may have  
14 failed but at least was child-centred.

15 Q. Again we see here, as we have seen previously, that on  
16 the face of it, the school building or environment has  
17 been allowed to deteriorate to the extent seen by the  
18 inspector?

19 A. Yes. I'm afraid the records don't provide enough  
20 information on the extent to which this particular  
21 institution, its managers, sought capital grants to  
22 alter the school and introduce new forms of  
23 accommodation.

24 LADY SMITH: Is it the case that, otherwise, they were  
25 dependant on the per capita money coming in? A payment

1 per child?

2 A. Per capita money coming in would pay for running costs,  
3 it would not necessarily pay for capital improvements.

4 LADY SMITH: And if the number of children being placed in  
5 the school was reducing, that source of income would in  
6 turn be reducing?

7 A. That source of income would impact on your ability to  
8 recruit staff.

9 LADY SMITH: Yes.

10 MR MacAULAY: The headmaster is referred to on page 9607,  
11 where, according to what he said to the inspectors, some  
12 of the staff were potentially good, others who had long  
13 experience in working in a hierarchical situation where  
14 discipline problems were passed up the line found it  
15 difficult when left to fall back on their own resources.

16 A. Yes.

17 Q. In dealing with acting out children. And he goes on to  
18 say:

19 "One or two members of staff he felt were quite  
20 unsuitable and showed a dislike and contempt for the  
21 boys."

22 One just wonders, if that were the case, why did  
23 they remain in their positions.

24 A. Well, we're not told. He or she clearly believes  
25 there's some dissonance between understanding childcare

1 practice in the 1980s as opposed to perhaps in the  
2 1960s, and I think to me, there's an inference that that  
3 school had not moved on and was recruiting staff whose  
4 experience and understanding was of a more authoritarian  
5 regime.

6 Q. The headmaster cites one member of staff who overtly  
7 sterilised cutlery before eating with the boys?

8 A. Yes, I think that indicates the dissonance between the  
9 staff and the boys.

10 Q. I think there was another rooftop incident during the  
11 inspection and the report goes on to say that:

12 "The roof has provided a traditional method of  
13 protest for the boys."

14 Is that correct?

15 A. Yes.

16 Q. I think the inspector met two of the boys, as he put it,  
17 in a rather nasty lavatory. Do you see that?

18 A. Yes. So he is clearly talking to the boys in this  
19 particular school. And the headmaster indicated that  
20 their home visit would still be on, even although they  
21 had demonstrated their unhappiness, and that the  
22 headmaster's view was that corporal punishment did not  
23 deter the rooftop tradition.

24 Q. Do we then learn at paragraph 4.67 that Tayside Regional  
25 Council, the local authority, had refused to place boys

1 at Balgowan?

2 A. Yes, that's right.

3 Q. And do we then read at paragraph 4.68 on page 9608 that  
4 the Secretary of State announced his decision to  
5 withdraw Balgowan's certificate of approval in February  
6 1983?

7 A. That's right.

8 Q. Was that in response to what was discovered in the  
9 report that we've just been looking at?

10 A. Yes. I think Balgowan was added to the list of  
11 suggested withdrawals of registration as a result of the  
12 decline in numbers.

13 Q. You have at paragraph 4.69, professor, a discussion on  
14 the use of corporal punishment in List D schools. You  
15 then make reference to the Campbell and Cosans case.

16 A. Yes.

17 Q. That in due course corporal punishment was abolished in  
18 Scottish schools.

19 A. That's right.

20 Q. What happened in approved schools?

21 A. There was clearly some discussion as to whether the  
22 decision also affected List D schools. The advice was  
23 that even although you could regard it as  
24 children's homes, because they are educational  
25 establishments and offering schooling, the ruling also

1 applied to List D schools.

2 Q. And what was the consequence of that advice?

3 A. The consequence was that a survey was undertaken at the  
4 time as to the extent of corporal punishment in List D  
5 schools and that only three by 1983 were still using  
6 corporal punishment, Rossie, St Andrew's and  
7 St Philip's, and that the reduction in corporal  
8 punishment appeared to be the result of the work of the  
9 senior social work adviser, who had responsibility for  
10 residential establishments, impressing on headmasters  
11 and managers on moving towards the abolition of corporal  
12 punishment. This was the same senior social work  
13 adviser who was brought in from the English classifying  
14 school in 1970. So this was someone who had a long  
15 experience of working in approved schools before coming  
16 to Scotland.

17 Q. And do you note at paragraph 4.70, 9609 to 9610, that as  
18 a result of further social work adviser work, the SWSG  
19 reported later in 1983 that all List D schools had  
20 agreed to cease the use of corporal punishment?

21 A. Yes, that's correct. So it had been abolished before it  
22 was formally abolished in ordinary state schools in  
23 Scotland.

24 Q. Do we note on top of page 9609 that Strathclyde Regional  
25 Council, and this is a reference to 1983, had already



1           formally abolished its use in its children's homes,  
2           assessment centres, and two List D schools, and the  
3           majority of other regional authorities except Tayside  
4           had either similarity abolished or, in practice,  
5           refrained from its use?

6           A. That's right, yes.

7           Q. Can I then take you to your review of this particular  
8           section. Can you take us through that?

9           A. What's important, I think, to realise from the post-1975  
10          position is the establishment of much larger social work  
11          departments within local authorities than had previously  
12          existed. You no longer had your small, rather large  
13          boroughs, which were quite actually small, such as  
14          Arbroath, responsible for childcare practice, and that  
15          all but the two island communities in the Western Isles  
16          were a substantial size, and therefore they could and  
17          did seek to restructure their social work services,  
18          including social work services for children, according  
19          to more professional understanding of childcare.

20                 At the same time, the number of professionally  
21          qualified social workers increased to the extent that  
22          virtually everybody who was engaged in the provision of  
23          childcare by 1984 was a qualified social worker.

24          Q. Deaths in care, you talk about --

25          A. Deaths in care, yes. As a result of that particular

1 Perth inquiry, the 1970 procedures were reemphasised  
2 with an emphasis on inter-professional and inter-agency  
3 collaboration and that local authority social work  
4 departments should establish an at risk register, which  
5 would appear to be the case from the retained files at  
6 NRS.

7 The aim of CAS was to continue to improve the  
8 quality of service by providing high quality advice.  
9 It's also the case that CAS was no longer involved  
10 in the inspection of voluntary children's homes or even  
11 local authority children's homes and it was assuming  
12 a more coordinated role in discussing with the national  
13 children's charities how they could take their services  
14 forward, such as at Quarriers. And from what  
15 I understand, the other national agencies for children  
16 at that period.

17 Certainly it was noted that in Aberlour, and it's  
18 the only case I have discovered so far, so I just don't  
19 know whether it was typical, the CAS advisers confirmed  
20 that the registering authority did inspect on an annual  
21 basis and would appear to have been satisfied with the  
22 provision of care that Aberlour actually provided.

23 Q. And we touched upon this at the beginning, but the other  
24 voluntary homes or children's homes or local authority  
25 homes that we might be interested in, you have found no

1 inspection reports in the records you've looked at?

2 A. No. There's no indication from any of the records that  
3 such reports were being received centrally, at least as  
4 a matter of course.

5 Q. As you point out, CAS did remain responsible for the  
6 inspection of List D schools as they had in the previous  
7 period?

8 A. Yes, that's right, and continued to inspect them and  
9 continued to inspect them in some detail, as you've  
10 seen, sometimes in joint collaboration with the  
11 HM Inspector of Schools.

12 Q. We've certainly seen reports for places like  
13 Dr Guthrie's, Balgowan, Balgay, Geilsland, Rossie.

14 A. Yes.

15 Q. Of course, over this period there was 25 or thereabouts,  
16 26, List D schools?

17 A. That's right.

18 Q. Clearly there are List D schools in relation to which no  
19 inspection reports are to be found in the records?

20 A. I think there are, but they don't reveal any particular  
21 issues.

22 Q. I see.

23 A. One could pull up other inspection reports from some of  
24 the other schools, but they don't reveal the issues that  
25 are being revealed here, particularly the use of

1 corporal punishment.

2 Q. I think that clarifies the position.

3 Then you talk about the philosophy adopted by the  
4 headmaster at Wellington and the liberal approach that  
5 you mentioned.

6 A. Yes. That clearly caught the eye of CAS and the Chief  
7 Social Work Adviser and that that was the direction of  
8 change that they wished any residential accommodation  
9 should move towards: a child-centred approach, even  
10 although it would appear that the staffing arrangements  
11 and perhaps the building itself were not conducive  
12 towards that more child-centred approach.

13 Q. Conversely, of course, we had what was discovered in the  
14 records about the use of handcuffs.

15 A. Yes.

16 Q. And I think you use the word disbelief, total disbelief,  
17 among CAS that this practice would be in existence.

18 A. That's right. As to why they hadn't known that  
19 handcuffs were being used, there's no particular  
20 explanation, but it was certainly the case that  
21 certainly by that particular period, the late 1970s,  
22 they felt that the majority of List D schools should be  
23 moving towards a more child-centred approach, away from  
24 the authoritarian regimes that had existed previously.

25 Q. Can we then move on to section 5 of the report, the

1 period involving the Central Advisory Service from 1985  
2 to 1992. As you tell us in the introduction, this  
3 section covers the work of CAS after the decision to  
4 transfer responsibility for funding legislation and  
5 inspection of the List D schools to local authorities.

6 A. Yes.

7 Q. So we've moved on from where we were, and we'll look at  
8 this in a moment. You'll say it also covers its work  
9 in relation to residential establishments, deaths of  
10 children in care, and the provision of non-residential  
11 care, especially in relation to child abuse. You also  
12 review limitations of the existing social work  
13 legislation on the central authority's ability to  
14 conduct inspections and reviews of local authority  
15 children's services.

16 A. Yes.

17 Q. So that gives us an indication of where you're going  
18 here.

19 A. The last section is designed to ensure the inquiry is  
20 aware that the officials at the time were aware of the  
21 limitations of their inspectorial duties and their  
22 ability to induce change that they thought necessary.

23 Q. Well, under the heading "Residential Establishments",  
24 you again mention the decline in the use of residential  
25 accommodation for the care of children, and once again

1           you provide some figures. So by 1986, the registered  
2           accommodation in List D schools had fallen from 1,585  
3           places to 857, with a 75% occupancy. So again, the  
4           numbers are coming down quite significantly.

5           A. Significantly, yes.

6           Q. And then you come to the Secretary of State's  
7           announcement in 1985, at 5.2, page 9613. Can you  
8           summarise what was being said now?

9           A. Essentially, the issues that were raised in 1971/72, and  
10          as you've seen in 1976 with the Secretary of State's  
11          response in Parliament, had been answered to some  
12          extent, that in fact List D schools effectively no  
13          longer existed in the way that they had. Therefore the  
14          financial issues attached to the transference of control  
15          could pass from the Treasury to local authorities, and  
16          given the small number of places available it was only  
17          a slight adjustment of the rate support grant that was  
18          required, and the local authority associations at the  
19          time really didn't have a problem with the additional  
20          guarantee that was being provided.

21          Q. I'll put the excerpt from Hansard on the screen again  
22          because it's reasonably legible. That's at  
23          SGV.001.002.4305.

24                 It's dated 6 June 1985 and in the second paragraph,  
25          after having considered the views in previous

1 discussions, he goes on to say:

2 "I have reached the conclusion that the schools  
3 should continue to remain under their present voluntary  
4 management but that closer association with local  
5 authorities would be advantageous. Progress in this  
6 direction will be impeded so long as my department is  
7 involved directly in funding and day-to-day operation of  
8 the schools. I have decided that regional and islands  
9 authorities should assume full responsibility for  
10 meeting the costs of maintaining at the schools children  
11 for whom they are directly responsible and at that  
12 grants representing half those costs currently paid by  
13 my department to the schools should be withdrawn with  
14 effect from 31 March 1986."

15 So that's his decision, it's over to you, local  
16 authorities, to manage these schools?

17 A. Yes. This is what is termed a placed question that the  
18 Secretary of State wished to announce the decision and  
19 it had clearly taken some months of discussion with the  
20 local authorities and the voluntary managers as to the  
21 future direction. But given as the number in the List D  
22 schools had declined significantly, the position of the  
23 voluntary managers had significantly weakened.

24 Q. You mentioned funding and he goes on to say in the  
25 second paragraph that he did propose to take that into

1 account in the next rate support grant settlement by  
2 increasing both aggregate Exchequer grant and relevant  
3 expenditure by the full amount of the estimated increase  
4 in their expenditure.

5 A. That's right, yes.

6 Q. But he goes on to say:

7 "I also propose to continue direct funding to the  
8 managers of Rossie School Montrose, and St Mary's  
9 Kenmure, Bishopbriggs, under section 10 of the 1968 Act  
10 since these schools are mainly secure establishments and  
11 have a specialised function as well as accepting  
12 children from the whole of Scotland."

13 Now, do we take from that that although the  
14 inspectorial functions in respect of List D schools  
15 generally had passed over to local authorities, that CAS  
16 retained an inspectorial function for secure units?

17 A. That's right, and they were no longer called List D  
18 schools, they were called secure units, or in fact they  
19 were just called schools.

20 Q. Yes, residential schools?

21 A. Residential schools under the control of Central  
22 Government. That is because, as I say in the report,  
23 they had a specialised function, in some cases under,  
24 I think it's section 413 of the 1975 -- one of the 1975  
25 Acts, as an alternative to imprisonment.



- 1 Q. Yes. Section 413 is the section that deals with the  
2 courts dealing with children other than sending them to  
3 prison.
- 4 A. That's right, yes. They could send them to Rossie or to  
5 St Mary's Kenmure.
- 6 Q. Were these the only two secure units of this type?
- 7 A. At that time they were the only two secure units,  
8 although I think Kerelaw had a very small secure unit  
9 facility.
- 10 Q. What about Larchgrove? That was a remand home?
- 11 A. That was an assessment centre.
- 12 Q. Yes.
- 13 A. I'm not sure that existed by this time, or at least I've  
14 got no reference to it. But that significant difference  
15 is that they were children who required specialist care.
- 16 Q. Do you note at the end of paragraph 5.2 at page 9614  
17 that by 1991, only 14 of the previous List D schools  
18 remained open?
- 19 A. Yes, that's right.
- 20 Q. Again, one assumes that these would be in different  
21 regional authorities, but clearly List D schools that  
22 had been there previously in previous regional  
23 authorities are not there?
- 24 A. Were no longer there.
- 25 Q. So we are limited to the authorities, are we, that would

1 have List D schools under their jurisdiction?

2 A. I think use of the words "List D schools" is a misnomer,  
3 they simply became residential establishments, and the  
4 regional authorities by 1991 had decided they had no  
5 need for their use and informed the managers. There are  
6 sets of papers in NRS which indicate discussions with  
7 the managers of the closed List D schools about the sale  
8 of the property and there was some agreement in initial  
9 capital funding that some of the sale of the property  
10 would be returned to the Treasury. But that doesn't  
11 concern inspections.

12 Q. No. Former List D schools that had existed in some  
13 regional authorities no longer existed at all?

14 A. No longer existed at all and some continued to exist,  
15 but as residential establishments under different  
16 management ethos.

17 Q. But these were generally residential establishments in  
18 which children would be placed via the children's  
19 hearing process?

20 A. Yes, or might be as a place of safety.

21 Q. Yes.

22 A. In an emergency.

23 Q. You then go on again to look at a report in connection  
24 with Rossie. You say at 5.3 that in 1986, Rossie had  
25 accommodation for 25 children in its secure unit.

1 A. Yes.

2 Q. And there was a visit, you tell us, in December 1986 by  
3 the social work adviser and an HM Inspector of Schools.  
4 Just to be clear then, the social work adviser, he is  
5 representing CAS.

6 A. Yes.

7 Q. Because this is a secure unit and still within CAS  
8 jurisdiction?

9 A. That's right. The funding arrangements, as previously,  
10 are still in place, ie Central Government funding.

11 Q. What transpired then from this particular visit?

12 A. It indicated that there was a level of appreciation of  
13 the support that was provided, but that there was  
14 clearly an element of staff training still required to  
15 enable the staff to understand and appreciate the  
16 methods of behaviour that the children actually  
17 exhibited and the amount of -- one really wouldn't want  
18 to use the word "control", but the ability of the staff  
19 to manage the children in an appropriate way.

20 There was an element where children were encouraged  
21 to write and phone home, especially if the family was  
22 going through a particularly difficult spell. They  
23 weren't entirely happy with the particular use given  
24 that this was meant to be secure unit accommodation, as  
25 I say in paragraph 5.5. There was an appreciation that

1           perhaps the regime needed to change in line with the  
2           type of child who was being committed there.

3       Q.   Can I just understand -- I think we have seen in the  
4           past that Rossie was both a List D school --

5       A.   Yes.

6       Q.   -- and a secure unit -- with a secure unit attached to  
7           it?

8       A.   It had a secure unit attached, and I think I said in one  
9           of my earlier reports, in 1961 for disturbed children,  
10          the MacDonald wing. I'm not sure that was the same as  
11          what was being developed in the mid-1980s. That secure  
12          unit was quite a small secure unit, whereas this was  
13          a much larger.

14      Q.   Rossie now is not a residential school for the reasons  
15          you have said.

16      A.   Yes.

17      Q.   It is a secure unit and that's what it is?

18      A.   It's a secure unit, which is also providing education.

19      Q.   Yes.

20      A.   And also providing care.

21      Q.   Just to understand, as a secure unit, the children there  
22          are kept in secure circumstances, namely under lock and  
23          key?

24      A.   They could be kept under lock and key or they could be  
25          supervised more closely than they would have been if it

1 had been an ordinary List D school, or when Rossie was  
2 an ordinary List D school. They could wander around  
3 here. They were much more tightly controlled.

4 Q. But we understand from what you say in your report that,  
5 as a secure unit, it also had what was described as  
6 a segregation unit?

7 A. Yes.

8 Q. And I think there are some observations made in the  
9 inspection as to the use of the segregation unit.

10 A. Yes. The segregation unit was where children who had  
11 been insolent or abusive towards staff members were kept  
12 for a period of time, a night, two nights a week, or  
13 whatever.

14 Q. Were some comments made as to whether or not the use of  
15 the segregation unit was appropriate?

16 A. I think that's a reflection of the understanding of good  
17 childcare practice, whether or not simply removing  
18 a child for abusive, insolent language to a segregation  
19 unit was actually appropriate and again reflecting what  
20 I have said about the need to constantly change practice  
21 to a more child-centred approach.

22 Q. What's said in the report towards the middle of the  
23 quote, this is the social work adviser, saying:

24 "I consider that this [that's children being  
25 isolated for being insolent and abusive] is not an

1           appropriate use of the segregation unit.  However,  
2           I would have to say that most of the entries seem to be  
3           in connection with incidents where children are involved  
4           in physical violence, damaging their rooms."

5           And so on.  The inference being that that would be  
6           an appropriate response?

7           A.  Or it could be that the practices in engaging with the  
8           children were perhaps not as appropriate as they could  
9           be in order to reduce the potential for violence or  
10          potential for disturbance.  It depends how you read that  
11          particular quote.

12          Q.  If we read on at paragraph 5.6, 9616, we certainly see  
13          what the social work adviser's recommendation was as to  
14          how these units should be used.  What was that  
15          recommendation?

16          A.  They'd certainly be engaged in earlier assessment of  
17          a child and, if you like, the package of care that  
18          should be provided for that child, that the case records  
19          should be comprehensive from the social worker,  
20          psychologists, psychiatrists, in order to, as I say,  
21          provide a more appropriate package of care that would  
22          reduce the need for a segregation unit.

23          Q.  And I think the social work advisers recommended that  
24          the use of units should be used only for the children  
25          who were "unable to control themselves"?

1 A. Yes.

2 Q. Otherwise they should be removed to their own bedrooms?

3 A. Yes, that's the point I'm trying to make, that Rossie  
4 needed to engage much more closely with a different  
5 style of childcare management.

6 MR MacAULAY: Very well. That's 1 o'clock, my Lady. We'll  
7 come back in the afternoon.

8 LADY SMITH: We certainly will. I will stop now for the  
9 lunch break and sit again at 2.00.

10 (1.00 pm)

11 (The lunch adjournment)

12 (2.00 pm)

13 LADY SMITH: Good afternoon. I think, if I'm guessing  
14 right, professor, we're now about to turn to another  
15 section in this last part of the report we have before  
16 us at the moment; is that right, Mr MacAulay?

17 MR MacAULAY: I think we actually started the section just  
18 before lunch, that's section 5.

19 LADY SMITH: Yes, deaths in care. Of course, we were  
20 in that section. I was thinking of the deaths in care  
21 sub-heading there at 5.8.

22 MR MacAULAY: I had been looking at residential schools  
23 again. I had taken you, I think, to page 9616. We had  
24 revisited Rossie.

25 A. Yes.

1 Q. At paragraph 5.7, you make some comments about St Mary's  
2 Kenmure, which was one of the other secure units.

3 A. Yes.

4 Q. It would appear that the social work adviser had some  
5 comments to make in relation to the move from being  
6 a List D school to a secure unit in, I think, 1986.  
7 What did he note?

8 A. I think it was reflecting many of the issues which had  
9 surfaced at Rossie in that the staff were unaccustomed,  
10 as he says, to the demands of working in a secure unit.  
11 They had not really begun an in-service training  
12 programme to ensure that staff were aware that the type  
13 of child who was being admitted to St Mary's Kenmure was  
14 perhaps different to what they were used to as a List D  
15 school, but that over a period of 12 months, a training  
16 programme had been introduced and other forms of  
17 training were being organised on an individual basis  
18 with staff being seconded to undertake two-week courses  
19 in family therapy.

20 It was also noted that Strathclyde tended to use  
21 Kenmure as an alternative assessment centre, given its  
22 own assessment centre, presumably at Larchgrove, had  
23 closed, and that itself was causing it administrative  
24 and management problems at the secure unit  
25 accommodation.



1           He noted that later in March 1988, significant  
2           improvements in care plans had been developed, which was  
3           in line with the contemporary thinking in terms of the  
4           use of secure units.

5           Q. Then you do have a section here also on deaths in care.

6           A. Yes.

7           Q. In particular, do you note in paragraph 5.9 that SWSG  
8           in April 1985 informed the parliamentary Undersecretary  
9           of State of two deaths of children in care?

10          A. Yes.

11          Q. Both under the care of Grampian; is that correct?

12          A. That's correct, yes.

13          Q. Can you tell us about these two cases?

14          A. One of the children known to have sniffed glue had been  
15          found unconscious in the bedroom of their  
16          children's home, with a solvent canister beside the bed.  
17          A second boy who had a record of psychiatric illness had  
18          died in a young offenders' institution.

19          Q. That would be Glenochil, I think?

20          A. Yes. The note had been prepared ahead of a meeting of  
21          the Parliamentary Undersecretary of State's meeting with  
22          the Director of Social Work, and the issue, I think,  
23          that Social Work Services Group and CAS wanted to ensure  
24          was that the directors were aware of the need to  
25          constantly keep in mind that CAS and Social Work

1 Services Group would want to review any deaths in care  
2 in terms of altering the procedures that a local  
3 authority should follow.

4 Q. The glue stiffing incident, that was in  
5 a children's home, and I think that was the Airyhall  
6 Children's Home in Aberdeen, which was not a former  
7 List D school?

8 A. Oh no, no, this was, as it says, a children's home.

9 Q. The point that's made about a fatal accident inquiry, do  
10 I take it that there was a fatal accident inquiry into  
11 at least one, if not both these cases?

12 A. It would appear to be the case, yes.

13 Q. And that has an impact, does it, on follow-up  
14 procedures?

15 A. It would impact on the way that Social Work Services  
16 Group advisers and the Scottish Home and Health  
17 Department's medical advisers would review the material  
18 coming in.

19 Q. Would that be because having such an inquiry would delay  
20 such a review?

21 A. It would appear to be the case that there would be some  
22 delay but that they would nevertheless want to have all  
23 the documents as they came in.

24 Q. Then do you tell us in the next paragraph that CAS  
25 undertook a survey of deaths of children in care between

1 the period January 1982 and December 1985.

2 A. Yes.

3 Q. And that was in order to see whether or not any new  
4 guidelines were required?

5 A. Yes, that's correct.

6 Q. And what was the conclusion?

7 A. That the 52 deaths over that period, plus two others not  
8 in care -- 19 were a result of an illness linked to  
9 congenital defect, a further six were the result of  
10 solvent/drug intake, that generally speaking the  
11 majority of deaths, the local authority social work  
12 department had followed the guidelines and there was  
13 nothing to suggest errors in terms of their practice.

14 Q. I will put the document on the screen briefly. It's not  
15 very clear to read, but I think we can make it out.  
16 It's SGV.001.002.4359. Yes, I think we can read it if  
17 we go in close.

18 It's date stamped 22 August 1986. What we see  
19 in the first page, the different local authorities where  
20 the deaths had occurred, and we can see that Strathclyde  
21 with 23 deaths far outstrips any other local authority.  
22 Orkney, there's one, for example.

23 A. Yes.

24 Q. If we turn over to the next page, 4360, again we have  
25 a range of causes of death. As you pointed out, number

1           9, illness with contributory congenital defect is the  
2           biggest, with 19. But we also see causes such as  
3           hanging, drowning, road accidents where there were six  
4           deaths.

5           A. Yes.

6           Q. Drugs and solvent intake as well, with about six deaths.

7                     If we look at paragraph 5.12 on page 9620, you begin  
8           by saying there that despite the increased scrutiny,  
9           deaths of children in care continued to remain  
10          a concern.

11          A. That's correct, yes.

12          Q. Can you explain why there was the concern?

13          A. The function of CAS was effectively to review local  
14          authorities' handling of children where there was  
15          a death in care and their monitoring of the paperwork  
16          that they received and, I suspect also, as a result of  
17          interviews that they conducted, whether on the telephone  
18          or in person, indicated that there were certainly six  
19          cases in 1987 where the quality of care being provided  
20          by the local authority, local authority social workers,  
21          was questionable, or there were particular issues  
22          emerging.

23          Q. And I think you set out three particular issues.

24          A. Yes, that is right. There had been a change in  
25          social worker and thus there was a gap in provision.

1           There was a reluctance in two to bring the children back  
2           for review to a children's hearing. And for three of  
3           the six, there were obviously more than one reason for  
4           some of them. There was a lack of articulated clarity  
5           and a recorded plan of intervention, and all of these  
6           things would have been quite critical to CAS at that  
7           period.

8           Q. You go on to look at two cases in connection with  
9           Strathclyde where concerns were expressed. That's at  
10          paragraph 5.14.

11          A. Yes.

12          Q. Are they cases within the 52 that were mentioned or are  
13          they --

14          A. That's right. No, they are two within the 1987 review,  
15          I think. Yes, that's right, yes.

16          Q. And the 1987 review was after the list we looked at,  
17          I think?

18          A. Yes, that's right.

19          Q. So what were the concerns here?

20          A. The concerns, I think, were essentially that the  
21          casework within the family was perhaps not as quite  
22          appropriate as it should have been. There was  
23          inadequate parenting and parental control on the basis  
24          that somehow or other the parents would improve. One  
25          child had died from drinking a poisonous fluid before

1 his third birthday. His mother was in a drunken state.

2 The senior social work adviser noted that there was  
3 evidence of underestimation of the seriousness of the  
4 mother's alcoholism.

5 Q. The other case you looked at, at 5.16, page 9621, that  
6 was looked at, this seemed quite unusual, this  
7 particular case in that the boy who apparently was  
8 "unlawfully killed" was in London.

9 A. That's right, yes, having apparently moved without  
10 authority from Strathclyde from his last known  
11 whereabouts in Scotland, which I think was -- if it  
12 wasn't Glasgow, it might have been Glenrothes.

13 Q. But was the issue that there was a failure on the part  
14 of the social worker to maintain supervisory contact  
15 with the boy?

16 A. It was the case that the social work department did not  
17 know when the child left his last known address and did  
18 not know who his principal carer was when he was removed  
19 to London.

20 Q. The death itself, I think the death certificate does say  
21 that he was unlawfully killed, but the cause of death  
22 not ascertained.

23 A. That's right, yes.

24 Q. It seems a strange cause of death in that there was the  
25 conclusion that he was unlawfully killed.

- 1 A. Yes, that's right.
- 2 Q. But the mechanism is not set out in the death  
3 certificate.
- 4 A. It's not set out, but from the documents it would appear  
5 that the boy's remains had been discovered pretty close  
6 to his last known whereabouts in London and there's  
7 a suggestion or an indication that a step-parent had  
8 been involved with his death. But again it's not  
9 conclusive in terms of what is said on paper.
- 10 Q. Would it appear that the boy had been decided for some  
11 considerable time before he was found?
- 12 A. Probably two years.
- 13 Q. It was dental identification --
- 14 A. Yes, that's right, yes.
- 15 Q. Then the other child you mention at paragraph 5.17, this  
16 was a child with a home supervision requirement --
- 17 A. Yes, that's right.
- 18 Q. -- who had died, his body being discovered in a derelict  
19 building, suffering from multiple bruising, fracturing  
20 of several bones, laceration of the scalp, and evidence  
21 of multiple wounds to the head caused by blunt force.  
22 So clearly he had been killed.
- 23 A. Yes. He had certainly been assaulted, yes.
- 24 Q. And what was the issue here from the point of view of  
25 the social work department?

1 A. It would appear that they were seeking to maintain the  
2 family as a unit, but that it may have been better for  
3 the child, the boy, had he been if not in foster care  
4 then in residential accommodation, given the state of  
5 his family at the time of his death.

6 Q. Do the records actually indicate who the perpetrator may  
7 have been?

8 A. No, no. It's not here, but the police did not at the  
9 time know.

10 Q. If we look at page 9623, at 5.19 you note that:

11 "In June 1990 in light of concerns on the reporting  
12 of deaths of children under home supervision, the SWSG  
13 proposed at a meeting with the ADSW that the procedures  
14 regarding reports deaths of children in care should be  
15 reviewed."

16 Did that happen, was there a review?

17 A. There was a review, but I think it can be said at this  
18 stage that there was general agreement that the existing  
19 system of reporting would continue. As far as I'm  
20 aware, no alteration occurred until well after 1992.

21 Q. Is that something you look at later on?

22 A. Yes, that's right. So essentially, what is being said  
23 here is that the directors of social work services are  
24 content with the existing system of reporting, where  
25 a child is not in statutory care, and that may reflect



1 back to the Perth case and not seeking a public inquiry  
2 every time there was a non-accidental injury.

3 Q. Can we go to page 9624 where you have a general heading  
4 "Child Abuse and the Fife and Orkney Inquiries".

5 Can you give us a preview of what you're covering in  
6 this final section of this section?

7 A. I think the essential issues for the issue of inspection  
8 in terms of the remit that I was given were to indicate  
9 the limitations of the inspectorial powers where there  
10 were concerns about the provision of childcare services  
11 within local authorities. In the Fife case the issue  
12 was that the local authority was pursuing a particular  
13 policy in terms of seeking to avoid residential care in  
14 line with its thinking and the extent to which Social  
15 Work Services Group advisers and, ultimately, the  
16 Secretary of State thought that perhaps in some cases  
17 residential provision was a better use of its powers to  
18 avoid abuse.

19 Q. You say that shows the limit of their powers because  
20 Fife did not comply with --

21 A. Fife continued to maintain its policy and, at the end,  
22 there was considerable discussion between the Social  
23 Work Services Group, the SED, the Scottish Office,  
24 Lord Advocate's department, and the Secretary of State  
25 as to what form the inquiry, if there was to be an

1 inquiry, should take and under which legislation the  
2 inquiry should be, as it clearly wasn't possible within  
3 the 1968 Act, what Act was it possible to indicate that  
4 an inquiry would be instituted.

5 Q. And there was a public inquiry?

6 A. There was a public inquiry, yes.

7 Q. If I take you to the Hansard announcement,  
8 SGV.001.008.9330. The announcement by Mr Rifkind is on  
9 1 March 1989. We're told that the Scottish Office  
10 officials have undertaken extensive discussions with  
11 officials of Fife Regional Council concerning the  
12 discharge by the authority of certain statutory  
13 functions relating to the use of voluntary and  
14 compulsory measures of care for children, together with  
15 relations between the social work department and the  
16 Children's Panel. He goes on to say:

17 "In the course of these discussions, clear  
18 differences of view have emerged as to whether the  
19 practice followed by the social work department is  
20 consistent with the best interests of children at risk  
21 and with the provision of effective support to the  
22 children's hearings system in the region."

23 And does that reflect the significant preference on  
24 the part of the local authority to keep children out of  
25 residential care?

1 A. And not to seek referral to children's hearings or at  
2 least not to refer to the children's reporter, and that  
3 issue being put up at a children's hearing.

4 Q. He goes on to say:

5 "I have concluded after careful consideration, that  
6 with a view to resolving these issues, it would now be  
7 right for me to constitute an inquiry under section 99  
8 of the Children Act 1975."

9 That was a route that I think he had been advised --

10 A. That's right, yes.

11 Q. -- that would provide a suitable platform for this sort  
12 of inquiry?

13 A. That's right, and I think that section was a reaction to  
14 the issue of the Perth case and the gap that then  
15 existed in terms of the then Secretary of State being  
16 able to hold an inquiry.

17 Q. And we know, as he says at the bottom, that he invited  
18 Sheriff Brian Kearney to undertake the inquiry along  
19 with Professor Elizabeth Mapstone.

20 A. Yes.

21 Q. What you have set out in this section, in a sense we've  
22 jumped the gun in that you have set out -- and we  
23 needn't look at the detail of what you set out -- the  
24 background to that ultimate decision being taken, that  
25 of a public inquiry.

- 1 A. Yes.
- 2 Q. And in particular, the interplay between Social Work  
3 Services Group, CAS, and the regional council.
- 4 A. Yes.
- 5 Q. Can you summarise the position for us, rather than  
6 looking at the detail of it?
- 7 A. Well, what's interesting about this set of papers is it  
8 indicates that the advisers did visit children's homes  
9 but not in an inspectorial capacity. They simply  
10 visited children's homes and social work departments to  
11 keep themselves informed as to policy and practice that  
12 was being pursued within a regional council. In this  
13 case, they noted that a particular children's home,  
14 Rimbleton, would appear not to be being used for  
15 children and that the intention of the regional  
16 authority was effectively to reduce its reliance on  
17 children's homes and possibly not use children's homes  
18 at all, preferring to work with families, with children  
19 who were deemed in need of care for better effect, if  
20 you like, to keep the families together.
- 21 Q. Was it also apparent that there was some tension between  
22 the local authority social workers and the  
23 Children's Panel?
- 24 A. Yes. I think as the inquiry itself made clear, there  
25 was a reluctance from the social work department to

1 report cases to the children's hearings through the  
2 reporter on the basis that they didn't control,  
3 basically, the outcome of a children's hearing, and  
4 I think what's made clear from the inquiry, and I think  
5 from these documents, is that under the 1968 Act it was  
6 the responsibility of the children's hearing to  
7 determine the outcome, not the local authority  
8 social work department.

9 LADY SMITH: It would have been very odd if it wasn't the  
10 responsibility of the hearing to determine the outcome.

11 A. Yes.

12 LADY SMITH: That was what they were there for.

13 A. That's right, yes.

14 LADY SMITH: Whilst of course interested in what the local  
15 authority could tell them about matters of fact and  
16 their opinions.

17 A. That's correct. That's basically what the advisers were  
18 establishing over that two-year period between 1986 and  
19 1988, that in fact every conceivable possibility -- they  
20 would not take a case to court or through the reporter  
21 and if they did, not necessarily all documents that were  
22 pertinent to the case were brought to the reporter's  
23 attention. And that was explained in the inquiry.

24 MR MacAULAY: Yes. Paragraph 5.25, for example, on 9626,  
25 when this is brewing away, you say:

1           "The issue at Fife Regional Council resurfaced  
2           in November 1986 whether it became apparent that its  
3           policy was to seek an immediate review of the decision  
4           of a children's hearing, which decided in favour of  
5           residential care."

6           A. That's right, yes.

7           Q. "Against the advice of Fife's social workers."

8           A. Yes, so they would then seek to take the case back to  
9           have the decision of the hearing reversed if possible.

10          Q. The reference at paragraph 5.26 to the  
11          Lancaster University criteria, which seemed to have been  
12          at the centre of this policy, can you help me with what  
13          that involved?

14          A. I'm not exactly sure what the criteria were, but the  
15          philosophy underlying them was essentially the role of  
16          a social worker -- and this reflected, if you like, the  
17          operation of the English system, which is much more  
18          court-based and where the duties of the local authority  
19          social workers were somewhat different in those  
20          proceedings, that the social work department and  
21          social workers should seek to keep families together and  
22          should seek packages of care, irrespective necessarily  
23          of particular conditions within the family.

24                 That was not necessarily against what was occurring  
25                 in Scotland, except it was taking it further.

1 Q. Yes. Because the policy in Scotland was that if  
2 possible children should be kept with families and in  
3 the community.

4 A. That's right, yes.

5 Q. But there was always the fallback of residential care  
6 should that be more appropriate and in the best  
7 interests of the child?

8 A. And I think what the advisers are indicating is that if  
9 you needed urgently a place of safety, perhaps  
10 a children's home was the best immediate outcome, which  
11 was not the policy of Fife, which does not fit in  
12 necessarily with the criteria that they were using.

13 LADY SMITH: Is there any indication of what places were  
14 being used as places of safety by Fife at this time?

15 A. There isn't, no. A place of safety could also be  
16 a foster home.

17 LADY SMITH: Yes, if you can find one at very short notice.

18 A. Yes.

19 LADY SMITH: A place of safety could be a police station.  
20 Not ideal for a child at all.

21 A. Yes.

22 MR MacAULAY: If we turn to page 9629, you there at 5.31 and  
23 onwards tell us about the fact that two social work  
24 advisers did in fact examine 20 cases covering a seven  
25 and a half month period to see what the position was on

1 the ground, so to speak.

2 A. That's right, yes.

3 Q. Their conclusion was what?

4 A. The conclusion was that I think generally speaking,  
5 the council, local authority social work department, was  
6 not necessarily deviating from the 1968 Act in the sense  
7 that it was following procedures, but there were issues  
8 concerning, perhaps, particular children, where abuse  
9 might be prevalent or might occur in particular cases.  
10 That was the crux, I think, of the issue that went up to  
11 ministers.

12 Q. I think you go on to say on page 9631 that it was clear  
13 that panel members and social workers had been openly at  
14 odds --

15 A. Yes.

16 Q. -- with children's hearings about what was the best  
17 interests of the children.

18 A. Yes, that's right, yes.

19 Q. Was there also involvement by social workers from Fife,  
20 in Fife, in this process? For example, if you go to  
21 paragraph 5.34, I think you have noted that a former  
22 social worker at Fife sought a meeting with the Chief  
23 Social Work Adviser?

24 A. Yes.

25 Q. And made certain points; is that correct?



1 A. They made certain points as they had moved from being  
2 a statutory social worker to working as volunteer with  
3 the Dunfermline Incest Support Group and they instanced  
4 two specific cases, which caused them concern, in which  
5 they felt that the child should not have remained with  
6 the family.

7 Q. Were these points put to Fife?

8 A. I understand that some discussion subsequently took  
9 place between Social Work Services Group and CAS and  
10 Fife County Council.

11 Q. On page 9633, just highlighting the tension between the  
12 social work department and the children's hearings,  
13 do you note there that the regional reporter had noted  
14 that individual social workers had:

15 "Withheld from children's hearings important  
16 information bearing on disposals or have failed to bring  
17 the reporter's attention to circumstances suggesting an  
18 urgent need for reference to a children's hearing."

19 A. That's correct, yes.

20 Q. Does this then give us some background as to the reasons  
21 why the Secretary of State announced the inquiry in,  
22 I think, 1989?

23 A. Yes. I think it was evident that Fife was not in breach  
24 of its statutory duties. The issue related to its  
25 functioning with the children's hearing and its

1 relationship with the reporter and the extent to which  
2 it would continue its policy of non-use of residential  
3 care, except in very extreme circumstances. I think  
4 it's noted here that cases that perhaps ought to have  
5 gone through the social work department were coming in  
6 through the police and other authorities, rather than  
7 social work department.

8 Q. But was this a matter that made its way into the press?

9 A. Yes, it did, at the beginning of 1989, where there were  
10 comments in the local and I think even in the Edinburgh  
11 press of discontent amongst former employees of Fife  
12 social services and from the reporter.

13 Q. If we look at page 9637, do we read at paragraph 5.44  
14 that reports appeared on the situation in Fife's  
15 social work department in the press:

16 "The reports noted that a number of Fife  
17 social workers had left their posts. A local Fife  
18 newspaper also reported on a claim from a former Fife  
19 social worker that their 'case notes over a sexual abuse  
20 case' had been changed."

21 A. Yes, that's correct.

22 Q. So the picture was looking quite serious?

23 A. The position is looking quite serious, yes.

24 Q. And I think that's something that the minister realised?

25 A. Yes, yes. I mean, it's evident that the minister was

1           kept informed up to a point, but not fully briefed until  
2           the end of 1988, beginning of 1989.

3           Q. We can see from what you have set out in your report  
4           that it went on for quite some considerable time, the  
5           dealings between the SWSG and Fife Regional Council.

6           A. I think if you start at the beginning round about spring  
7           1986, it wasn't until spring 1989 that an inquiry was  
8           instituted.

9           Q. And like all inquiries, they don't report immediately?

10          A. No, no, no.

11          Q. And I think Sheriff Kearney's inquiry, that was set up  
12          in 1989, didn't report until October 1992?

13          A. Yes.

14          Q. So well over three years --

15          A. Three years before it had taken all the evidence and  
16          reported.

17          Q. And what conclusions did Sheriff Kearney arrive at,  
18          can you briefly tell us?

19          A. From my understanding, it basically confirmed the  
20          Secretary of State's concern and that Fife had pursued  
21          a policy which perhaps had put some children at risk.

22          Q. And I think Sheriff Kearney was critical of the policy?

23          A. Yes.

24          Q. The other inquiry that you -- perhaps before we move on  
25          to that, you've put this forward as an example of the

1 limitations on CAS in particular and its inspectorial  
2 abilities. Again, if you let me understand why you see  
3 this as a limitation of that power.

4 A. There was nothing within the 1968 Act or subsequent  
5 regulations which followed, which indicated the ability  
6 of a social work adviser, and ultimately Social Work  
7 Services Group advising the Secretary of State that  
8 local practice should alter. It was very much  
9 a question of general oversight of social work practice.  
10 And in that respect, given that the advisers were not  
11 inspecting Fife in the strict sense, they were simply  
12 engaging with Fife, they were certainly visiting the  
13 children's homes and I think there's indication that  
14 when Fife recommissioned its children's home at  
15 Rimbleton, Social Work Services Group, SED and the  
16 advisers already had a form completed to enable it to  
17 re-open, which indicates, I think, the seriousness and  
18 the limitations of its powers, that it was not in  
19 a position to enforce change within Fife. Does  
20 that ...?

21 Q. That's helpful, thank you. Then that brings me to the  
22 Orkney Inquiry, which is the other inquiry that you look  
23 at. As you tell us on page 9638 towards the top, the  
24 Orkney Inquiry was established in June 1991. That's  
25 under the chairmanship of Lord Clyde.

1 A. Yes.

2 Q. Perhaps you can just briefly tell us what the background  
3 to that was.

4 A. Orkney was, I think, the smallest local authority social  
5 work department in Scotland. It certainly had  
6 a Director of Social Work Services and a small number of  
7 qualified social work care staff that covered across the  
8 range. Orkney accepted at the beginning of 1989 that  
9 perhaps its practice was in some way deficient and  
10 invited CAS to review its operation and provide advice,  
11 and that's what it did.

12 It was the smallest local authority, with eight  
13 professional staff, and indicated that although the  
14 relationship between the social work department and the  
15 children's reporter had improved from a previous  
16 incident, there was evidence of a very low level of  
17 operation. Training has a low profile and some  
18 reorganisation of its staff was necessary.

19 So that indicates, again, that although Social Work  
20 Services Group and CAS had no powers of inspection, it  
21 could provide advice, and the advice, as far as we're  
22 aware, was actually implemented. A new Director of  
23 Social Work services was appointed and new staff were,  
24 I think, transferred from the mainland on a secondment  
25 basis.

1           But then a particular incident occurred, essentially  
2           with one particular family, which then broadened to  
3           other families, which certainly caused some concern in  
4           terms of the interpretation of the alleged abuse and the  
5           process that Orkney used in trying to establish that  
6           abuse had occurred.

7           But I think that's important here is that the then  
8           Chief Social Work Adviser indicates very clearly that  
9           central powers are illusory, that in fact they don't  
10          have very many powers. Although they knew there was  
11          a deficiency, they did not have the powers to intervene.

12         Q. Although they made recommendations which were taken up?

13         A. They made recommendations which were taken up, but the  
14          eventual decision taken to remove certain children was  
15          outside the purview of CAS and CAS certainly did not  
16          know about it until quite late on in the day.

17         Q. If we look at the position as at 1989, page 9643, you  
18          make reference at 5.55 to a report, and I think this was  
19          a report by two social work advisers.

20         A. Yes.

21         Q. That it revealed a very sorry picture at the lack of  
22          effective intervention in this case, and this is the  
23          serious case you mentioned where the father was  
24          convicted for a serious offence against the children.

25         A. That's right, yes.

- 1 Q. And that Orkney social work department had relied on  
2 voluntary measures of family support as opposed to  
3 a referral to the Children's Panel.
- 4 A. That's correct.
- 5 Q. And CAS was being critical of that?
- 6 A. CAS was being critical, but not in a position to issue  
7 regulations or issue directions.
- 8 Q. We know that ultimately, a judicial inquiry was set up.
- 9 A. Yes.
- 10 Q. But before that happened, do we see references to  
11 suggest that there was no purpose in having a judicial  
12 inquiry? For example, if we look at page 9644, towards  
13 the top, we note that the Chief Social Work Adviser did  
14 not believe that a judicial inquiry would obtain  
15 additional material of substance that would no doubt add  
16 to the recommendations.
- 17 A. That refers essentially to the position before the  
18 removal of a set of children from a number of families.
- 19 Q. So this is to do with the children of the person who was  
20 convicted?
- 21 A. That's right. They knew everything and as far as they  
22 were aware, it was generally on the lines that they  
23 would have recommended anyway.
- 24 Q. And that's what you mean then when we look at  
25 paragraph 5.57 at 9645, that the minister was informed

1           that as Orkney social work department was in the process  
2           of reorganisation on the lines of CAS's recommendations,  
3           a judicial inquiry under section 99 of the 1975 Act  
4           could not be justified.

5           A. That's correct.

6           Q. Then the landscape changes?

7           A. The landscape changes very quickly  
8           in January/February 1990.

9           Q. And that, as you have indicated, was the removal of  
10          a number of other children.

11          A. Yes.

12          Q. At short notice.

13          A. At very short notice, yes.

14          Q. And we know there were a number of court cases involving  
15          that, both with the sheriff at first instance, and  
16          I think on appeal to the Court of Session. But in  
17          particular, Lord Clyde was commissioned to look into the  
18          Orkney affair, and he produced his report, I think quite  
19          quickly.

20          A. I think in 1991, yes, within two years.

21          Q. Yes.

22          A. Just bear with me.

23          Q. The inquiry was set up in June 1991 and its report was  
24          published in October 1992.

25          A. Yes.



1 Q. So that was fairly quick as inquiries go. What was his  
2 ultimate conclusion then?

3 A. I think whilst he did not see an issue with the first  
4 family, there were clearly errors of judgment in the  
5 removal of a large number of children and the way those  
6 children were processed on the mainland.

7 Q. I think the criticism was, for example, of the way  
8 children might have been interviewed?

9 A. Yes, that's right. I think if I may say that although  
10 CAS was informed of the decision, it did not have any  
11 papers at that time they were being informed as to the  
12 detail.

13 Q. As to why the children were being removed?

14 A. Yes, the actual detail of the case papers was not within  
15 its purview at the time.

16 Q. Again, you've put this forward as an example of the  
17 limitations on CAS's inspectorial power and powers  
18 generally. Again, if you just flesh that out for me.

19 A. Well, essentially, CAS was not in a position to request  
20 or demand papers of any individual case, whether it was  
21 on Fife or Orkney. The fact that Fife allowed them to  
22 review cases was, if you like, a discretion of Fife.  
23 The fact that Orkney invited CAS in to review its  
24 organisation was very much their own invitation as  
25 a result of their perceived weaknesses. And in that

1           respect, if you cannot demand papers, you cannot demand  
2           to see the detail, and I think it is in this report that  
3           the 1986 Act -- the powers of inspection related only to  
4           specific papers and not necessarily to the whole range  
5           of papers that would be available on any one case. So  
6           background notes of a child was not within the review of  
7           a CAS inspectorial team if they looked at pre-1972 in  
8           terms of a local authority or voluntary children's home.

9           In that respect, it felt that the review that it was  
10          conducting itself or the advice it was giving ministers  
11          at the time was, "Well, what else can we do? We cannot  
12          demand these papers."

13                 Does that ...?

14          Q. Yes, thank you, that does clarify matters.

15                 You do tell us on page 9646 at paragraph 5.59 that  
16          there was an apparent increased sensitivity on the part  
17          of SWSG and CAS towards the issue of child abuse.

18          A. Yes.

19          Q. What was the basis for that?

20          A. If I can refer you back to the circular issued in 1976  
21          on non-accidental injury and the at risk registers.  
22          What you see developing in the 1980s is a sudden  
23          increase in the number of children clearly put on the at  
24          risk registers within local authorities. But the issue  
25          there was, of course, that being on the at risk register

1 did not mean that a child was in statutory care; it was  
2 simply at risk. And of course, CAS had no purview of  
3 those particular children, and the circulars issued  
4 previously indicated that CAS had a concern when there  
5 was a non-accidental injury for a child -- there was  
6 a deficiency in its ability to review the paperwork for  
7 children at risk on the at risk register.

8 Q. So what you tell us in that paragraph at 5.59, you make  
9 reference to the child protection registers and how  
10 these had grown.

11 A. Yes.

12 Q. They increased from 600 in 1985 to 1,700 in 1990 in  
13 Strathclyde.

14 A. Yes.

15 Q. You go on to say:

16 "A further indication lay in the number of referrals  
17 to reporters and children's hearings. In 1988 there had  
18 been 4,039 referrals on alleged grounds of incest,  
19 assault [and so on] and then in 1990, the total figure  
20 was 6,448."

21 A. Yes, that's right.

22 Q. So we can see the growth?

23 A. The at risk register was clearly developing and, as a  
24 result of that, local authority social workers, where  
25 they thought there were particular issues, were

1           referring them to the reporter to ensure that the child  
2           was brought within statutory care. But that didn't  
3           necessarily mean every child who was on the at risk  
4           register was necessarily brought within statutory care.

5       Q. But were the children who were on the register -- would  
6       these be children in the community?

7       A. Well, they could be -- yes, they could be in the  
8       community or they might well have been referred to  
9       a place of safety.

10      LADY SMITH: Yes, because just to confirm, once you're  
11      a child on the at risk register, being removed from the  
12      family home does not mean you get taken off the  
13      register.

14      A. That's right, yes.

15      LADY SMITH: You may be put in a foster home. The fact  
16      you're on the register isn't to infer that there's  
17      a problem with the foster home, but it continues to  
18      indicate that there's something about this child's  
19      circumstances that could put them at serious risk.

20      A. If they were returned to their family setting.

21      LADY SMITH: Exactly. If that link hasn't been broken.

22      A. Yes.

23      LADY SMITH: As we move forward, freeing for adoption hadn't  
24      been achieved, for example, or adoption itself, then the  
25      child would have to keep being flagged up as having that

1 risk associated with them.

2 A. That's right, yes.

3 MR MacAULAY: The sensitivity then that had increased within  
4 SWSG and CAS, what did this lead to?

5 A. It led to the beginning of discussions on the issue of  
6 a new circular to deal with, if you like, cases outside  
7 the purview of CAS and Social Work Services Group and  
8 therefore the Secretary of State. The primary issue was  
9 for the welfare of children who were not under statutory  
10 care, but within the purview of the local authority  
11 social work department as being at risk.

12 Q. That then takes us, professor, to page 9647 and your  
13 review of this section. You deal with that in a few  
14 paragraphs. Can you just perhaps take us through that?

15 A. Yes. The first section, 5.60, really is addressing the  
16 issue of the new security units that had been  
17 established and the reflection that there were issues  
18 concerning staff training and the staff complement  
19 in relation to, clearly, heavily disturbed children who  
20 were being referred there for their care and support,  
21 and that it was certainly the case that they wished to  
22 maintain a relationship with their family at the same  
23 time as providing more in-depth care within their  
24 regimes.

25 Q. And deaths in care, I think you deal with at 5.61.

1 A. Yes. Here there was certainly a recognition that deaths  
2 in care, or rather all deaths of children, whether in  
3 care or not, linked to the at risk register or  
4 thereabouts had not substantially increased in number  
5 over the period, but again there were issues of the  
6 desire to improve the practice as it emerged where there  
7 were clearly deficiencies in the care provided, which  
8 resulted in a child dying in care or dying not in  
9 statutory care.

10 Q. At 5.63 I think you look at what we've just been  
11 discussing in connection with Fife and Orkney as being  
12 another dimension of CAS's position in the oversight of  
13 childcare provision, and you have discussed the  
14 limitations that you see in how that was handled.

15 A. Yes.

16 Q. I think then, professor, having covered these points  
17 very recently, we come to your final conclusion on this  
18 part at page 9650. Perhaps you can just, again, briefly  
19 summarise what you have set out in your conclusion.

20 A. Yes. The 1968 Act essentially accepted that Scottish  
21 childcare provision was certainly deficient, even in  
22 comparison with that south of the border. Far greater  
23 reliance on institutions than the courts rather than  
24 supporting families within the communities or the  
25 children within those families, and at that aim of the

1 Act was to encourage the development of  
2 non-institutional provision, whether it was  
3 children's homes, whether it was remand centres or  
4 whether it was eventually List D schools. And at the  
5 same time, to provide advice to the nascent social work  
6 local authority departments. Not directly in this  
7 report, but linked to that, was the increase in support  
8 for the development of professional training.

9 Q. And you talk about CAS.

10 A. CAS was established ahead of the Act with a new post  
11 created, that of a Chief Social Work Adviser, who  
12 reorganised CAS on the principles of seeking to further  
13 the Act by encouraging non-institutional provision,  
14 perhaps moving too quickly initially in the belief that  
15 approved schools would be taken over by the local  
16 authority, which didn't of course happen in the first  
17 instance, but nevertheless accepting that local  
18 authority social work departments in future should  
19 encourage and engage with allied professions to provide  
20 a more broad range form of assessment of children who  
21 required care and support.

22 At the same time, it was decided that CAS should  
23 cease to inspect voluntary homes and local authority  
24 children's homes as that was the responsibility of the  
25 registering authority, and the 1968 Act was quite clear

1           that the registering authority was the local authority,  
2           and I think one needs to remember that the whole purpose  
3           of the 1968 Act was to encourage and support the  
4           development of local authority social work services  
5           under professional support.

6           It was the recognition also that within that, there  
7           were clear concerns over the deaths of children in care  
8           and the deaths of children who perhaps should have been  
9           in care, and that circulars were issued in 1968, 1972  
10          and 1982 on the need to ensure that CAS would receive  
11          all the appropriate paperwork for its review, both by  
12          its social work advisers and by the Scottish Home and  
13          Health Department's medical adviser, and perhaps even  
14          the Inspector of Schools, where necessary, to ensure  
15          that if practice could be improved, guidance would be  
16          provided to specific authorities and perhaps generally  
17          across Scotland.

18          It was certainly the case that CAS's functions in  
19          terms of general monitoring were put to the test, both  
20          in the Fife issue and also in the Orkney issue, and the  
21          limitations of its powers therein.

22          CAS certainly had dedicated social work advisers for  
23          children's services. It also had advisers concerning  
24          probation, the elderly and so on. These officials were  
25          certainly qualified to conduct their enquiries and,



1 where necessary, to conduct their inspections. It's  
2 clear that they worked, where necessary, in conjunction  
3 with the Scottish hospital and health department's  
4 medical officers and also with the HM Inspector of  
5 Schools, perhaps at a higher level than had operated  
6 before 1968.

7 It had some successes, if you want to use the word  
8 "success", in the sense that it obtained the abolition  
9 of corporal punishment within List D schools ahead of  
10 ordinary schools, and that can be put down to the  
11 informal pressure put down by the senior social work  
12 adviser.

13 Elsewhere, I would suggest that it recognised that  
14 List D schools were perhaps past their time and that,  
15 really, childcare practice had moved on and an  
16 acceptance of more specialised provision was necessary,  
17 which began to occur with the centrally controlled  
18 secure accommodation units that were established in the  
19 mid-1980s.

20 However, it recognised that essentially, apart from  
21 the limited number of inspections in 1992, which  
22 concerned perhaps, unfortunately, a dozen deaths of  
23 children in care and two secure units, that its  
24 authority was based on some sapiential knowledge of  
25 wider issues of childcare rather than the ability to



1       LADY SMITH: That's right. I think the details are either  
2               already on the website or about to be on the website,  
3               but I have given prior notice of broadly the period that  
4               we're going to cover from the first week of June is the  
5               current plan. Thank you.

6       (2.55 pm)

7               (The inquiry adjourned until a time to be determined  
8                               in June 2019)

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PROFESSOR IAN LEVITT (continued) .....1

Questions from MR MacAULAY (continued) .....1

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