

Scottish Child Abuse Inquiry

Witness Statement of

Nicholas James DIVER

Support person present: No

Personal Background

1. My name is Nicholas Diver. My date of birth is [REDACTED] 1971. My contact details are known to the Inquiry.
2. I have a History degree from Oxford University from 1994 and a Post Graduate Certificate in Education from Nottingham University in 1997.
3. I began working at Merchiston Castle School in September 1997 until August 2000. I left there and began working at Wellington College in Berkshire from September 2000 to August 2008. I thereafter moved to King Edward VI School in Southampton as Head of History. I am still employed there as Head of Humanities as well as Head of History.

Employment with the school

4. I was employed at Merchiston Castle School from September 1997 to August 2000 as a History and Politics teacher. In my first two years I was a tutor in Rogerson East and in my last year was a resident Assistant Housemaster in Evans. I was also a football and cricket coach and was in charge of the "Understanding Industry" course in my final year.
5. References were taken up by the school. From what I remember I had given my tutor at Nottingham University and the Headmaster of Cranleigh School in Surrey. I was

an old boy of Cranleigh and had also worked there part time from October 1995 to June 1996.

6. I think there was a year-long probation period. I certainly remember a 'confirmation of contract' meeting with the then Merchiston Headmaster, David Spawforth at the end of my first year. I cannot remember prerequisites for employment other than the need to prove academic qualifications.
7. My line manager as a History and Politics teacher was the Head of Department. This was John Begg in my first two years and Jonathan Selby in my last. I remember that under John there were three new members of the department in my first year. We had weekly meetings of the department and teaching was observed by John, the Headmaster and others in the department. In my second year the new Headmaster, Andrew Hunter, observed me teach as did John again and in my last we had a programme of internal departmental lesson observation in which we all watched one another. I cannot remember if there was a formal process of teaching appraisal after the probationary year.
8. As a House tutor my line manager was Paul Williams in Rogerson East and Alex Anderson in Evans. Contact with these people was frequent with one to one meetings and meetings of the entire pastoral teams of the respective houses. I think that these happened at least once a week at break time. I know that Paul had to write a report on me at the end of my probationary year.
9. I remember a series of sessions with the Deputy Head, Ken Houston, when I first arrived when I was taken through the different policies of the school including such things as health and safety, report writing and child protection. Regarding my House roles, both Paul and Alex made a clear point of integrating new tutors carefully and I remember frequent sessions that explained my duties and how the Housemaster expected things to be. I also remember sessions about Health & Safety and discussions about child protection protocols with these two. I'm afraid that whilst I remember the sessions taking place and the broad topics I cannot remember details.

Policy

10. I had no responsibility for policy. I was very junior in the school. I'm afraid that I cannot remember or recall any areas of policy in relation to training, recruitment of staff, child protection, requirement for qualifications, staff appraisal, complaints procedure, discipline and punishment of children, disciplinary process for dealing with complaints and allegations against staff, whistleblowing and/or record keeping. I do remember that the appointment of Nigel Rickard as a Deputy Head seemed to bring about a ramping up of focus on issues regarding child protection and I also remember that there seemed to be far more paperwork passed down regarding the list of issues given above but, again, I'm afraid that I cannot remember the details. That said, my inability to remember such things does not mean that they weren't dealt with. It may just be a failure of memory.

Strategic planning

11. I had no involvement in or responsibility for strategic planning. My memories are, I'm afraid, vague on the school's strategic approach and if there was change with the appointment of Andrew Hunter as headmaster in 1998. I do remember that there was a remodelling of the Senior Management under Andrew Hunter, with more designated and focused roles for those involved. The feeling at the time was that the management structure had been brought up to date, with a shift away from a rather personalised approach to management under David Spawforth. That said, other than knowing the job titles of senior management individuals, I can't say that I had detailed understanding of their roles.

Other staff/ Recruitment of staff

12. I did not manage other staff or have anyone reporting to me and I wasn't involved in the recruitment of staff at the school. Other than my recollections of my own appointment as detailed above I have no knowledge of recruitment policies and practices.

13. I don't know to what extent references were obtained from former employers nor do I know if referees were actually spoken to.

Training of staff

14. I wasn't involved in training and/or personal development of staff. In relation to training and/or personal development policies and how in practice these matters were implemented, I remember that training was rather devolved in that it was based departmentally and in the boarding houses that one was attached too. Looking back now, with the benefit of a modern day comparison, my gut feeling is that there was surprisingly little formal training in the sense of a well-worked out programme. That said, towards the end of my time at Merchiston I do remember whole-staff inset sessions taking place, one on IT comes to mind.

Supervision/staff appraisal/staff evaluation

16. I was never involved in supervision, staff appraisal and evaluation of staff. In relation to my knowledge of the school's policy in relation to supervision, staff appraisal and evaluation of staff, there was clearly a process of appraisal leading to the conformation of my contract at the end of my first year. Other than that I cannot recall a formal appraisal system. To be fair, that does not necessarily mean that there wasn't one, simply that after twenty years I cannot remember one.

Living arrangements

15. In my first two years I shared a flat in Lanark Road with a maths teacher. This was about a twenty minute walk away from the school. In my last year I was the live-in assistant Housemaster in Evans house. This meant I lived in a flat in the boarding house on the floor below the boys' accommodation.
16. Housemasters lived in the boarding houses and there were assistant Housemasters in each. Most staff lived either off site in their own properties or in school properties on site.

17. Pastoral staff and cleaners had access to the children's residential areas. I remember that there were locks with door codes.

Culture within Merchiston Castle

18. During my period of employment, the culture of and within the school was quite hearty and athletic but with a growing appreciation of the need to focus more and more on the academic side of life. The atmosphere was a friendly one. The boys enjoyed themselves and relations between them and the staff in the classroom and more broadly always seemed to me to be very positive. The boys themselves seemed to be a cohesive group; fiercely proud of the school and usually very protective of one another. Fagging did not exist in any form as far as I am aware.

Discipline and punishment

19. In relation to how and by whom children were disciplined and punished at the school, housemasters were the key. In Rogerson East there was a system of red and blue papers for minor infringements. Boys would have to write academic revision notes; a certain number of sides depending on the nature of the infringement. Boys could be gated further up the school in the sense of being denied access to Colinton and Edinburgh. Serious infringements would be dealt with by the Deputy Head and/or the Headmaster, e.g. drinking. There was never any suggestion of physical punishment.
20. I remember being fully aware of the range of sanctions available, largely because it was actually rather narrow, but I cannot remember a formal policy document. Again, there may have been but I just can't remember it. If records were kept that would have been the role of the Housemasters.

Individual boarding houses would have Upper VI prefects in them. They were responsible for the day to day running of the House. My view of these individuals during my two years in Rogerson East were that they were a mature and reliable group. I never had any sense that the prefects were anything other than serious and

caring in their interpretation of their roles. I remember that Paul Williams put considerable effort into training his prefects.

Day to day running of the school

21. I was never involved in the day to day running of the school, other than being on duty in boarding houses. In Rogerson East I would be on duty from 7.00 pm - 10.00 pm in the evenings on Tuesdays and Thursdays. In Evans I was also on duty one evening per week as well as being on duty on either Saturday or Sunday night. This involved being responsible for call overs and there was a clear policy whereby the Deputy Head was to be phoned if a boy missed call over.
22. I think I can be confident that, if any child was being abused or ill-treated, it would have come to light at or around the time it was occurring. The Housemasters were very diligent and really did know their boys very well and saw a great deal of them every single day. Pastoral issues were discussed frequently with house tutors. From my perspective as an ordinary teacher, Merchiston was a small school in terms of the numbers of boys and the site. You got to know them well and certainly picked up changes in mood etc.

Concerns about the school

23. To my knowledge, the school was never the subject of concern, in school or to any external body or agency, or any other person, because of the way in which children and young people in the school were treated
24. I am not aware of such concerns about the school but if there were, my gut instinct is that Housemasters and the Deputy Head would have been the front line as regards reporting to parents.

Reporting of complaints/concerns

25. In relation to a complaints or reporting process in place when any child in the school, or another person on their behalf, wished to make a complaint or report a concern, each pupil had a tutor who was a pastoral and academic figure in the life of the boys. Pupils were encouraged to feel free to speak to tutors about concerns if they had them. That said, the tutor was probably often a rather distant figure in the daily existence of a boy when compared to the presence and role of the Housemaster
26. I remember a session with Deputy Head, Ken Houston about this. How to talk to a boy with a concern, the need to pass information up to the Housemaster however trivial it might seem and the fact that a tutor should go to him, Ken, if they were concerned about the Housemaster himself. To be honest, I don't know if complaints were recorded.

Trusted adult/confidante

27. I don't recall that there was a person in the school, or outside of it, that a child could speak to about any worries they had but it may just be that I cannot remember. I don't know if children in practice raised concerns in this way. I suppose that a boy could always have arranged to speak to the chaplain. The Housemaster would have been the first port of call for boys if they had issues.

Abuse

28. In relation to whether the school had a definition of 'abuse' that it applied in relation to the treatment of children at the school during my period of employment, I remember an inset session when this was discussed although I cannot give a date. Looking at the Merchiston situation from my current position, it is certainly the case that we are today far clearer in our own minds as teachers about such things.

29. I'm afraid that I cannot remember clearly what, in the eyes of the school, would constitute abuse of children in its care, but I would imagine that the definition was physical, emotional, mental and sexual.
30. I cannot remember how the definition was communicated and explained to staff working at the school. For example, I cannot remember if there was a staff handbook. Such things are essential nowadays but I'm just not sure about twenty years ago. Again, this comment is not me saying that there definitively wasn't such a document, simply that I cannot remember. I'm afraid I cannot recall when it was introduced and if it ever changed.

Child protection arrangements

31. In relation to whether staff, including managerial staff, were given guidance and instruction on how children in their care at the school should be treated, cared for and protected against abuse, ill-treatment or inappropriate behaviour towards them, whether from staff, other adults, or fellow pupils, as mentioned above, I do remember an inset session on this issue but other than that I have no details that come to mind. Although by the standards of today it seems rather informal, I am convinced that the two Housemasters that I worked for at Merchiston were utterly devoted to the well-being of the boys in their care. It was certainly made clear by them that our primary responsibility as tutors was looking after the welfare of the boys.
32. I remember instruction being given by Ken Houston to staff on how to handle, and respond to, reports of abuse or ill-treatment of children by staff, other adults, or fellow pupils.
33. It was always clear to me that such matters had to be reported. This was as much common sense and natural decency as school policy. I cannot remember the formal situation here. To be honest, in my capacity as a very junior figure, the notion of autonomy and discretion in such matters did not occur. My role would always have been to report matters of concern.

34. Tutors were encouraged to look out for the welfare of their charges at all times and I was certainly aware of the need to report issues upwards had I ever come across any.
35. The only occasion I was aware of concerns related to DXP [REDACTED] In response to this a group of staff took these concerns to the Senior Management. I was not actually part of the group that went to the Senior Management as I was involved in the Understanding Industry Course that day but I had made it clear to colleagues that I shared their concerns and would be prepared to pass on any information that was requested.

External monitoring

36. I remember that we were inspected whilst Andrew Hunter was head. An HMI inspection perhaps? I honestly don't recall if they spoke with children, whether individually or in a group. As well as this I don't know if staff were present. I think I was spoken to about the History department and the academic side of the school. I don't think I was spoken to about my pastoral role. In relation to feedback, I was only aware of the usual inspection report.

Record-keeping

37. I'm afraid that I have nothing to offer in respect of the school's policy on record-keeping, record-keeping in practice, and the quality of the records as a source of information. My personal records were the usual marks. I cannot remember reports being copied, they were all done by hand. Other than the DXP [REDACTED] issue, I was not involved in any allegation of abuse. As a peripheral figure in that issue I was not privy to the nature of record keeping.
38. If there was an existing policy on record-keeping by staff at the school, and if they provided adequate information about how children had been treated in practice, and whether children had been reporting what they considered to be abuse, ill-treatment or inappropriate conduct, none of this rings a bell, I'm afraid. Again, that doesn't

mean that it didn't happen. It may simply be that I don't remember now over twenty three years after I arrived.

Investigations into abuse – personal involvement

39. I was on one occasion rather distantly involved in an investigation on behalf of the school into an allegation of abuse or ill-treatment of children at the school or into inappropriate behaviour by staff or others towards children.
40. I had on one occasion seen DXP a fellow teacher act oddly towards a boy during a social event. The boy, I think his name was was rather the worse for wear and was sitting in an arm chair in his kilt with his legs spread apart, seemingly oblivious to the oddity of what he was doing. I was a fair distance away but saw that DXP seemed to make a deliberate point of sitting on the floor so that he could look up the kilt of the boy. This must have happened in 1999, I think. I cannot put a date on this and, to be fair, it may have been innocuous but I do remember it troubling me to the extent that I mentioned it, to, I think, Alex Anderson. Kevin John Alexander Anderson (known as Alex). An RS teacher and Housemaster of Evans in my time at Merchiston.
41. It transpired that a number of colleagues had similar concerns regarding DXP and the decision was made to take this issue to the Senior Management one morning. OPA and Chispa Prini-Garcia are people I remember being involved. As it happened, I was not able to be part of the meeting that took place with the Senior Management as I was involved that morning with the fifth form 'Understanding Industry' course. I had made it clear though that I shared the concerns of my colleagues and would be prepared to say so to the senior management. My memories of the aftermath of this are vague. I recall Nigel Rickard Deputy Head speaking to us to tell us that he had spoken to DXP and the latter being described as "fey", i.e. given to losing track of things, staring into the distance in a world of his own. I left Merchiston the following term and DXP remained in post, with a rather difficult atmosphere in the Common Room as a result.

42. Not having been at the actual meeting with the HM over [DXP] it is hard for me to judge how well it had been handled at that stage. In my very junior position, I suppose that I assumed that matters had been handled professionally and correctly. I remember a meeting with Nigel Rickard when the "fey" comment was made but nothing beyond this. I don't know whether those more deeply involved were spoken to again.
43. Looking back now, I am very surprised that I wasn't spoken to one-to-one. Things would be dealt with very differently today, I am sure.

Reports of abuse and civil claims

44. I was never involved in the handling of reports to, or civil claims made against the school by former pupils, concerning historical abuse.

Police investigations/ criminal proceedings

I never became aware of police investigations into alleged abuse at the school. I have never given a statement to the police or the Crown concerning alleged abuse of children cared for at the school. I've never given evidence at a trial concerning alleged abuse of children cared for at the school.

Convicted abusers

45. I don't know if any person who worked at the school was convicted of the abuse of a child or children at the school. I have never heard of Torquil Johnson-Ferguson and as such I have never had any personal dealings with him.

Specific alleged abusers

46. I recall James Rainy Brown, [DXP] and [QZA] They were all at Merchiston during my three years at the school. At the time Rainy Brown

and DXP were perhaps in their sixties and QZA would possibly be in his fifties.

47. Rainy Brown had been the Pringle Housemaster before my time. When I worked at Merchiston he was still heavily involved in Pringle life, teaching, sport and social activities. DXP was the [REDACTED] and QZA a former [REDACTED] who subsequently became a SNR [REDACTED] under Andrew Hunter.
48. All three were simply colleagues to me. I had no formal and precise working relationships or links with them. Rainy Brown was a very distant figure indeed, spending most of his time in Pringle. The other two were around the place and I would pass the time of day with them but I never worked alongside them in a formal manner on a particular project or role.
49. Rainy Brown always struck me as a very peculiar man indeed. Fanatically devoted to the School, Edinburgh and Scotland. Almost childlike in his enthusiasms and his willingness to offer activities for the Pringle boys. A ball of energy, but not my cup of tea at all. If nothing else, he had a clear distrust of people from the South of England and had what I felt was a rather contrived eccentricity. He clearly also had no time for females, referring to them, I believe, as the "enemy" and spoke about visiting girls' schools as going into the "lair of the enemy".
50. QZA was a distant and rather snobbish man but capable of humour and of being pleasant company when the mood suited him. DXP was a personable and friendly man but with a strange aversion to matters of personal hygiene, a trait that was picked up on by the boys frequently.
51. I didn't know any of the three of them very well at all. I saw very little of Rainy Brown in my three years, given that he spent most of his time at Pringle. I saw rather more of QZA and DXP given that they spent more time in the common room but my relationship with them never went beyond that of colleagues. I wouldn't say that I was friends with them although my dealings with them were friendly. [REDACTED] was

just starting at Oxford reading History so we had something in common there and spoke about this on occasion.

52. I did see all three of them with children. Where Rainy Brown was concerned, this would be seeing him take sports practices. On these occasions there always appeared to be plenty of fun and Rainy Brown was at the heart of it. I cannot recall seeing him with children in an academic context or in Pringle. I suppose I must have seen QZA with children around and about the place but not in a way that gave me any reason to think anything was amiss. Other than the DXP episode set out above, his relations with pupils in my presence were warm and friendly and gave no cause for concern on my part. It was clear though that there was a good deal of laughter behind his back on the part of pupils, given his personal hygiene issues.
53. I saw QZA reprimand boys a couple of times over dress infringements. Certainly nothing that I felt was an issue. He was perfectly professional. I didn't see Rainy Brown or DXP discipline any of the boys.
54. I never saw Rainy Brown or QZA abuse any of the children. In relation to DXP only the episode recounted above.
55. I did not hear of Rainy Brown and QZA abusing children. Although Rainy Brown was clearly an odd man in many ways and a fanatical believer in what I suppose might be called an "active and outward bound childhood" I certainly never saw him abuse a child and never heard of him doing so. As detailed above, a number of colleagues had concerns regarding DXP that led to the eventual meeting with the Senior Management. I think that one person had a recollection of seeing another episode similar to mine, in the sense of looking up a boy's kilt. I think that this may have taken place on a coach coming back from a social event but I cannot be certain.

Helping the Inquiry

56. The lessons that can be learned to protect children in a boarding school, now and in the future are the dissemination of formal policies and the putting on of formal and

regular training for all staff. Looking back now after nearly a quarter of a century, with the benefit of being able to compare a modern school with the Merchiston of 1997-2000, it does strike me that Merchiston was rather light on these things. Certainly, when I moved to Wellington College it was immediately apparent that there was far more formality and precision in this sort of thing.

57. A few years ago I was contacted by someone from Scotland about this issue. I don't recall the background or formal role of the person I spoke to. Two phone conversations took place and I told this person the same information as is included in this statement. I was not required to sign anything and have had no communication from this source since.
58. I have no objection to my witness statement being published as part of the evidence to the Inquiry. I believe the facts stated in this witness statement are true.

Signed.....
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[Redacted Signature]
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Dated.....
10 March 2021